



MEMORANDUM

**TO: BRADLEY ARNOLD  
SUMTER COUNTY ADMINISTRATOR**

**FROM: GEORGE G. ANGELIADIS, ESQ.  
THE HOGAN LAW FIRM, COUNTY ATTORNEY**

**RE: ANALYSIS OF EXISTING RESIDENCY RESTRICTIONS ON  
INDIVIDUALS CONVICTED OF SEXUALLY MOTIVATED  
CRIMES AGAINST MINORS**

**DATE: JULY 24, 2012**

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**Question Presented:** Are existing residency requirements for individuals designated as Sexual Predators consistent with Florida Statutes.

**General Summary:** Section 16-132 of the Sumter County Code of Ordinances sets forth the current residency restrictions for individuals designated as “Sexual Predators” in Sumter County. Generally, the Ordinance provides that any individual designated as a “Sexual Predator” is precluded from residing within 2,500 feet of any school, day care center, park, playground or other place where children regularly congregate.

The County’s Ordinance is more restrictive than Florida Statute §775.215, which provides that a person who has been convicted of certain sexually motivated offenses, regardless of whether adjudication was withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park, or playground. While offenders convicted of the offenses identified in F.S. §775.215 may ultimately be declared as “Sexual Predators” by the court, the statute in question does not specifically distinguish between individuals designated as a “Sexual Offenders” or “Sexual Predators”. It appears that the legislature did not intend for this statute to have retroactive application, as it became effective upon its inception in October, 2004.

The County’s Ordinance, coupled with Florida Statute F.S. §775.215 appear to provide substantial protections to the community, while balancing the ability of individuals designated as “Sexual Predators” to find appropriate housing.

**Discussion:** Sumter County Code of Ordinances, Section 16-132, addresses the residency restrictions for individuals convicted of sexually motivated crimes against minors. Currently, the code only applies restrictions upon individuals designated as “Sexual Predators”. Specifically, Section 16-132 provides as follows:

*(a) It is unlawful for any person who is required by state law to register as a sexual predator to reside within two thousand five hundred (2,500) feet of any*

*school, public library, day care center, park, playground, or other place where children regularly congregate. The provisions of this section shall not apply to school bus stops.*

*(b) A person residing within two thousand five hundred (2,500) feet of any school, public library, day care center, park, playground, or other place where children regularly congregate does not commit a violation of this section, provided that the sexual predator is in full compliance with probation, parole, or conditional release and does not commit another sexual offense, and was in compliance with the residency restrictions prior to December 1, 2005, if any of the following apply:*

*(1) The person established the permanent residence prior to December 1, 2005.*

*(2) The person was a minor when he/she committed the offense and was not convicted as an adult.*

*(3) The person is a minor.*

*(4) The school, public library or day care center within two thousand five hundred (2,500) feet of the person's permanent residence was opened after the person established the permanent residence.*

*(c) A person who violates subsection (a) shall be guilty of a misdemeanor punishable by law.*

Under Florida law, not all “sex offenders” are “sexual predators”. A court must make a specific finding that an offender is a “Sexual Predator” before that offender can be officially designated as a “Sexual Predator” and be subject to Florida’s sexual predator registration and notification requirements. The County should be aware of these distinctions when evaluating whether additional restrictions should be placed upon individuals designated as “Sexual Offenders”.

**I. Legislative Findings, Purpose, and Intent – Sexual Predators F.S. §775.21(3)**

*(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.*

*(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.*

*(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.*

*(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and those members of the community and the public be notified of the sexual predator's presence. The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.*

*(e) It is the intent of the Legislature to address the problem of sexual predators*  
by:

*1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;*

*2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and*

3. *Requiring community and public notification of the presence of a sexual predator, as provided in this section*

## **II. Sexual Predator Designation**

There are three ways a person can be qualified and designated as a sexual **predator** in the State of Florida and, therefore, be required to comply with Florida's sexual predator registration laws:

1) **"One is Enough"** - Commit one specified offense on or after October 1, 1993, in Florida or in another jurisdiction, be convicted of such offense, and have a court enter a finding that such person is a sexual predator; OR

2) **"Second Strike"** – Commit one specified offense on or after October 1, 1993, in Florida or in another jurisdiction, after having previously been convicted of or found to have committed, or pled nolo contendere or guilty to, regardless of adjudication, one or more of specified sexual offenses, and have a court enter a finding that such person is a sexual predator; OR

3) **Civil Commitment** - An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under this section and is subject to registration and community and public notification. {Section 775.21(4)}

A conviction for a Capital, Life, First-Degree Felony Violation or any Attempt thereof, is generally considered under the "One is Enough" category. These offenses include:

F.S. § 787.01 – Kidnapping: Where the victim is a minor and the defendant is not the victim's parent or guardian.

F.S. § 787.02 – False Imprisonment: Where the victim is a minor and the defendant is not the victim's parent or guardian.

F.S. § 794.011 – Sexual Battery: As defined by the statute.

F.S. § 800.04 – Lewd / Lascivious Offenses: when committed upon or in the presence of persons less than 16 years of age.

F.S. § 847.0145 – Selling or Buying Minors: for portrayal in a visual depiction engaging in sexually explicit conduct.

Violations of similar laws of another jurisdiction are also considered in the "sexual predator" designation.

**In any of the above instances, a written finding designating the qualifying individual as a “Sexual Predator” *must* be issued from the court to establish the designation of “Sexual Predator”.**

### **III. Sexual Offender Designation**

There are several ways a person can be qualified and designated as a “sexual offender” in the state of Florida and, therefore, be required to comply with Florida’s sexual offender registration laws:

1. Conviction for committing, or attempting, soliciting, or conspiring to commit, any of the certain specified crimes (or any similar offense committed in this state which has been re-designated from a former statute number to the one specified); AND

a. Be in the custody or control of, or under the supervision of, the Florida Department of Corrections, or be in the custody of a private correctional facility, on or after October 1, 1997, as a result of the above conviction(s); or

b. On or after October 1, 1997, be released or have been released from the sanction(s) imposed for the above conviction(s).

**OR**

2. Establish or maintain a residence in this state and have not been designated as a sexual predator by a court of this state but have been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and as a result of such designation, are subjected to registration or community or public notification, or both, or would be if a resident of that state or jurisdiction;

**OR**

3. Establish or maintain a residence in this state and be in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the specified criminal offenses listed below (or any similar offense committed in this state which has been redesignated from a former statute number to the one specified).  
{Sections 943.0435(1)(a); 944.606(1)(b); 944.607(1)(a), 985.4815}

**OR**

4. Be adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit on or after July 1, 2007 of any of the crimes specified in Chart 2 below when the juvenile was 14 years of age or older at the time of the offense.

**IV. Residency Restrictions for Individuals Convicted of Sexually Motivated Offenses.** Florida Statute §775.215 addresses residency restriction for persons convicted of certain sex offenses, and provides in pertinent part:

*(2)(a) A person who has been convicted of a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park, or playground. However, a person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence.*

*(b) A person who violates this subsection and whose conviction under s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 was classified as a felony of the first degree or higher commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subsection and whose conviction under s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.*

*(c) This subsection applies to any person convicted of a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 for offenses that occur on or after October 1, 2004, excluding persons who have been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354.*

*(3)(a) A person who has been convicted of an offense in another jurisdiction that is similar to a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park, or playground. However, a person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence.*

*(b) A person who violates this subsection and whose conviction in another jurisdiction resulted in a penalty that is substantially similar to a felony of the first degree or higher commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subsection and whose conviction in another jurisdiction resulted in a penalty that is substantially similar to a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.*

*(c) This subsection applies to any person convicted of an offense in another jurisdiction that is similar to a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 if such offense occurred on or after May 26, 2010, excluding persons who have been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354.*

The offenses contemplated under §775.215 are as follows:

- a. §794.011 – Sexual Battery.
- b. §800.04 – Lewd, lascivious, offenses committed upon or in the presence of persons less than 16 years of age.
- c. §827.071 – Sexual performance by a child.
- d. §847.0135(5) – Computer pornography.
- e. §847.0145 – Selling or buying of minors (for portrayal in a visual depiction engaging in sexually explicit conduct).

As indicated above, it does not appear that an individual subject to the restrictions set forth in §775.215 must be designated as a “Sexual Predator” for its provisions to apply. Thus, it could be argued that §775.215 applies to individuals designated as either a “Sexual Predator” or “Sexual Offender”. However, in order to preclude retroactive application of the statute, §775.215 indicates that it applies to convictions of enumerated offenses which occur on or after October 1, 2004.

As discussed above, Sumter County’s Code establishes a restriction that precludes a “Sexual Predator” from residing within 2,500 feet of certain places where children regularly congregate. This 2,500 foot restriction is 1,500 feet more restrictive than the limitations imposed by the State of Florida. While the current County Ordinance can be modified to become more inclusive with regard to application, and thus more restrictive, there are some policy considerations which must be taken into account.

- A. Modifying the current ordinance would not be retroactively applied, and thus, would only be effective against individuals moving into protected areas after the effective date of the amendment to the Ordinance.
- B. Modifying the current ordinance to include a “Sexual Offender” designation may create complications in identification and enforcement, as well as complications in determining the proximity of offenders to precluded area.
- C. Modifying the current ordinance may fail to recognize mitigating factors associated with a Sexual Offender designation, such as “Romeo & Juliet” arguments, or the age of individuals when the offense occurred.
- D. Modifying the current ordinance to be more restrictive may cause individuals designated as “Sexual Predators” and/or “Sexual Offenders to congregate in certain areas, creating pockets with high concentrations of these types of offenders.

**Conclusion.** Sumter County’s current Code of Ordinances appears to be consistent with state statutes. The Code contemplates residence restrictions which are more restrictive

towards “Sexual Predators” than state statutes (2500 ft v. 1,000 ft.). In addition, Florida Statute §775.215 addresses residence restrictions against individuals convicted of qualifying offenses after October 1, 2004, and does not appear to be limited in its application solely to “Sexual Predators”. Also, it would appear that Florida Statute §775.215 *bridges the gap* between the ordinance and the statute. While it may be possible to amend the County’s ordinance to make it more restrictive towards “Sexual Offenders”, doing so would probably not allow Sumter County to apply the restrictions retroactively for due process purposes. These factors, coupled with the other considerations detailed above, do not demonstrate that the Sumter County Code is inconsistent with state law with regard to restricting the place where “Sexual Offenders” reside. Thus, Amending the County’s Code of Ordinances would be a policy decision for the BOCC.