

1 A bill to be entitled
 2 An act relating to supervision of sexually violent
 3 predators; amending s. 947.1405, F.S.; tolling the
 4 conditional release period of persons transferred to
 5 the custody of the Department of Children and
 6 Families; amending s. 948.012, F.S.; tolling the
 7 supervision period of persons transferred to the
 8 custody of the Department of Children and Families;
 9 providing an effective date.

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

12
 13 Section 1. Section 947.1405, Florida Statutes, is amended
 14 to read:

15 947.1405 Conditional release program.—

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

18 (2) Any inmate who:

19 (a) Is convicted of a crime committed on or after October
 20 1, 1988, and before January 1, 1994, and any inmate who is
 21 convicted of a crime committed on or after January 1, 1994,
 22 which crime is or was contained in category 1, category 2,
 23 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
 24 Rules of Criminal Procedure (1993), and who has served at least
 25 one prior felony commitment at a state or federal correctional
 26 institution;

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

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

31
 32 shall, upon reaching the tentative release date or provisional
 33 release date, whichever is earlier, as established by the
 34 Department of Corrections, be released under supervision subject
 35 to specified terms and conditions, including payment of the cost
 36 of supervision pursuant to s. 948.09. Such supervision shall be
 37 applicable to all sentences within the overall term of sentences
 38 if an inmate's overall term of sentences includes one or more
 39 sentences that are eligible for conditional release supervision
 40 as provided herein.

41 (3) If a person who is transferred to the custody of the
 42 Department of Children and Families pursuant to part V of
 43 chapter 394 is subject to conditional release supervision, the
 44 period of conditional release supervision is tolled until such
 45 person is no longer in the custody of the Department of Children
 46 and Families. This subsection applies to all periods of
 47 conditional release supervision which begin on or after October
 48 1, 2014, regardless of the date of the underlying offense.

49 (4) Effective July 1, 1994, and applicable for offenses
 50 committed on or after that date, the commission may require, as
 51 a condition of conditional release, that the releasee make
 52 payment of the debt due and owing to a county or municipal

53 detention facility under s. 951.032 for medical care, treatment,
54 hospitalization, or transportation received by the releasee
55 while in that detention facility. The commission, in determining
56 whether to order such repayment and the amount of such
57 repayment, shall consider the amount of the debt, whether there
58 was any fault of the institution for the medical expenses
59 incurred, the financial resources of the releasee, the present
60 and potential future financial needs and earning ability of the
61 releasee, and dependents, and other appropriate factors

62 (5) If any inmate placed on conditional release supervision
63 is also subject to probation or community control, resulting
64 from a probationary or community control split sentence within
65 the overall term of sentences, the Department of Corrections
66 shall supervise such person according to the conditions imposed
67 by the court and the commission shall defer to such supervision.
68 If the court revokes probation or community control and
69 resentsences the offender to a term of incarceration, such
70 revocation also constitutes a sufficient basis for the
71 revocation of the conditional release supervision on any
72 nonprobationary or noncommunity control sentence without further
73 hearing by the commission. If any such supervision on any
74 nonprobationary or noncommunity control sentence is revoked,
75 such revocation may result in a forfeiture of all gain-time, and
76 the commission may revoke the resulting deferred conditional
77 release supervision or take other action it considers
78 appropriate. If the term of conditional release supervision

79 exceeds that of the probation or community control, then, upon
 80 expiration of the probation or community control, authority for
 81 the supervision shall revert to the commission and the
 82 supervision shall be subject to the conditions imposed by the
 83 commission.

84 (6) A panel of no fewer than two commissioners shall
 85 establish the terms and conditions of any such release. If the
 86 offense was a controlled substance violation, the conditions
 87 shall include a requirement that the offender submit to random
 88 substance abuse testing intermittently throughout the term of
 89 conditional release supervision, upon the direction of the
 90 correctional probation officer as defined in s. 943.10(3). The
 91 commission shall also determine whether the terms and conditions
 92 of such release have been violated and whether such violation
 93 warrants revocation of the conditional release.

94 (7)~~(3)~~ As part of the conditional release process, the
 95 commission, through review and consideration of information
 96 provided by the department, shall determine:

- 97 (a) The amount of reparation or restitution.
- 98 (b) The consequences of the offense as reported by the
 99 aggrieved party.
- 100 (c) The aggrieved party's fear of the inmate or concerns
 101 about the release of the inmate.

102 (8)~~(4)~~ The commission shall provide to the aggrieved party
 103 information regarding the manner in which notice of any
 104 developments concerning the status of the inmate during the term

105 of conditional release may be requested.

106 (9)~~(5)~~ Within 180 days prior to the tentative release date
 107 or provisional release date, whichever is earlier, a
 108 representative of the department shall review the inmate's
 109 program participation, disciplinary record, psychological and
 110 medical records, criminal records, and any other information
 111 pertinent to the impending release. The department shall gather
 112 and compile information necessary for the commission to make the
 113 determinations set forth in subsection (7)~~(3)~~. A department
 114 representative shall conduct a personal interview with the
 115 inmate for the purpose of determining the details of the
 116 inmate's release plan, including the inmate's planned residence
 117 and employment. The department representative shall forward the
 118 inmate's release plan to the commission and recommend to the
 119 commission the terms and conditions of the conditional release.

120 (10)~~(6)~~ The commission shall review the recommendations of
 121 the department, and such other information as it deems relevant,
 122 and may conduct a review of the inmate's record for the purpose
 123 of establishing the terms and conditions of the conditional
 124 release. The commission may impose any special conditions it
 125 considers warranted from its review of the release plan and
 126 recommendation. If the commission determines that the inmate is
 127 eligible for release under this section, the commission shall
 128 enter an order establishing the length of supervision and the
 129 conditions attendant thereto. However, an inmate who has been
 130 convicted of a violation of chapter 794 or found by the court to

131 be a sexual predator is subject to the maximum level of
132 supervision provided, with the mandatory conditions as required
133 in subsection (11)~~(7)~~, and that supervision shall continue
134 through the end of the releasee's original court-imposed
135 sentence. The length of supervision must not exceed the maximum
136 penalty imposed by the court.

137 (11)~~(7)~~(a) Any inmate who is convicted of a crime
138 committed on or after October 1, 1995, or who has been
139 previously convicted of a crime committed on or after October 1,
140 1995, in violation of chapter 794, s. 800.04, s. 827.071, s.
141 847.0135(5), or s. 847.0145, and is subject to conditional
142 release supervision, shall have, in addition to any other
143 conditions imposed, the following special conditions imposed by
144 the commission:

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

151 2. If the victim was under the age of 18, a prohibition on
152 living within 1,000 feet of a school, child care facility, park,
153 playground, designated public school bus stop, or other place
154 where children regularly congregate. A releasee who is subject
155 to this subparagraph may not relocate to a residence that is
156 within 1,000 feet of a public school bus stop. Beginning October

157 1, 2004, the commission or the department may not approve a
158 residence that is located within 1,000 feet of a school, child
159 care facility, park, playground, designated school bus stop, or
160 other place where children regularly congregate for any releasee
161 who is subject to this subparagraph. On October 1, 2004, the
162 department shall notify each affected school district of the
163 location of the residence of a releasee 30 days prior to release
164 and thereafter, if the releasee relocates to a new residence,
165 shall notify any affected school district of the residence of
166 the releasee within 30 days after relocation. If, on October 1,
167 2004, any public school bus stop is located within 1,000 feet of
168 the existing residence of such releasee, the district school
169 board shall relocate that school bus stop. Beginning October 1,
170 2004, a district school board may not establish or relocate a
171 public school bus stop within 1,000 feet of the residence of a
172 releasee who is subject to this subparagraph. The failure of the
173 district school board to comply with this subparagraph shall not
174 result in a violation of conditional release supervision. A
175 releasee who is subject to this subparagraph may not be forced
176 to relocate and does not violate his or her conditional release
177 supervision if he or she is living in a residence that meets the
178 requirements of this subparagraph and a school, child care
179 facility, park, playground, designated public school bus stop,
180 or other place where children regularly congregate is
181 subsequently established within 1,000 feet of his or her
182 residence.

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
191 by the victim, a qualified practitioner in the sexual offender
192 treatment program, and the sentencing 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;
- 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;

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.

272 6. If the victim was under age 18, a prohibition on
 273 working for pay or as a volunteer at any school, child care
 274 facility, 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 a qualified practitioner in the sexual offender
 278 treatment program, a prohibition on viewing, owning, or
 279 possessing any obscene, pornographic, or sexually stimulating
 280 visual or auditory material, including telephone, electronic
 281 media, computer programs, or computer services that are relevant
 282 to the offender's deviant behavior 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 a qualified practitioner in the
 286 offender's sex offender treatment program, after a risk

287 assessment is completed, approves and implements a safety plan
 288 for the offender's accessing or using the Internet or other
 289 computer services.

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

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

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

301 (b) For a releasee whose crime was committed on or after
 302 October 1, 1997, in violation of chapter 794, s. 800.04, s.
 303 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
 304 conditional release supervision, in addition to any other
 305 provision of this subsection, the commission shall impose the
 306 following additional conditions of conditional release
 307 supervision:

308 1. As part of a treatment program, participation in a
 309 minimum of one annual polygraph examination to obtain
 310 information necessary for risk management and treatment and to
 311 reduce the sex offender's denial mechanisms. The polygraph
 312 examination must be conducted by a polygrapher who is a member

313 of a national or state polygraph association and who is
 314 certified as a postconviction sex offender polygrapher, where
 315 available, and at the expense of the releasee. The results of
 316 the examination shall be provided to the releasee's probation
 317 officer and qualified practitioner and may not be used as
 318 evidence in a hearing to prove that a violation of supervision
 319 has occurred.

320 2. Maintenance of a driving log and a prohibition against
 321 driving a motor vehicle alone without the prior approval of the
 322 supervising officer.

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

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

328 5. Electronic monitoring of any form when ordered by the
 329 commission. Any person who has been placed under supervision and
 330 is electronically monitored by the department must pay the
 331 department for the cost of the electronic monitoring service at
 332 a rate that may not exceed the full cost of the monitoring
 333 service. Funds collected under this subparagraph shall be
 334 deposited into the General Revenue Fund. The department may
 335 exempt a person from the payment of all or any part of the
 336 electronic monitoring service cost if the department finds that
 337 any of the factors listed in s. 948.09(3) exist.

338 (12)~~(8)~~ It is the finding of the Legislature that the

339 population of offenders released from state prison into the
340 community who meet the conditional release criteria poses the
341 greatest threat to the public safety of the groups of offenders
342 under community supervision. Therefore, the Department of
343 Corrections is to provide intensive supervision by experienced
344 correctional probation officers to conditional release
345 offenders. Subject to specific appropriation by the Legislature,
346 caseloads may be restricted to a maximum of 40 conditional
347 release offenders per officer to provide for enhanced public
348 safety and to effectively monitor conditions of electronic
349 monitoring or curfews, if so ordered by the commission.

350 (13)~~(9)~~ The commission shall adopt rules pursuant to ss.
351 120.536(1) and 120.54 necessary to implement the provisions of
352 the Conditional Release Program Act.

353 (14)~~(10)~~ Effective for a releasee whose crime was
354 committed on or after September 1, 2005, in violation of chapter
355 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and
356 the unlawful activity involved a victim who was 15 years of age
357 or younger and the offender is 18 years of age or older or for a
358 releasee who is designated as a sexual predator pursuant to s.
359 775.21, in addition to any other provision of this section, the
360 commission must order electronic monitoring for the duration of
361 the releasee's supervision.

362 (15)~~(11)~~ Effective for a releasee whose crime was
363 committed on or after October 1, 2008, and who has been found to
364 have committed the crime for the purpose of benefiting,

365 promoting, or furthering the interests of a criminal gang, the
 366 commission shall, in addition to any other conditions imposed,
 367 impose a condition prohibiting the releasee from knowingly
 368 associating with other criminal gang members or associates,
 369 except as authorized by law enforcement officials, prosecutorial
 370 authorities, or the court, for the purpose of aiding in the
 371 investigation of criminal activity.

372 (16)~~(12)~~ In addition to all other conditions imposed, for
 373 a releasee who is subject to conditional release for a crime
 374 that was committed on or after May 26, 2010, and who has been
 375 convicted at any time of committing, or attempting, soliciting,
 376 or conspiring to commit, any of the criminal offenses listed in
 377 s. 943.0435(1)(a)1.a.(I), or a similar offense in another
 378 jurisdiction against a victim who was under 18 years of age at
 379 the time of the offense, if the releasee has not received a
 380 pardon for any felony or similar law of another jurisdiction
 381 necessary for the operation of this subsection, if a conviction
 382 of a felony or similar law of another jurisdiction necessary for
 383 the operation of this subsection has not been set aside in any
 384 postconviction proceeding, or if the releasee has not been
 385 removed from the requirement to register as a sexual offender or
 386 sexual predator pursuant to s. 943.04354, the commission must
 387 impose the following conditions:

388 (a) A prohibition on visiting schools, child care
 389 facilities, parks, and playgrounds without prior approval from
 390 the releasee's supervising officer. The commission may also

391 designate additional prohibited locations to protect a victim.
 392 The prohibition ordered under this paragraph does not prohibit
 393 the releasee from visiting a school, child care facility, park,
 394 or playground for the sole purpose of attending a religious
 395 service as defined in s. 775.0861 or picking up or dropping off
 396 the releasee's child or grandchild at a child care facility or
 397 school.

398 (b) A prohibition on distributing candy or other items to
 399 children on Halloween; wearing a Santa Claus costume, or other
 400 costume to appeal to children, on or preceding Christmas;
 401 wearing an Easter Bunny costume, or other costume to appeal to
 402 children, on or preceding Easter; entertaining at children's
 403 parties; or wearing a clown costume without prior approval from
 404 the commission.

405 Section 2. Subsection (1) is amended and subsection (5) is
 406 added to section 948.012, Florida Statutes, to read:

407 948.012 Split sentence of probation or community control
 408 and imprisonment.—

409 (1) If ~~Whenever~~ punishment by imprisonment for a
 410 misdemeanor or a felony, except for a capital felony, is
 411 prescribed, the court, ~~in its discretion,~~ may, at the time of
 412 sentencing, impose a split sentence whereby the defendant is to
 413 be placed on probation or, with respect to any such felony, into
 414 community control upon completion of any specified period of
 415 such sentence which may include a term of years or less. In such
 416 case, the court shall stay and withhold the imposition of the

417 remainder of sentence imposed upon the defendant and direct that
418 the defendant be placed upon probation or into community control
419 after serving such period as may be imposed by the court. Except
420 as provided in subsection (5), The period of probation or
421 community control shall commence immediately upon the release of
422 the defendant from incarceration, whether by parole or gain-time
423 allowances.

424 (5) If a person who has been sentenced to a split sentence
425 pursuant to subsection (1) is transferred to the custody of the
426 Department of Children and Families pursuant to part V of
427 chapter 394, the period of probation or community control is
428 tolled until such person is no longer in the custody of the
429 Department of Children and Families. This subsection applies to
430 all sentences of probation or community control which begin on
431 or after October 1, 2014, regardless of the date of the
432 underlying offense.

433 Section 3. This act shall take effect October 1, 2014.
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