

MEMORANDUM

**TO: BRADLEY ARNOLD
SUMTER COUNTY ADMINISTRATOR**

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

**RE: REVIEW OF ORDINANCE RELATED TO RESIDENCE OF SEX
OFFENDERS/PREDATORS IN SUMTER COUNTY, FLORIDA**

DATE: NOVEMBER 17, 2011

Question Presented: What are the current residential requirements / restrictions for individuals designated as Sex Offenders and/or Predators in Sumter County, Florida, and whether it would be practical for Sumter County to expand current restrictions to include distance requirements from school bus stops?

General Summary: Currently, there are no state laws that prevent a released offender/predator (an offender/predator that is no longer serving any type of prison or probationary sentence) from living near a school, playground, child care facility, day care, bus stop, etc.

However, Florida Statute, §775.215, entitled, “*Residency Restrictions for persons convicted of certain sex offenses*“, provides, in part, that individuals convicted of certain sexual crimes, where the victim was less than 16, and the offense occurred on or after 10/01/2004 (05/26/2010 if the offense occurred in another jurisdiction), cannot reside within 1,000 feet of any school, child care facility, park, or playground.

In addition, Sumter County has enacted an Ordinance which addresses this particular issue. Chapter 16, Article VII, Sec. 16-132, entitled Sexual Predators Residency Requirements makes it unlawful for any person designated 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 Ordinance specifically excludes bus stops.

Discussion: Florida Statute §775.215 reads as follows:

775.215 Residency restriction for persons convicted of certain sex offenses.

(1) As used in this section, the term:

(a) “Child care facility” has the same meaning as provided in s. 402.302.

(b) “Park” means all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.

(c) “Playground” means a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.

(d) “School” has the same meaning as provided in s. 1003.01 and includes a private school as defined in s. 1002.01, a voluntary prekindergarten education program as described in s. 1002.53(3), a public school as

described in s. 402.3025(1), the Florida School for the Deaf and the Blind, the Florida Virtual School as established under s. 1002.37, and a K-8 Virtual School as established under s. 1002.415, but does not include facilities dedicated exclusively to the education of adults.

(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.

History.—s. 2, ch. 2004-55; s. 21, ch. 2008-172; ss. 3, 18, ch. 2010-92.

In addition, Florida Statute §775.21(10)(b) prohibits particular sexual predators adjudicated of certain specific crimes, where the victim of the offense was a minor, from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate.

Chapter 16, Article VII, Sec. 16-132, of the Sumter County Code, entitled Sexual Predators Residency Requirements, applies to individuals designated as Sexual Predators under the law, and reads as follows:

Sec. 16-132, Sexual Predators Residency Requirements.

(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.

First, it should be noted that the County's requirement of 2,500 feet is more restrictive than the state statute. The County's Ordinance was originally adopted by virtue of the passage of Ordinance 2006-1; thus, the effective date of the restrictions would not apply to individuals establishing a permanent residence within 2,500 feet of a restricted area prior to the effective date of the Ordinance (12/01/2005), when the public was placed on notice of the Ordinance. Not including this type of effective date would create due process issues which would subject the County Ordinance to being stricken under constitutional grounds.

The state statute referenced above does not contemplate school bus stops. Similarly, Sumter County's Ordinance specifically excludes bus stops from the Ordinance. This is most likely due to the fact the BOCC passing Ordinance 2006-1 believed that making the Ordinance retroactive would subject the Ordinance to Constitutional challenges. In addition, due to the fact that school bus stops are often changed on a year to year basis, the prospect of applying and enforcing the Ordinance to bus stops was probably determined not to be practical.

It should also be noted that Sexual offenders/predators who are still serving a court-ordered sentence, such as probation, parole, or community control, that are monitored under the Florida Department of Corrections, are required to follow the Conditions of

Probation ordered by the judge in accordance with Florida Statute. Individual restrictions are normally listed in these conditions, and often include residency restrictions.

Conclusion: In conclusion, there are certain state laws which apply to residency restrictions for certain designated individuals. These restrictions make unlawful for certain designated individual to live within 1,000 feet of any school, child care facility, park, or playground. Sumter County restrictions, as applied to designated Sexual Predators, are more restrictive, and preclude Sexual Predators from 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 constitutional issues associated with not providing an effective date of any applicable state or local law probably preclude the passage of such laws without taking such due process factors into consideration. In addition, including school bus stops into such restrictions makes application and enforcement problematic in light of the transitory nature of the bus stops.

Finally, it should be noted, that other local governments are currently addressing other issues, such as prohibitions/restrictions on sex offender group lodging facilities which this Board may wish to address.