

By the Committee on Criminal Justice; and Senator Crist

591-08242-08

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1 A bill to be entitled

2 An act relating to sexual offenders and predators;
3 amending s. 775.21, F.S.; revising provisions relating to
4 reimbursement of specified costs by sexual predators;
5 creating s. 775.215, F.S.; specifying residency distance
6 limitations for persons convicted of certain sexual
7 offenses; preempting certain local ordinances and
8 providing for repeal of such ordinances; amending s.
9 775.24, F.S.; revising provisions relating to the duty of
10 the court to uphold certain laws; amending s. 794.065,
11 F.S.; providing additional residency restrictions on
12 certain offenders; providing penalties; creating s.
13 794.0701, F.S.; providing for enhanced penalties for
14 loitering or prowling by persons convicted of certain sex
15 offenses; amending s. 947.1405, F.S.; providing additional
16 conditional release restrictions for certain offenders;
17 amending s. 948.30, F.S.; revising provisions relating to
18 terms and conditions of probation or community control for
19 certain sex offenses; providing additional restrictions
20 for certain probationers or community controllees who
21 committed sexual offenses with minors under the age of 16;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (b) of subsection (3) of section
27 775.21, Florida Statutes, is amended to read:

28 775.21 The Florida Sexual Predators Act.--

29 (3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.--

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30 (b) The high level of threat that a sexual predator
31 presents to the public safety, and the long-term effects suffered
32 by victims of sex offenses, provide the state with sufficient
33 justification to implement a strategy that includes:

34 1. Incarcerating sexual predators and maintaining adequate
35 facilities to ensure that decisions to release sexual predators
36 into the community are not made on the basis of inadequate space.

37 2. Providing for specialized supervision of sexual
38 predators who are in the community by specially trained probation
39 officers with low caseloads, as described in ss. 947.1405(7) and
40 948.30. The sexual predator is subject to specified terms and
41 conditions implemented at sentencing or at the time of release
42 from incarceration, with a requirement that only those sexual
43 predators found to be indigent may defer payment pursuant to s.
44 28.246 of all or part of the costs in accordance with the
45 provisions of that section ~~who are financially able must pay all~~
46 ~~or part of the costs of supervision.~~

47 3. Requiring the registration of sexual predators, with a
48 requirement that complete and accurate information be maintained
49 and accessible for use by law enforcement authorities,
50 communities, and the public.

51 4. Providing for community and public notification
52 concerning the presence of sexual predators.

53 5. Prohibiting sexual predators from working with children,
54 either for compensation or as a volunteer.

55 Section 2. Section 775.215, Florida Statutes, is created to
56 read:

57 775.215 Residency distance limitations for persons
58 convicted of certain sexual offenses; local ordinances preempted

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59 and repealed.--The adoption of residency distance limitations for
60 persons convicted of sexual offenses, including, but not limited
61 to, violations of s. 787.01, s. 787.02, s. 794.011, s. 800.04, s.
62 827.071, or s. 847.0145, regardless of whether adjudication has
63 been withheld, is expressly preempted to the state. The
64 provisions of ss. 794.065, 947.1405, and 948.30 establishing such
65 distance limitations supersede the distance limitations included
66 in any such municipal or county ordinances. Any such residency
67 distance limitations adopted by a county or municipality prior to
68 October 1, 2008, are repealed and abolished as of October 1,
69 2008.

70 Section 3. Subsection (2) of section 775.24, Florida
71 Statutes, is amended to read:

72 775.24 Duty of the court to uphold laws governing sexual
73 predators and sexual offenders.--

74 (2) If a person meets the criteria in this chapter for
75 designation as a sexual predator or meets the criteria in s.
76 943.0435, s. 944.606, s. 944.607, or any other law for
77 classification as a sexual offender, the court may not enter an
78 order, for the purpose of approving a plea agreement or for any
79 other reason, which:

80 (a) Exempts a person who meets the criteria for designation
81 as a sexual predator or classification as a sexual offender from
82 such designation or classification; ~~or~~ exempts such person from
83 the requirements for registration or community and public
84 notification imposed upon sexual predators and sexual offenders;
85 exempts such person from the distance limitations contained in
86 ss. 794.065, 947.1405, and 948.30; or exempts such person from
87 the provisions of s. 794.0701;

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88 (b) Restricts the compiling, reporting, or release of
89 public records information that relates to sexual predators or
90 sexual offenders; or

91 (c) Prevents any person or entity from performing its
92 duties or operating within its statutorily conferred authority as
93 such duty or authority relates to sexual predators or sexual
94 offenders.

95 Section 4. Section 794.065, Florida Statutes, is amended to
96 read:

97 794.065 Unlawful place of residence for persons convicted
98 of certain sex offenses.--

99 (1) (a) 1. It is unlawful for any person who has been
100 convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or
101 s. 847.0145, regardless of whether adjudication has been
102 withheld, in which the victim of the offense was less than 16
103 years of age, to reside within 1,000 feet of any school, day care
104 center, park, or playground.

105 2. A person who violates this subsection ~~section~~ and whose
106 conviction for an offense listed in subparagraph 1. ~~under s.~~
107 ~~794.011, s. 800.04, s. 827.071, or s. 847.0145~~ was classified as:

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

113 b. A felony of the second or third degree, commits a
114 misdemeanor of the first degree, punishable as provided in s.
115 775.082 or s. 775.083.

116 (b)(2) This subsection ~~section~~ applies to any person

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117 convicted of an offense listed in subparagraph (a)1. if the
118 offense occurred a violation of s. 794.011, s. 800.04, s.
119 827.071, or s. 847.0145 for offenses that occur on or after
120 October 1, 2004.

121 (2)(a)1. It is unlawful for any person who has been
122 convicted of a violation of s. 787.01, s. 787.02, s. 794.011, s.
123 800.04, s. 827.071, or s. 847.0145, committed on or after October
124 1, 2008, regardless of whether adjudication has been withheld, in
125 which the victim of the offense was less than 16 years of age, to
126 reside within 1,500 feet of any school, day care center, park, or
127 playground.

128 2. A person violating this subsection whose conviction of
129 an offense listed in subparagraph 1. was classified as:

130 a. A felony of the first degree or higher, commits a felony
131 of the third degree, punishable as provided in s. 775.082 or s.
132 775.083.

133 b. A felony of the second or third degree, commits a
134 misdemeanor of the first degree, punishable as provided in s.
135 775.082 or s. 775.083.

136 (b) The distances in this subsection shall be measured in a
137 straight line from the offender's place of residence to the
138 nearest boundary line of the school, day care center, park, or
139 playground.

140 Section 5. Section 794.0701, Florida Statutes, is created
141 to read:

142 794.0701 Loitering or prowling by persons convicted of
143 certain sex offenses.--Any person who:

144 (1) Has been convicted of a violation of s. 787.01, s.
145 787.02, s. 794.011, s. 800.04, s. 827.071, or s. 847.0145,

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146 regardless of whether adjudication has been withheld, in which
147 the victim of the offense was less than 16 years of age; and
148 (2) Loiters or prowls as proscribed in s. 856.021 within
149 300 feet of a place where children regularly congregate,
150 including, but not limited to, a school, designated public school
151 bus stop, day care center, playground or park
152
153 commits a misdemeanor of the first degree, punishable as provided
154 in s. 775.082 or s. 775.083.

155 Section 6. Section 4. Paragraph (a) of subsection (7) of
156 section 947.1405, Florida Statutes, is amended, and subsection
157 (11) is added to that section, to read:

158 947.1405 Conditional release program.--

159 (7) (a) Any inmate who is convicted of a crime committed on
160 or after October 1, 1995, or who has been previously convicted of
161 a crime committed on or after October 1, 1995, in violation of
162 chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is
163 subject to conditional release supervision, shall have, in
164 addition to any other conditions imposed, the following special
165 conditions imposed by the commission:

166 1. A mandatory curfew from 10 p.m. to 6 a.m. The commission
167 may designate another 8-hour period if the offender's employment
168 precludes the above specified time, and such alternative is
169 recommended by the Department of Corrections. If the commission
170 determines that imposing a curfew would endanger the victim, the
171 commission may consider alternative sanctions.

172 2.a. If the victim was under the age of 18, a prohibition
173 on living within 1,000 feet of a school, day care center, park,
174 playground, designated public school bus stop, or other place

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175 | where children regularly congregate. A releasee who is subject to
176 | this subparagraph may not relocate to a residence that is within
177 | 1,000 feet of a public school bus stop.

178 | b. Beginning October 1, 2004, the commission or the
179 | department may not approve a residence that is located within
180 | 1,000 feet of a school, day care center, park, playground,
181 | designated school bus stop, or other place where children
182 | regularly congregate for any releasee who is subject to this
183 | subparagraph. On October 1, 2004, the department shall notify
184 | each affected school district of the location of the residence of
185 | a releasee 30 days prior to release and thereafter, if the
186 | releasee relocates to a new residence, shall notify any affected
187 | school district of the residence of the releasee within 30 days
188 | after relocation. If, on October 1, 2004, any public school bus
189 | stop is located within 1,000 feet of the existing residence of
190 | such releasee, the district school board shall relocate that
191 | school bus stop. Beginning October 1, 2004, a district school
192 | board may not establish or relocate a public school bus stop
193 | within 1,000 feet of the residence of a releasee who is subject
194 | to this subparagraph. The failure of the district school board to
195 | comply with this subparagraph shall not result in a violation of
196 | conditional release supervision.

197 | c. If the victim was under the age of 18, beginning October
198 | 1, 2008, neither the commission nor the department may approve a
199 | residence located within 1,500 feet of a school, day care center,
200 | park, playground, designated school bus stop, or other place
201 | where children regularly congregate for any releasee who is
202 | subject to this subparagraph. The distance in this sub-
203 | subparagraph shall be measured in a straight line from the

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204 offender's place of residence to the nearest boundary line of the
205 school, day care center, park, playground, or other place where
206 children regularly congregate. The distance may not be measured
207 by a pedestrian route or automobile route.

208 3. Active participation in and successful completion of a
209 sex offender treatment program with qualified practitioners
210 specifically trained to treat sex offenders, at the releasee's
211 own expense. If a qualified practitioner is not available within
212 a 50-mile radius of the releasee's residence, the offender shall
213 participate in other appropriate therapy.

214 4. A prohibition on any contact with the victim, directly
215 or indirectly, including through a third person, unless approved
216 by the victim, the offender's therapist, and the sentencing
217 court.

218 5. If the victim was under the age of 18, a prohibition
219 against contact with children under the age of 18 without review
220 and approval by the commission. The commission may approve
221 supervised contact with a child under the age of 18 if the
222 approval is based upon a recommendation for contact issued by a
223 qualified practitioner who is basing the recommendation on a risk
224 assessment. Further, the sex offender must be currently enrolled
225 in or have successfully completed a sex offender therapy program.
226 The commission may not grant supervised contact with a child if
227 the contact is not recommended by a qualified practitioner and
228 may deny supervised contact with a child at any time. When
229 considering whether to approve supervised contact with a child,
230 the commission must review and consider the following:

231 a. A risk assessment completed by a qualified practitioner.
232 The qualified practitioner must prepare a written report that

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233 | must include the findings of the assessment and address each of
234 | the following components:

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

236 | (II) The sex offender's history of adult charges with
237 | apparent sexual motivation;

238 | (III) The sex offender's history of adult charges without
239 | apparent sexual motivation;

240 | (IV) The sex offender's history of juvenile charges,
241 | whenever available;

242 | (V) The sex offender's offender treatment history,
243 | including a consultation from the sex offender's treating, or
244 | most recent treating, therapist;

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

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

248 | (VIII) The sex offender's personal, social, educational,
249 | and work history;

250 | (IX) The results of current psychological testing of the
251 | sex offender if determined necessary by the qualified
252 | practitioner;

253 | (X) A description of the proposed contact, including the
254 | location, frequency, duration, and supervisory arrangement;

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

257 | (XII) The parent's or legal guardian's preference regarding
258 | the proposed contact; and

259 | (XIII) The qualified practitioner's opinion, along with the
260 | basis for that opinion, as to whether the proposed contact would
261 | likely pose significant risk of emotional or physical harm to the

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262 | child.

263 |

264 | The written report of the assessment must be given to the
265 | commission.

266 | b. A recommendation made as a part of the risk-assessment
267 | report as to whether supervised contact with the child should be
268 | approved;

269 | c. A written consent signed by the child's parent or legal
270 | guardian, if the parent or legal guardian is not the sex
271 | offender, agreeing to the sex offender having supervised contact
272 | with the child after receiving full disclosure of the sex
273 | offender's present legal status, past criminal history, and the
274 | results of the risk assessment. The commission may not approve
275 | contact with the child if the parent or legal guardian refuses to
276 | give written consent for supervised contact;

277 | d. A safety plan prepared by the qualified practitioner,
278 | who provides treatment to the offender, in collaboration with the
279 | sex offender, the child's parent or legal guardian, and the
280 | child, when age appropriate, which details the acceptable
281 | conditions of contact between the sex offender and the child. The
282 | safety plan must be reviewed and approved by the Department of
283 | Corrections before being submitted to the commission; and

284 | e. Evidence that the child's parent or legal guardian, if
285 | the parent or legal guardian is not the sex offender, understands
286 | the need for and agrees to the safety plan and has agreed to
287 | provide, or to designate another adult to provide, constant
288 | supervision any time the child is in contact with the offender.

289 |

290 | The commission may not appoint a person to conduct a risk

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291 | assessment and may not accept a risk assessment from a person who
292 | has not demonstrated to the commission that he or she has met the
293 | requirements of a qualified practitioner as defined in this
294 | section.

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

299 | 7. Unless otherwise indicated in the treatment plan
300 | provided by the sexual offender treatment program, a prohibition
301 | on viewing, owning, or possessing any obscene, pornographic, or
302 | sexually stimulating visual or auditory material, including
303 | telephone, electronic media, computer programs, or computer
304 | services that are relevant to the offender's deviant behavior
305 | pattern.

306 | 8. Effective for a releasee whose crime is committed on or
307 | after July 1, 2005, a prohibition on accessing the Internet or
308 | other computer services until the offender's sex offender
309 | treatment program, after a risk assessment is completed, approves
310 | and implements a safety plan for the offender's accessing or
311 | using the Internet or other computer services.

312 | 9. A requirement that the releasee must submit two
313 | specimens of blood to the Florida Department of Law Enforcement
314 | to be registered with the DNA database.

315 | 10. A requirement that the releasee make restitution to the
316 | victim, as determined by the sentencing court or the commission,
317 | for all necessary medical and related professional services
318 | relating to physical, psychiatric, and psychological care.

319 | 11. Submission to a warrantless search by the community

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320 control or probation officer of the probationer's or community
321 controllee's person, residence, or vehicle.

322 (11) (a) For a releasee whose crime was committed on or
323 after October 1, 2008, the commission must, in addition to all
324 other provisions of this section, impose the special conditions
325 in paragraph (b) on the following releasees:

326 1. A releasee whose crime was committed on or after October
327 1, 2008, in violation of s. 800.04(4), (5), or (6); s. 827.071;
328 or s. 847.0145 in this state or a similar offense in another
329 jurisdiction when, at the time of the offense, the victim was
330 under 16 years of age and the releasee was 18 years of age or
331 older.

332 2. A releasee who is designated as a sexual predator under
333 s. 775.21 or who has received a similar designation or
334 determination in another jurisdiction.

335 3. A releasee subject to registration as a sexual predator
336 under s. 775.21 or as a sexual offender under s. 943.0435 who has
337 committed an offense that would meet the criteria for the
338 designation or registration when at the time of the offense the
339 victim was under 16 years of age and the releasee was 18 years of
340 age or older, who commits a violation of s. 775.21 or s. 943.0435
341 on or after October 1, 2008, and who is not otherwise subject to
342 this paragraph.

343 (b) The commission must order a prohibition on distributing
344 candy or other items to children on Halloween, wearing a Santa
345 Claus costume on or preceding Christmas, wearing an Easter Bunny
346 costume on or preceding Easter, entertaining at children's
347 parties, or wearing a clown costume without prior approval from
348 the commission.

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349 Section 7. Paragraph (b) of subsection (1) and subsection
350 (3) of section 948.30, Florida Statutes, are amended, and
351 subsection (4) is added to that section, to read:

352 948.30 Additional terms and conditions of probation or
353 community control for certain sex offenses.--Conditions imposed
354 pursuant to this section do not require oral pronouncement at the
355 time of sentencing and shall be considered standard conditions of
356 probation or community control for offenders specified in this
357 section.

358 (1) Effective for probationers or community controllees
359 whose crime was committed on or after October 1, 1995, and who
360 are placed under supervision for violation of chapter 794, s.
361 800.04, s. 827.071, or s. 847.0145, the court must impose the
362 following conditions in addition to all other standard and
363 special conditions imposed:

364 (b)1. Except as provided in subparagraph 2., if the victim
365 was under the age of 18, a prohibition on living within 1,000
366 feet of a school, day care center, park, playground, or other
367 place where children regularly congregate, as prescribed by the
368 court. The 1,000-foot distance shall be measured in a straight
369 line from the offender's place of residence to the nearest
370 boundary line of the school, day care center, park, playground,
371 or other place where children regularly congregate. The distance
372 may not be measured by a pedestrian route or automobile route.

373 2. For a probationer or community controllee whose crime
374 was committed on or after October 1, 2008, if the victim was
375 under the age of 18, a prohibition on living within 1,500 feet of
376 a school, day care center, park, playground, or other place where
377 children regularly congregate, as prescribed by the court. This

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378 distance shall be measured in a straight line from the offender's
379 place of residence to the nearest boundary line of the school,
380 day care center, park, playground, or other place where children
381 regularly congregate. The distance may not be measured by a
382 pedestrian route or automobile route.

383 (3) Effective for a probationer or community controllee
384 whose crime was committed on or after September 1, 2005, and who:

385 (a) Is placed on probation or community control for a
386 violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,
387 or s. 847.0145 and the unlawful sexual activity involved a victim
388 under 16 ~~15~~ years of age or younger and the offender is 18 years
389 of age or older;

390 (b) Is designated a sexual predator pursuant to s. 775.21;
391 or

392 (c) Has previously been convicted of a violation of chapter
393 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and
394 the unlawful sexual activity involved a victim under 16 ~~15~~ years
395 of age or younger and the offender is 18 years of age or older,
396

397 the court must order, in addition to any other provision of this
398 section, mandatory electronic monitoring as a condition of the
399 probation or community control supervision.

400 (4) (a) The court must, in addition to all other provisions
401 of this section, impose the special conditions in paragraph (b)
402 on the following probationers or community controllees whose
403 crime was committed on or after October 1, 2008:

404 1. A probationer or community controllee who violated s.
405 800.04(4), (5), or (6); s. 827.071; or s. 847.0145 in this state
406 or committed a similar offense in another jurisdiction when, at

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407 the time of the offense, the victim was under 16 years of age and
408 the probationer or community controllee was 18 years of age or
409 older.

410 2. A probationer or community controllee who is designated
411 as a sexual predator under s. 775.21 or who has received a
412 similar designation or determination in another jurisdiction.

413 3. A probationer or community controllee subject to
414 registration as a sexual predator under s. 775.21 or as a sexual
415 offender pursuant to s. 943.0435 who has committed an offense
416 that would meet the criteria for the designation or registration
417 when at the time of the offense the victim was under 16 years of
418 age and the probationer or community controllee was 18 years of
419 age or older, who commits a violation of s. 775.21 or s. 943.0435
420 on or after October 1, 2008, and who is not otherwise subject to
421 this paragraph.

422 (b) The court must order a prohibition on distributing
423 candy or other items to children on Halloween, wearing a Santa
424 Claus costume on or preceding Christmas, wearing an Easter Bunny
425 costume on or preceding Easter, entertaining at children's
426 parties, or wearing a clown costume without prior approval from
427 the court.

428 Section 8. This act shall take effect October 1, 2008.