

A bill to be entitled

An act relating to supervision of sexually violent predators; amending s. 394.926, F.S.; requiring the Department of Children and Families to notify the Department of Corrections and the Parole Commission if a sexually violent predator who has a pending term of court-ordered or postprison release supervision is released from custody; amending s. 947.1405, F.S.; tolling the conditional release period of persons transferred to the custody of the Department of Children and Families; amending s. 948.012, F.S.; tolling the supervision period of persons with split sentences and who have been transferred to the custody of the Department of Children and Families; amending s. 775.21, F.S.; correcting a cross-reference; providing an effective date.

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

Section 1. Subsection (2) of section 394.926, Florida Statutes, is amended to read:

394.926 Notice to victims of release of persons committed as sexually violent predators; notice to Department of Corrections and Parole Commission.—

(2) If a sexually violent predator who has a ~~an active or~~ pending term of probation, community control, parole,

HB 7017

2014

27 conditional release, or other court-ordered or postprison
28 release supervision is released from custody, the department
29 must immediately notify the Department of Corrections' Office of
30 Community Corrections in Tallahassee. The Parole Commission must
31 also be immediately notified of any releases of a sexually
32 violent predator who has a ~~an active or~~ pending term of parole,
33 conditional release, or other postprison release supervision
34 that is administered by the Parole Commission.

35 Section 2. Section 947.1405, Florida Statutes, is amended
36 to read:

37 947.1405 Conditional release program.—

38 (1) This section and s. 947.141 may be cited as the
39 "Conditional Release Program Act."

40 (2) Any inmate who:

41 (a) Is convicted of a crime committed on or after October
42 1, 1988, and before January 1, 1994, and any inmate who is
43 convicted of a crime committed on or after January 1, 1994,
44 which crime is or was contained in category 1, category 2,
45 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
46 Rules of Criminal Procedure (1993), and who has served at least
47 one prior felony commitment at a state or federal correctional
48 institution;

49 (b) Is sentenced as a habitual or violent habitual
50 offender or a violent career criminal pursuant to s. 775.084; or

51 (c) Is found to be a sexual predator under s. 775.21 or
52 former s. 775.23,

53
54 shall, upon reaching the tentative release date or provisional
55 release date, whichever is earlier, as established by the
56 Department of Corrections, be released under supervision subject
57 to specified terms and conditions, including payment of the cost
58 of supervision pursuant to s. 948.09. Such supervision shall be
59 applicable to all sentences within the overall term of sentences
60 if an inmate's overall term of sentences includes one or more
61 sentences that are eligible for conditional release supervision
62 as provided in this section ~~herein~~.

63 (3) If a person who is transferred to the custody of the
64 Department of Children and Families pursuant to part V of
65 chapter 394 is subject to conditional release supervision, the
66 period of conditional release supervision is tolled until such
67 person is no longer in the custody of the Department of Children
68 and Families. This subsection applies to all periods of
69 conditional release supervision which begin on or after October
70 1, 2014, regardless of the date of the underlying offense.

71 (4) Effective July 1, 1994, and applicable for offenses
72 committed on or after that date, the commission may require, as
73 a condition of conditional release, that the releasee make
74 payment of the debt due and owing to a county or municipal
75 detention facility under s. 951.032 for medical care, treatment,
76 hospitalization, or transportation received by the releasee
77 while in that detention facility. The commission, in determining
78 whether to order such repayment and the amount of such

HB 7017

2014

79 repayment, shall consider the amount of the debt, whether there
80 was any fault of the institution for the medical expenses
81 incurred, the financial resources of the releasee, the present
82 and potential future financial needs and earning ability of the
83 releasee, and dependents, and other appropriate factors.

84 (5) If any inmate placed on conditional release
85 supervision is also subject to probation or community control,
86 resulting from a probationary or community control split
87 sentence within the overall term of sentences, the Department of
88 Corrections shall supervise such person according to the
89 conditions imposed by the court and the commission shall defer
90 to such supervision. If the court revokes probation or community
91 control and resentsences the offender to a term of incarceration,
92 such revocation also constitutes a sufficient basis for the
93 revocation of the conditional release supervision on any
94 nonprobationary or noncommunity control sentence without further
95 hearing by the commission. If any such supervision on any
96 nonprobationary or noncommunity control sentence is revoked,
97 such revocation may result in a forfeiture of all gain-time, and
98 the commission may revoke the resulting deferred conditional
99 release supervision or take other action it considers
100 appropriate. If the term of conditional release supervision
101 exceeds that of the probation or community control, then, upon
102 expiration of the probation or community control, authority for
103 the supervision shall revert to the commission and the
104 supervision shall be subject to the conditions imposed by the

HB 7017

2014

105 commission.

106 (6) A panel of no fewer than two commissioners shall
107 establish the terms and conditions of any such release. If the
108 offense was a controlled substance violation, the conditions
109 shall include a requirement that the offender submit to random
110 substance abuse testing intermittently throughout the term of
111 conditional release supervision, upon the direction of the
112 correctional probation officer as defined in s. 943.10(3). The
113 commission shall also determine whether the terms and conditions
114 of such release have been violated and whether such violation
115 warrants revocation of the conditional release.

116 (7)~~(3)~~ As part of the conditional release process, the
117 commission, through review and consideration of information
118 provided by the department, shall determine:

119 (a) The amount of reparation or restitution.

120 (b) The consequences of the offense as reported by the
121 aggrieved party.

122 (c) The aggrieved party's fear of the inmate or concerns
123 about the release of the inmate.

124 (8)~~(4)~~ The commission shall provide to the aggrieved party
125 information regarding the manner in which notice of any
126 developments concerning the status of the inmate during the term
127 of conditional release may be requested.

128 (9)~~(5)~~ Within 180 days prior to the tentative release date
129 or provisional release date, whichever is earlier, a
130 representative of the department shall review the inmate's

131 program participation, disciplinary record, psychological and
132 medical records, criminal records, and any other information
133 pertinent to the impending release. The department shall gather
134 and compile information necessary for the commission to make the
135 determinations set forth in subsection (7) ~~(3)~~. A department
136 representative shall conduct a personal interview with the
137 inmate for the purpose of determining the details of the
138 inmate's release plan, including the inmate's planned residence
139 and employment. The department representative shall forward the
140 inmate's release plan to the commission and recommend to the
141 commission the terms and conditions of the conditional release.

142 (10) ~~(6)~~ The commission shall review the recommendations of
143 the department, and such other information as it deems relevant,
144 and may conduct a review of the inmate's record for the purpose
145 of establishing the terms and conditions of the conditional
146 release. The commission may impose any special conditions it
147 considers warranted from its review of the release plan and
148 recommendation. If the commission determines that the inmate is
149 eligible for release under this section, the commission shall
150 enter an order establishing the length of supervision and the
151 conditions attendant thereto. However, an inmate who has been
152 convicted of a violation of chapter 794 or found by the court to
153 be a sexual predator is subject to the maximum level of
154 supervision provided, with the mandatory conditions as required
155 in subsection (11) ~~(7)~~, and that supervision shall continue
156 through the end of the releasee's original court-imposed

HB 7017

2014

157 sentence. The length of supervision must not exceed the maximum
158 penalty imposed by the court.

159 (11)~~(7)~~(a) Any inmate who is convicted of a crime
160 committed on or after October 1, 1995, or who has been
161 previously convicted of a crime committed on or after October 1,
162 1995, in violation of chapter 794, s. 800.04, s. 827.071, s.
163 847.0135(5), or s. 847.0145, and is subject to conditional
164 release supervision, shall have, in addition to any other
165 conditions imposed, the following special conditions imposed by
166 the commission:

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

173 2. If the victim was under the age of 18, a prohibition on
174 living within 1,000 feet of a school, child care facility, park,
175 playground, designated public school bus stop, or other place
176 where children regularly congregate. A releasee who is subject
177 to this subparagraph may not relocate to a residence that is
178 within 1,000 feet of a public school bus stop. Beginning October
179 1, 2004, the commission or the department may not approve a
180 residence that is located within 1,000 feet of a school, child
181 care facility, park, playground, designated school bus stop, or
182 other place where children regularly congregate for any releasee

183 who is subject to this subparagraph. On October 1, 2004, the
184 department shall notify each affected school district of the
185 location of the residence of a releasee 30 days prior to release
186 and thereafter, if the releasee relocates to a new residence,
187 shall notify any affected school district of the residence of
188 the releasee within 30 days after relocation. If, on October 1,
189 2004, any public school bus stop is located within 1,000 feet of
190 the existing residence of such releasee, the district school
191 board shall relocate that school bus stop. Beginning October 1,
192 2004, a district school board may not establish or relocate a
193 public school bus stop within 1,000 feet of the residence of a
194 releasee who is subject to this subparagraph. The failure of the
195 district school board to comply with this subparagraph shall not
196 result in a violation of conditional release supervision. A
197 releasee who is subject to this subparagraph may not be forced
198 to relocate and does not violate his or her conditional release
199 supervision if he or she is living in a residence that meets the
200 requirements of this subparagraph and a school, child care
201 facility, park, playground, designated public school bus stop,
202 or other place where children regularly congregate is
203 subsequently established within 1,000 feet of his or her
204 residence.

205 3. Active participation in and successful completion of a
206 sex offender treatment program with qualified practitioners
207 specifically trained to treat sex offenders, at the releasee's
208 own expense. If a qualified practitioner is not available within

209 a 50-mile radius of the releasee's residence, the offender shall
210 participate in other appropriate therapy.

211 4. A prohibition on any contact with the victim, directly
212 or indirectly, including through a third person, unless approved
213 by the victim, a qualified practitioner in the sexual offender
214 treatment program, and the sentencing court.

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

229 a. A risk assessment completed by a qualified
230 practitioner. The qualified practitioner must prepare a written
231 report that must include the findings of the assessment and
232 address each of the following components:

- 233 (I) The sex offender's current legal status;
234 (II) The sex offender's history of adult charges with

235 | apparent sexual motivation;

236 | (III) The sex offender's history of adult charges without

237 | apparent sexual motivation;

238 | (IV) The sex offender's history of juvenile charges,

239 | whenever available;

240 | (V) The sex offender's offender treatment history,

241 | including a consultation from the sex offender's treating, or

242 | most recent treating, therapist;

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

244 | (VII) The sex offender's mental health and substance abuse

245 | history as provided by the Department of Corrections;

246 | (VIII) The sex offender's personal, social, educational,

247 | and work history;

248 | (IX) The results of current psychological testing of the

249 | sex offender if determined necessary by the qualified

250 | practitioner;

251 | (X) A description of the proposed contact, including the

252 | location, frequency, duration, and supervisory arrangement;

253 | (XI) The child's preference and relative comfort level

254 | with the proposed contact, when age-appropriate;

255 | (XII) The parent's or legal guardian's preference

256 | regarding the proposed contact; and

257 | (XIII) The qualified practitioner's opinion, along with

258 | the basis for that opinion, as to whether the proposed contact

259 | would likely pose significant risk of emotional or physical harm

260 | to the child.

261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286

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

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

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

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

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

287 offender.

288

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

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

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

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

312 9. A requirement that the releasee must submit two

313 specimens of blood to the Department of Law Enforcement to be
314 registered with the DNA database.

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

320 11. Submission to a warrantless search by the community
321 control or probation officer of the probationer's or community
322 controllee's person, residence, or vehicle.

323 (b) For a releasee whose crime was committed on or after
324 October 1, 1997, in violation of chapter 794, s. 800.04, s.
325 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
326 conditional release supervision, in addition to any other
327 provision of this subsection, the commission shall impose the
328 following additional conditions of conditional release
329 supervision:

330 1. As part of a treatment program, participation in a
331 minimum of one annual polygraph examination to obtain
332 information necessary for risk management and treatment and to
333 reduce the sex offender's denial mechanisms. The polygraph
334 examination must be conducted by a polygrapher who is a member
335 of a national or state polygraph association and who is
336 certified as a postconviction sex offender polygrapher, where
337 available, and at the expense of the releasee. The results of
338 the examination shall be provided to the releasee's probation

339 officer and qualified practitioner and may not be used as
 340 evidence in a hearing to prove that a violation of supervision
 341 has occurred.

342 2. Maintenance of a driving log and a prohibition against
 343 driving a motor vehicle alone without the prior approval of the
 344 supervising officer.

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

347 4. If there was sexual contact, a submission to, at the
 348 releasee's expense, an HIV test with the results to be released
 349 to the victim or the victim's parent or guardian.

350 5. Electronic monitoring of any form when ordered by the
 351 commission. Any person who has been placed under supervision and
 352 is electronically monitored by the department must pay the
 353 department for the cost of the electronic monitoring service at
 354 a rate that may not exceed the full cost of the monitoring
 355 service. Funds collected under this subparagraph shall be
 356 deposited into the General Revenue Fund. The department may
 357 exempt a person from the payment of all or any part of the
 358 electronic monitoring service cost if the department finds that
 359 any of the factors listed in s. 948.09(3) exist.

360 (12)~~(8)~~ It is the finding of the Legislature that the
 361 population of offenders released from state prison into the
 362 community who meet the conditional release criteria poses the
 363 greatest threat to the public safety of the groups of offenders
 364 under community supervision. Therefore, the Department of

365 Corrections is to provide intensive supervision by experienced
366 correctional probation officers to conditional release
367 offenders. Subject to specific appropriation by the Legislature,
368 caseloads may be restricted to a maximum of 40 conditional
369 release offenders per officer to provide for enhanced public
370 safety and to effectively monitor conditions of electronic
371 monitoring or curfews, if so ordered by the commission.

372 (13)~~(9)~~ The commission shall adopt rules pursuant to ss.
373 120.536(1) and 120.54 necessary to implement ~~the provisions of~~
374 the Conditional Release Program Act.

375 (14)~~(10)~~ Effective for a releasee whose crime was
376 committed on or after September 1, 2005, in violation of chapter
377 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and
378 the unlawful activity involved a victim who was 15 years of age
379 or younger and the offender is 18 years of age or older or for a
380 releasee who is designated as a sexual predator pursuant to s.
381 775.21, in addition to any other provision of this section, the
382 commission must order electronic monitoring for the duration of
383 the releasee's supervision.

384 (15)~~(11)~~ Effective for a releasee whose crime was
385 committed on or after October 1, 2008, and who has been found to
386 have committed the crime for the purpose of benefiting,
387 promoting, or furthering the interests of a criminal gang, the
388 commission shall, in addition to any other conditions imposed,
389 impose a condition prohibiting the releasee from knowingly
390 associating with other criminal gang members or associates,

391 except as authorized by law enforcement officials, prosecutorial
392 authorities, or the court, for the purpose of aiding in the
393 investigation of criminal activity.

394 (16)~~(12)~~ In addition to all other conditions imposed, for
395 a releasee who is subject to conditional release for a crime
396 that was committed on or after May 26, 2010, and who has been
397 convicted at any time of committing, or attempting, soliciting,
398 or conspiring to commit, any of the criminal offenses listed in
399 s. 943.0435(1)(a)1.a.(I), or a similar offense in another
400 jurisdiction against a victim who was under 18 years of age at
401 the time of the offense, if the releasee has not received a
402 pardon for any felony or similar law of another jurisdiction
403 necessary for the operation of this subsection, if a conviction
404 of a felony or similar law of another jurisdiction necessary for
405 the operation of this subsection has not been set aside in any
406 postconviction proceeding, or if the releasee has not been
407 removed from the requirement to register as a sexual offender or
408 sexual predator pursuant to s. 943.04354, the commission must
409 impose the following conditions:

410 (a) A prohibition on visiting schools, child care
411 facilities, parks, and playgrounds without prior approval from
412 the releasee's supervising officer. The commission may also
413 designate additional prohibited locations to protect a victim.
414 The prohibition ordered under this paragraph does not prohibit
415 the releasee from visiting a school, child care facility, park,
416 or playground for the sole purpose of attending a religious

417 service as defined in s. 775.0861 or picking up or dropping off
 418 the releasee's child or grandchild at a child care facility or
 419 school.

420 (b) A prohibition on distributing candy or other items to
 421 children on Halloween; wearing a Santa Claus costume, or other
 422 costume to appeal to children, on or preceding Christmas;
 423 wearing an Easter Bunny costume, or other costume to appeal to
 424 children, on or preceding Easter; entertaining at children's
 425 parties; or wearing a clown costume without prior approval from
 426 the commission.

427 Section 3. Subsection (1) of section 948.012, Florida
 428 Statutes, is amended, and subsection (5) is added to that
 429 section, to read:

430 948.012 Split sentence of probation or community control
 431 and imprisonment.—

432 (1) If ~~Whenever~~ punishment by imprisonment for a
 433 misdemeanor or a felony, except for a capital felony, is
 434 prescribed, the court, ~~in its discretion,~~ may, at the time of
 435 sentencing, impose a split sentence whereby the defendant is to
 436 be placed on probation or, with respect to any such felony, into
 437 community control upon completion of any specified period of
 438 such sentence which may include a term of years or less. In such
 439 case, the court shall stay and withhold the imposition of the
 440 remainder of sentence imposed upon the defendant and direct that
 441 the defendant be placed upon probation or into community control
 442 after serving such period as may be imposed by the court. Except

443 as provided in subsection (5), the period of probation or
 444 community control shall commence immediately upon the release of
 445 the defendant from incarceration, whether by parole or gain-time
 446 allowances.

447 (5) If a person who has been sentenced to a split sentence
 448 pursuant to subsection (1) is transferred to the custody of the
 449 Department of Children and Families pursuant to part V of
 450 chapter 394, the period of probation or community control is
 451 tolled until such person is no longer in the custody of the
 452 Department of Children and Families. This subsection applies to
 453 all sentences of probation or community control which begin on
 454 or after October 1, 2014, regardless of the date of the
 455 underlying offense.

456 Section 4. Paragraph (b) of subsection (3) of section
 457 775.21, Florida Statutes, is amended to read:

458 775.21 The Florida Sexual Predators Act.—

459 (3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

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

464 1. Incarcerating sexual predators and maintaining adequate
 465 facilities to ensure that decisions to release sexual predators
 466 into the community are not made on the basis of inadequate
 467 space.

468 2. Providing for specialized supervision of sexual

469 predators who are in the community by specially trained
470 probation officers with low caseloads, as described in ss.
471 947.1405(11) ~~947.1405(7)~~ and 948.30. The sexual predator is
472 subject to specified terms and conditions implemented at
473 sentencing or at the time of release from incarceration, with a
474 requirement that those who are financially able must pay all or
475 part of the costs of supervision.

476 3. Requiring the registration of sexual predators, with a
477 requirement that complete and accurate information be maintained
478 and accessible for use by law enforcement authorities,
479 communities, and the public.

480 4. Providing for community and public notification
481 concerning the presence of sexual predators.

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

484 Section 5. This act shall take effect October 1, 2014.