

Committee Substitute for Senate Bill No. 1354

An act relating to sexual offenders; amending ss. 947.005 and 948.001, F.S.; defining terms; amending ss. 947.1405 and 948.30, F.S.; prohibiting a sex offender from having contact with a child younger than 18; providing an exception; providing that the Parole Commission or a court may approve a sex offender having supervised contact with a child younger than 18 under specified conditions; directing the Department of Health to prepare and maintain a list of “qualified practitioners”; requiring a court and the commission to use qualified practitioners on the department list to prepare risk assessments; specifying that qualified practitioners must meet the rule requirements specified by their respective licensing boards; prohibiting a sex offender from accessing or using the Internet or other computer services without an approved safety plan; reenacting s. 775.21(3)(b), F.S., relating to the threat to public safety by sexual offenders, to incorporate the amendments made to s. 947.1405, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 947.005, Florida Statutes, is amended to read:

947.005 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

- (1) “Commission” means the Parole Commission.
- (2) “Department” means the Department of Corrections.
- (3) “Secretary” means the Secretary of Corrections.
- (4) “Presumptive parole release date” means the tentative parole release date as determined by objective parole guidelines.
- (5) “Effective parole release date” means the actual parole release date as determined by the presumptive parole release date, satisfactory institutional conduct, and an acceptable parole plan.
- (6) “Tentative release date” means the date projected for the prisoner’s release from custody by virtue of gain-time granted or forfeited pursuant to s. 944.275(3)(a).
- (7) “Provisional release date” means the date projected for the prisoner’s release from custody as determined pursuant to s. 944.277.
- (8) “Authority” means the Control Release Authority.
- (9) “Qualified practitioner” means 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, as determined by rule of the respective

boards, has the coursework, training, qualifications, and experience to evaluate and treat sex offenders.

(10) “Risk assessment” means an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

(11) “Safety plan” means a written document prepared by the qualified practitioner, in collaboration with the sex offender, the child’s parent or legal guardian, and, when appropriate, the child, which establishes clear roles and responsibilities for each individual involved in any contact between the child and the sex offender.

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

947.1405 Conditional release program.—

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

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

2. If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop, or other place where children regularly congregate. A releasee who is subject to this subparagraph may not relocate to a residence that is within 1,000 feet of a public school bus stop. Beginning October 1, 2004, the commission or the department may not approve a residence that is located within 1,000 feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate for any releasee who is subject to this subparagraph. On October 1, 2004, the department shall notify each affected school district of the location of the residence of a releasee 30 days prior to release and thereafter, if the releasee relocates to a new residence, shall notify any affected school district of the residence of the releasee within 30 days after relocation. If, on October 1, 2004, any public school bus stop is located within 1,000 feet of the existing residence of such releasee, the district school board shall relocate that school bus stop. Beginning October 1, 2004, a district school board may not establish or relocate a public school bus stop within 1,000 feet of the residence of a releasee who is subject to this subparagraph. The failure of the district school board to comply with this subparagraph shall not result in a violation of conditional release supervision.

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

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

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

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

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

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

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

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

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

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

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

(VIII) The sex offender's personal, social, education, and work history;

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

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

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

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

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

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 offender, until all of the following conditions are met:

a.—Successful completion of a sex offender treatment program.

b.—The adult person who is legally responsible for the welfare of the child has been advised of the nature of the crime.

e.—Such adult person is present during all contact or association with the child.

d.—Such adult person has been approved by the commission.

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

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

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

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

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

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

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

Section 3. Present subsections (6) and (7) of section 948.001, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and new subsections (6), (7), and (8) are added to that section, to read:

948.001 Definitions.—As used in this chapter, the term:

(6) "Qualified practitioner" means 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, as determined by rule of the respective boards, has the coursework, training, qualifications, and experience to evaluate and treat sex offenders.

(7) "Risk assessment" means an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

(8) "Safety plan" means a written document prepared by the qualified practitioner, in collaboration with the sex offender, the child's parent or legal guardian, and, when appropriate, the child which establishes clear roles and responsibilities for each individual involved in any contact between the child and the sex offender.

Section 4. Subsection (1) of section 948.30, Florida Statutes, is amended to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.—Conditions imposed pursuant to this section

do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

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

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

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

(c) Active participation in and successful completion of a sex offender treatment program with qualified practitioners ~~therapists~~ specifically trained to treat sex offenders, at the probationer's or community controllee's own expense. If a qualified practitioner ~~specialty trained therapist~~ is not available within a 50-mile radius of the probationer's or community controllee's residence, the offender shall participate in other appropriate therapy.

(d) A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender's therapist, and the sentencing court.

(e) If the victim was under the age of 18, a prohibition, ~~until successful completion of a sex offender treatment program,~~ on unsupervised contact with a child under the age of 18 ~~except as provided in this paragraph, unless authorized by the sentencing court without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court.~~ The court may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment. Further, the sex offender must be currently enrolled in or have successfully completed a sex offender therapy program. The court may not grant supervised contact with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time. When considering whether to approve supervised contact with a child, the court must review and consider the following:

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

- a. The sex offender's current legal status;
- b. The sex offender's history of adult charges with apparent sexual motivation;
- c. The sex offender's history of adult charges without apparent sexual motivation;
- d. The sex offender's history of juvenile charges, whenever available;
- e. The sex offender's offender treatment history, including consultations with the sex offender's treating, or most recent treating, therapist;
- f. The sex offender's current mental status;
- g. The sex offender's mental health and substance-abuse-treatment history as provided by the Department of Corrections;
- h. The sex offender's personal, social, education, and work history;
- i. The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;
- j. A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;
- k. The child's preference and relative comfort level with the proposed contact, when age-appropriate;
- l. The parent's or legal guardian's preference regarding the proposed contact; and
- m. The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.

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

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

3. 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 court may not approve contact with the child if the parent or legal guardian refuses to give written consent for supervised contact.

4. 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, if the parent or legal guardian is not the sex offender, 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 court; and

5. Evidence that the child's parent or legal guardian 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 offender.

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

(f) If the victim was under age 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate, including, but not limited to, schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls.

(g) Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

(h) Effective for probationers and community controllees whose crime is committed on or after July 1, 2005, a prohibition on accessing the Internet or other computer services until the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

~~(i)(h)~~ A requirement that the probationer or community controllee must submit a specimen of blood or other approved biological specimen to the Department of Law Enforcement to be registered with the DNA data bank.

~~(j)(i)~~ A requirement that the probationer or community controllee make restitution to the victim, as ordered by the court under s. 775.089, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

~~(k)(j)~~ Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

Section 5. For the purpose of incorporating the amendments made to section 947.1405, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 775.21, Florida Statutes, is reenacted to read:

775.21 The Florida Sexual Predators Act.—

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

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

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.
2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.
3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.
4. Providing for community and public notification concerning the presence of sexual predators.
5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

Section 6. This act shall take effect January 1, 2006.

Approved by the Governor May 26, 2005.

Filed in Office Secretary of State May 26, 2005.