

By Senator Silver

38-521-98

See HB

1 A bill to be entitled
2 An act relating to sexual offenses against
3 children; amending s. 415.504, F.S., relating
4 to mandatory reports of child abuse or neglect;
5 requiring the Department of Children and Family
6 Services to report within a specified period
7 each alleged juvenile offense involving a child
8 victim under 16 years of age to the appropriate
9 law enforcement agency having jurisdiction over
10 the offense; reenacting s. 415.503, F.S.,
11 relating to penalties relating to abuse
12 reporting, to incorporate said amendment in a
13 reference; amending s. 794.05, F.S., relating
14 to unlawful sexual activity with certain
15 minors; prohibiting any person at least 21
16 years of age from engaging in sexual activity
17 with a person 16 or 17 years of age; redefining
18 "sexual activity" to include certain
19 penetration by an object; providing an
20 exception for acts between married persons;
21 providing for nonapplicability of specified
22 provisions to certain persons who have had the
23 disabilities of nonage removed; prohibiting
24 certain acts against a child under 16 years of
25 age, or forcing or enticing a child to commit
26 any such act, involving handling, fondling, or
27 assaulting a child in a lewd, lascivious, or
28 indecent manner, actual or simulated sexual
29 intercourse, deviate intercourse, sexual
30 bestiality, masturbation, sadomasochistic
31 abuse, actual lewd exhibition of genitals, or

1 conduct which simulates sexual battery;
2 prohibiting specified acts of sexual activity
3 upon a child under 16 years of age, or lewd or
4 lascivious acts in the presence of the child;
5 providing penalties; providing that the
6 victim's lack of chastity, prior sexual
7 conduct, or consent is not a defense; providing
8 an exception for maternal breastfeeding;
9 requiring establishment of paternity and
10 providing offender's child support liability,
11 under specified circumstances; repealing s.
12 800.04, F.S., relating to lewd, lascivious, or
13 indecent assault or act upon or in the presence
14 of a child; amending s. 27.365, F.S., relating
15 to Florida Prosecuting Attorneys Association,
16 s. 90.4025, F.S., relating to admissibility of
17 paternity determination, s. 382.356, F.S.,
18 relating to protocol for sharing certain birth
19 control information, s. 409.2355, F.S.,
20 relating to programs for prosecution of males
21 over age 21 who commit certain offenses
22 involving girls under age 16, s. 411.243, F.S.,
23 relating to Teen Pregnancy Community
24 Initiative, s. 775.082, F.S., relating to
25 penalties, s. 775.084, F.S., relating to
26 violent career criminals, habitual felony
27 offenders, and habitual violent felony
28 offenders, s. 775.0877, F.S., relating to
29 criminal transmission of HIV, s. 775.15, F.S.,
30 relating to time limitations, s. 775.21, F.S.,
31 relating to sexual predators, s. 787.01, F.S.,

1 relating to kidnapping, s. 787.02, F.S.,
2 relating to false imprisonment, s. 787.025,
3 F.S., relating to luring or enticing a child,
4 s. 827.04, F.S., relating to contributing to
5 the delinquency or dependency of a minor, s.
6 914.16, F.S., relating to limits on interviews
7 of certain child abuse and sexual abuse
8 victims, s. 921.0022, F.S., relating to the
9 Criminal Punishment Code offense severity
10 ranking chart, s. 943.0435, F.S., relating to
11 reporting requirements for sex offenders, s.
12 943.0585, F.S., relating to court-ordered
13 expunction of criminal history records, s.
14 943.059, F.S., relating to court-ordered
15 sealing of criminal history records, s.
16 944.606, F.S., relating to notification upon
17 release of sexual offenders, s. 944.607, F.S.,
18 relating to certain notification of information
19 on sex offenders, s. 947.1405, F.S., relating
20 to conditional release program, s. 948.03,
21 F.S., relating to terms and conditions of
22 probation or community control, s. 948.06,
23 F.S., relating to violation of probation or
24 community control, and s. 985.03, F.S.,
25 relating to definitions with respect to ch.
26 985, F.S., relating to delinquency, to conform
27 references to said repeal of s. 800.04, F.S.;
28 amending s. 827.01, F.S.; redefining
29 "caregiver" with respect to ch. 827, F.S.,
30 relating to abuse of children; amending s.
31 827.03, F.S., relating to abuse, aggravated

1 abuse, and neglect of a child; redefining
2 "child abuse"; prohibiting failure by a
3 caregiver to report known or suspected child
4 abuse within a specified time period to the
5 appropriate law enforcement agency having
6 jurisdiction over the offense; providing
7 penalties; reenacting s. 415.5018(4)(b), F.S.,
8 relating to family services response system,
9 and s. 787.04(5), F.S., relating to certain
10 offenses of removing minors from state or
11 concealing minors, to incorporate said
12 amendment in references; amending s. 827.071,
13 F.S., relating to sexual performance by a
14 child; prohibiting possession, with intent to
15 promote, of a videotape, video laser disc,
16 audiotape, compact disc, computer diskette, or
17 computer hard drive which in whole or in part
18 includes any sexual conduct by a child, and
19 providing that possession of three or more
20 copies of same is prima facie evidence of
21 intent to promote; providing penalties;
22 reenacting s. 772.102(1)(a), F.S., relating to
23 definition of "criminal activity", s.
24 794.024(1), F.S., relating to unlawful
25 disclosure of identifying information, s.
26 895.02(1)(a), F.S., relating to definition of
27 "racketeering activity," and s. 934.07, F.S.,
28 relating to authorized interception of wire,
29 oral, or electronic communications, to
30 incorporate said amendments in references;
31 providing an effective date.

1
2 WHEREAS, as the criminal justice system of this state
3 endeavors to meet the responsibility to investigate and
4 prosecute sexual assaults committed against children, its
5 resources cannot be activated without a timely and accurate
6 notification process, and

7 WHEREAS, it is necessary to compel caregivers to notify
8 law enforcement in cases of child sexual assault, to prevent
9 the child from remaining at risk from the offender, and

10 WHEREAS, current technology exists that will enhance
11 the criminal justice system in the identification,
12 investigation, and prosecution of these offenses and further
13 ensure that all child sexual assault victims receive the full
14 benefit and protection of the system, NOW, THEREFORE,

15

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

17

18 Section 1. Present paragraph (e) of subsection (2) of
19 section 415.504, Florida Statutes, is redesignated as
20 paragraph (f) and a new paragraph (e) is added to said
21 subsection to read:

22 415.504 Mandatory reports of child abuse or neglect;
23 mandatory reports of death; central abuse hotline.--

24 (2)

25 (e) The department must report each alleged juvenile
26 sex offense involving a child victim under 16 years of age to
27 the appropriate law enforcement agency having jurisdiction
28 over the offense within 24 hours after receipt of the initial
29 abuse report.

30 Section 2. For the purpose of incorporating the
31 amendment to section 415.504, Florida Statutes, in a reference

1 thereto, section 415.513, Florida Statutes, is reenacted to
2 read:

3 415.513 Penalties relating to abuse reporting.--

4 (1) A person who is required by s. 415.504 to report
5 known or suspected child abuse or neglect and who knowingly
6 and willfully fails to do so, or who knowingly and willfully
7 prevents another person from doing so, is guilty of a
8 misdemeanor of the second degree, punishable as provided in s.
9 775.082 or s. 775.083.

10 (2) A person who knowingly and willfully makes public
11 or discloses any confidential information contained in the
12 central abuse registry and tracking system or in the records
13 of any child abuse or neglect case, except as provided in ss.
14 415.502-415.514, is guilty of a misdemeanor of the second
15 degree, punishable as provided in s. 775.082 or s. 775.083.

16 (3) The department shall establish procedures for
17 determining whether a false report of child abuse or neglect
18 has been made and for submitting all identifying information
19 relating to such a report to the appropriate law enforcement
20 agency and the state attorney for prosecution.

21 (4) A person who knowingly and willfully makes a false
22 report of child abuse or neglect, or who advises another to
23 make a false report, is guilty of a misdemeanor of the second
24 degree, punishable as provided in s. 775.082 or s. 775.083.
25 Anyone making a report who is acting in good faith is immune
26 from any liability under this subsection.

27 (5) Each state attorney shall establish procedures to
28 facilitate the prosecution of persons under this section.

29 Section 3. Section 794.05, Florida Statutes, is
30 amended to read:

31 794.05 Unlawful sexual activity with certain minors.--

1 (1)(a) A person 21 ~~24~~ years of age or older who
2 engages in sexual activity with a person 16 or 17 years of age
3 commits a felony of the second degree, punishable as provided
4 in s. 775.082, s. 775.083, or s. 775.084. As used in this
5 section, "sexual activity" means oral, anal, or vaginal
6 penetration by, or union with, the sexual organ of another or
7 the anal or vaginal penetration of another by any other
8 object. ~~However, "sexual activity" does not include an act~~
9 done for a bona fide medical purpose or an act between persons
10 who are legally married.

11 ~~(b)(2)~~ The provisions of this subsection ~~section~~ do
12 not apply to a person 16 or 17 years of age who has had the
13 disabilities of nonage removed under chapter 743.

14 (2) A person who:

15 (a) Handles, fondles, or assaults any child under the
16 age of 16 years in a lewd, lascivious, or indecent manner;

17 (b) Commits upon any child under the age of 16 years
18 actual or simulated sexual intercourse, deviate sexual
19 intercourse, sexual bestiality, masturbation, sadomasochistic
20 abuse, actual lewd exhibition of the genitals, or any act or
21 conduct which simulates that sexual battery is being or will
22 be committed, or forces or entices the child to commit any
23 such act;

24 (c) Commits an act defined as sexual activity upon any
25 child under the age of 16 years; or

26 (d) Knowingly commits any lewd or lascivious act in
27 the presence of any child under the age of 16 years,
28
29 without committing the crime of sexual battery, commits a
30 felony of the second degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084.

1 (3) The victim's lack of chastity, prior sexual
2 conduct, or consent is not a defense to the crimes proscribed
3 in this section. The victim's prior sexual conduct is not a
4 relevant issue in a prosecution under this section.

5 (4) A mother's breastfeeding of her baby does not
6 under any circumstance violate this section.

7 ~~(3) The victim's prior sexual conduct is not a~~
8 ~~relevant issue in a prosecution under this section.~~

9 (5)~~(4)~~ If an offense under this section directly
10 results in the victim giving birth to a child, paternity of
11 that child shall be established as described in chapter 742.
12 If it is determined that the offender is the father of the
13 child, the offender must pay child support pursuant to the
14 child support guidelines described in chapter 61.

15 Section 4. Section 800.04, Florida Statutes, is
16 repealed.

17 Section 5. Section 27.365, Florida Statutes, is
18 amended to read:

19 27.365 Florida Prosecuting Attorneys Association;
20 annual report regarding prosecutions.--By February 1st of each
21 year beginning in 1997, the Florida Prosecuting Attorneys
22 Association shall report to the President and Minority Leader
23 of the Senate, the Speaker and Minority Leader of the House of
24 Representatives, and to the appropriate substantive committees
25 of each chamber regarding prosecutions for offenses during the
26 previous calendar year under ss. 794.011, 794.05, former
27 800.04, and 827.04(4) when the victim of the offense was less
28 than 18 years of age. This report must include, by judicial
29 circuit, the following information in summary format for each
30 offense: the initial charge in each case; the age of the
31 victim and the age of the offender; the charge ultimately

1 prosecuted, if any; whether the case went to trial or was
2 resolved by plea agreement; and either the sentence imposed in
3 each case, or the status of each case on December 31st of the
4 previous year. The names of sexual offense victims shall not
5 be included in the report.

6 Section 6. Section 90.4025, Florida Statutes, is
7 amended to read:

8 90.4025 Admissibility of paternity determination in
9 certain criminal prosecutions.--If a person less than 18 years
10 of age gives birth to a child and the paternity of that child
11 is established under chapter 742, such evidence of paternity
12 is admissible in a criminal prosecution under ss. 794.011,
13 794.05, former 800.04, and 827.04(4).

14 Section 7. Section 382.356, Florida Statutes, is
15 amended to read:

16 382.356 Protocol for sharing certain birth certificate
17 information.--In order to facilitate the prosecution of
18 offenses under s. 794.011, s. 794.05, ~~s. 800.04~~, or s.
19 827.04(4), the Department of Health, the Department of
20 Revenue, and the Florida Prosecuting Attorneys Association
21 shall develop a protocol for sharing birth certificate
22 information for all children born to unmarried mothers who are
23 less than 17 years of age at the time of the child's birth.

24 Section 8. Section 409.2355, Florida Statutes, is
25 amended to read:

26 409.2355 Programs for prosecution of males over age 21
27 who commit certain offenses involving girls under age
28 16.--Subject to specific appropriated funds, the Department of
29 Children and Family Services is directed to establish a
30 program by which local communities, through the state
31 attorney's office of each judicial circuit, may apply for

1 grants to fund innovative programs for the prosecution of
2 males over the age of 21 who victimize girls under the age of
3 16 in violation of s. 794.011, s. 794.05, ~~s. 800.04~~, or s.
4 827.04(4).

5 Section 9. Paragraph (e) of subsection (1) of section
6 411.243, Florida Statutes, is amended to read:

7 411.243 Teen Pregnancy Prevention Community
8 Initiative.--Subject to the availability of funds, the
9 Department of Health and Rehabilitative Services shall create
10 a Teen Pregnancy Prevention Community Initiative. The purpose
11 of this initiative is to create collaborative community
12 partnerships to reduce teen pregnancy. Participating
13 communities shall examine their needs and resources relative
14 to teen pregnancy prevention and develop plans which provide
15 for a collaborative approach to how existing, enhanced, and
16 new initiatives together will reduce teen pregnancy in a
17 community. Community incentive grants shall provide funds for
18 communities to implement plans which provide for a
19 collaborative, comprehensive, outcome-focused approach to
20 reducing teen pregnancy.

21 (1) The requirements of the community incentive grants
22 are as follows:

23 (e) Plans must be developed for how a community will
24 reduce the incidence of teen pregnancy in a specified
25 geographic area or region. These plans must include:

26 1. Provision for collaboration between existing and
27 new initiatives for a comprehensive, well-planned,
28 outcome-focused approach. All organizations involved in teen
29 pregnancy prevention in the community must be involved in the
30 planning and implementation of the community incentive grant
31 initiative.

1 2. Provision in the targeted area or region for all of
2 the components identified below. These components may be
3 addressed through a collaboration of existing initiatives,
4 enhancements, or new initiatives. Community incentive grant
5 funds must address current gaps in the comprehensive teen
6 pregnancy prevention plan for communities.

7 a. Primary prevention components are:

8 (I) Prevention strategies targeting males.

9 (II) Role modeling and monitoring.

10 (III) Intervention strategies targeting abused or
11 neglected children.

12 (IV) Human sexuality education.

13 (V) Sexual advances protection education.

14 (VI) Reproductive health care.

15 (VII) Intervention strategies targeting younger
16 siblings of teen mothers.

17 (VIII) Community and public awareness.

18 (IX) Innovative programs to facilitate prosecutions
19 under s. 794.011 or, s. 794.05, ~~or s. 800.04~~.

20 b. Secondary prevention components are:

21 (I) Home visiting.

22 (II) Parent education, skill building, and supports.

23 (III) Care coordination and case management.

24 (IV) Career development.

25 (V) Goal setting and achievement.

26
27 Community plans must provide for initiatives which are
28 culturally competent and relevant to the families' values.

29 Section 10. Paragraph (a) of subsection (8) of section
30 775.082, Florida Statutes, is amended to read:

31

1 775.082 Penalties; mandatory minimum sentences for
2 certain reoffenders previously released from prison.--

3 (8)(a)1. "Prison releasee reoffender" means any
4 defendant who commits, or attempts to commit:

- 5 a. Treason;
- 6 b. Murder;
- 7 c. Manslaughter;
- 8 d. Sexual battery;
- 9 e. Carjacking;
- 10 f. Home-invasion robbery;
- 11 g. Robbery;
- 12 h. Arson;
- 13 i. Kidnapping;
- 14 j. Aggravated assault;
- 15 k. Aggravated battery;
- 16 l. Aggravated stalking;
- 17 m. Aircraft piracy;
- 18 n. Unlawful throwing, placing, or discharging of a
19 destructive device or bomb;
- 20 o. Any felony that involves the use or threat of
21 physical force or violence against an individual;
- 22 p. Armed burglary;
- 23 q. Burglary of an occupied structure or dwelling; or
- 24 r. Any felony violation of s. 790.07, s. 794.05(2)~~s.~~
25 ~~800.04~~, s. 827.03, or s. 827.071;

26
27 within 3 years of being released from a state correctional
28 facility operated by the Department of Corrections or a
29 private vendor.

30 2. If the state attorney determines that a defendant
31 is a prison releasee reoffender as defined in subparagraph 1.,

1 the state attorney may seek to have the court sentence the
2 defendant as a prison releasee reoffender. Upon proof from the
3 state attorney that establishes by a preponderance of the
4 evidence that a defendant is a prison releasee reoffender as
5 defined in this section, such defendant is not eligible for
6 sentencing under the sentencing guidelines and must be
7 sentenced as follows:

8 a. For a felony punishable by life, by a term of
9 imprisonment for life;

10 b. For a felony of the first degree, by a term of
11 imprisonment of 30 years;

12 c. For a felony of the second degree, by a term of
13 imprisonment of 15 years; and

14 d. For a felony of the third degree, by a term of
15 imprisonment of 5 years.

16 Section 11. Paragraph (c) of subsection (1) of section
17 775.084, Florida Statutes, is amended to read:

18 775.084 Violent career criminals; habitual felony
19 offenders and habitual violent felony offenders; definitions;
20 procedure; enhanced penalties.--

21 (1) As used in this act:

22 (c) "Violent career criminal" means a defendant for
23 whom the court must impose imprisonment pursuant to paragraph
24 (4)(c), if it finds that:

25 1. The defendant has previously been convicted as an
26 adult three or more times for an offense in this state or
27 other qualified offense that is:

28 a. Any forcible felony, as described in s. 776.08;

29 b. Aggravated stalking, as described in s. 784.048(3)
30 and (4);

31

1 c. Aggravated child abuse, as described in s.
2 827.03(2);
3 d. Aggravated abuse of an elderly person or disabled
4 adult, as described in s. 825.102(2);
5 e. Lewd, lascivious, or indecent conduct, as described
6 in s. 794.05(2) or former s. 800.04;
7 f. Escape, as described in s. 944.40; or
8 g. A felony violation of chapter 790 involving the use
9 or possession of a firearm.
10 2. The defendant has been incarcerated in a state
11 prison or a federal prison.
12 3. The primary felony offense for which the defendant
13 is to be sentenced is a felony enumerated in subparagraph 1.
14 and was committed on or after October 1, 1995, and:
15 a. While the defendant was serving a prison sentence
16 or other commitment imposed as a result of a prior conviction
17 for an enumerated felony; or
18 b. Within 5 years after the conviction of the last
19 prior enumerated felony, or within 5 years after the
20 defendant's release from a prison sentence or other commitment
21 imposed as a result of a prior conviction for an enumerated
22 felony, whichever is later.
23 4. The defendant has not received a pardon for any
24 felony or other qualified offense that is necessary for the
25 operation of this paragraph.
26 5. A conviction of a felony or other qualified offense
27 necessary to the operation of this paragraph has not been set
28 aside in any postconviction proceeding.
29 Section 12. Subsection (1) of section 775.0877,
30 Florida Statutes, is amended to read:
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1 775.0877 Criminal transmission of HIV; procedures;
2 penalties.--

3 (1) In any case in which a person has been convicted
4 of or has pled nolo contendere or guilty to, regardless of
5 whether adjudication is withheld, any of the following
6 offenses, or the attempt thereof, which offense or attempted
7 offense involves the transmission of body fluids from one
8 person to another:

9 (a) Section 794.011, relating to sexual battery,

10 (b) Section 826.04, relating to incest,

11 (c) Section 794.05(2) or former s.800.04(1), (2), and
12 (3), relating to lewd, lascivious, or indecent assault or act
13 upon any person less than 16 years of age,

14 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
15 relating to assault,

16 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
17 relating to aggravated assault,

18 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
19 relating to battery,

20 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
21 relating to aggravated battery,

22 (h) Section 827.03(1), relating to child abuse,

23 (i) Section 827.03(2), relating to aggravated child
24 abuse,

25 (j) Section 825.102(1), relating to abuse of an
26 elderly person or disabled adult,

27 (k) Section 825.102(2), relating to aggravated abuse
28 of an elderly person or disabled adult,

29 (l) Section 827.071, relating to sexual performance by
30 person less than 18 years of age,

31

1 (m) Sections 796.03, 796.07, and 796.08, relating to
2 prostitution, or

3 (n) Section 381.0041(11)(b), relating to donation of
4 blood, plasma, organs, skin, or other human tissue,

5
6 the court shall order the offender to undergo HIV testing, to
7 be performed under the direction of the Department of Health
8 and Rehabilitative Services in accordance with s. 381.004,
9 unless the offender has undergone HIV testing voluntarily or
10 pursuant to procedures established in s. 381.004(3)(i)6. or s.
11 951.27, or any other applicable law or rule providing for HIV
12 testing of criminal offenders or inmates, subsequent to her or
13 his arrest for an offense enumerated in paragraphs (a)-(n) for
14 which she or he was convicted or to which she or he pled nolo
15 contendere or guilty. The results of an HIV test performed on
16 an offender pursuant to this subsection are not admissible in
17 any criminal proceeding arising out of the alleged offense.

18 Section 13. Subsection (7) of section 775.15, Florida
19 Statutes, is amended to read:

20 775.15 Time limitations.--

21 (7) If the victim of a violation of s. 794.011, former
22 s. 794.05, Florida Statutes 1995, former s. 800.04, or s.
23 826.04 is under the age of 16, the applicable period of
24 limitation, if any, does not begin to run until the victim has
25 reached the age of 16 or the violation is reported to a law
26 enforcement agency or other governmental agency, whichever
27 occurs earlier. Such law enforcement agency or other
28 governmental agency shall promptly report such allegation to
29 the state attorney for the judicial circuit in which the
30 alleged violation occurred. If the offense is a first or
31 second degree felony violation of s. 794.011, and the crime is

1 reported within 72 hours after its commission, paragraph
2 (1)(b) applies. This subsection applies to any such offense
3 except an offense the prosecution of which would have been
4 barred by subsection (2) on or before December 31, 1984.

5 Section 14. Paragraph (c) of subsection (4) and
6 paragraph (b) of subsection (9) of section 775.21, Florida
7 Statutes, are amended to read:

8 775.21 The Florida Sexual Predators Act; definitions;
9 legislative findings, purpose, and intent; criteria;
10 designation; registration; community and public notification;
11 immunity; penalties.--

12 (4) SEXUAL PREDATOR CRITERIA.--

13 (c) For a current offense committed on or after
14 October 1, 1996, upon conviction, an offender shall be
15 designated as a "sexual predator" under subsection (5), and
16 subject to registration under subsection (6) and community and
17 public notification under subsection (7) if:

18 1. The felony meets the criteria of former ss.
19 775.22(2) and 775.23(2), specifically, the felony is:

20 a. A capital, life, or first degree felony violation
21 of chapter 794 or s. 847.0145, or of a similar law of another
22 jurisdiction; or

23 b. Any second degree or greater felony violation of
24 chapter 794, former s. 800.04, s. 827.071, or s. 847.0145, or
25 of a similar law of another jurisdiction, and the offender has
26 previously been convicted of or found to have committed, or
27 has pled nolo contendere or guilty to, regardless of
28 adjudication, any violation of s. 794.011(2), (3), (4), (5),
29 or (8), s. 794.023, s. 794.05(2), former s. 800.04, s.
30 827.071, s. 847.0133, or s. 847.0145, or of a similar law of
31 another jurisdiction;

1 2. The offender has not received a pardon for any
2 felony or similar law of another jurisdiction that is
3 necessary for the operation of this paragraph; and

4 3. A conviction of a felony or similar law of another
5 jurisdiction necessary to the operation of this paragraph has
6 not been set aside in any postconviction proceeding.

7 (9) PENALTIES.--

8 (b) A sexual predator who has been convicted of or
9 found to have committed, or has pled nolo contendere or guilty
10 to, regardless of adjudication, any violation of s.
11 794.011(2), (3), (4), (5), or (8), s. 794.023, s. 794.05(2) or
12 former s. 800.04, s. 827.071, s. 847.0133, or s. 847.0145, or
13 of a similar law of another jurisdiction, when the victim of
14 the offense was a minor, and who works, whether for
15 compensation or as a volunteer, at any business, school, day
16 care center, park, playground, or other place where children
17 regularly congregate, commits a felony of the third degree,
18 punishable as provided in s. 775.082, s. 775.083, or s.
19 775.084.

20 Section 15. Paragraph (a) of subsection (3) of section
21 787.01, Florida Statutes, is amended to read:

22 787.01 Kidnapping; kidnapping of child under age 13,
23 aggravating circumstances.--

24 (3)(a) A person who commits the offense of kidnapping
25 upon a child under the age of 13 and who, in the course of
26 committing the offense, commits one or more of the following:

- 27 1. Aggravated child abuse, as defined in s. 827.03;
28 2. Sexual battery, as defined in chapter 794, against
29 the child;

30
31

1 3. A lewd, lascivious, or indecent assault or act upon
2 or in the presence of the child, in violation of s. 794.05(2)
3 ~~s. 800.04~~;

4 4. A violation of s. 796.03 or s. 796.04, relating to
5 prostitution, upon the child; or

6 5. Exploitation of the child or allowing the child to
7 be exploited, in violation of s. 450.151,

8
9 commits a life felony, punishable as provided in s. 775.082,
10 s. 775.083, or s. 775.084.

11 Section 16. Paragraph (a) of subsection (3) of section
12 787.02, Florida Statutes, is amended to read:

13 787.02 False imprisonment; false imprisonment of child
14 under age 13, aggravating circumstances.--

15 (3)(a) A person who commits the offense of false
16 imprisonment upon a child under the age of 13 and who, in the
17 course of committing the offense, commits any offense
18 enumerated in subparagraphs 1.-5., commits a felony of the
19 first degree, punishable by imprisonment for a term of years
20 not exceeding life or as provided in s. 775.082, s. 775.083,
21 or s. 775.084.

22 1. Aggravated child abuse, as defined in s. 827.03;

23 2. Sexual battery, as defined in chapter 794, against
24 the child;

25 3. A lewd, lascivious, or indecent assault or act upon
26 or in the presence of the child, in violation of s. 794.05(2)
27 ~~s. 800.04~~;

28 4. A violation of s. 796.03 or s. 796.04, relating to
29 prostitution, upon the child; or

30 5. Exploitation of the child or allowing the child to
31 be exploited, in violation of s. 450.151.

1 Section 17. Paragraph (a) of subsection (2) of section
2 787.025, Florida Statutes, is amended to read:

3 787.025 Luring or enticing a child.--

4 (2)(a) A person over the age of 18 who, having been
5 previously convicted of a violation of chapter 794 or former
6 s. 800.04, or a violation of a similar law of another
7 jurisdiction, intentionally lures or entices, or attempts to
8 lure or entice, a child under the age of 12 into a structure,
9 dwelling, or conveyance for other than a lawful purpose
10 commits a felony of the third degree, punishable as provided
11 in s. 775.082, s. 775.083, or s. 775.084.

12 Section 18. Subsection (3) of section 827.04, Florida
13 Statutes, is amended to read:

14 827.04 Contributing to the delinquency or dependency
15 of a child; penalty.--

16 (3) A person 21 years of age or older who impregnates
17 a child under 16 years of age commits an act of child abuse
18 which constitutes a felony of the third degree, punishable as
19 provided in s. 775.082, s. 775.083, or s. 775.084. A person
20 who impregnates a child in violation of this subsection
21 commits an offense under this subsection regardless of whether
22 the person is found to have committed, or has been charged
23 with or prosecuted for, any other offense committed during the
24 course of the same criminal transaction or episode, including,
25 but not limited to, an offense proscribed under s. 794.05(2)
26 or former s. 800.04, relating to lewd, lascivious, or indecent
27 assault or act upon any person under 16 years of age. Neither
28 the victim's lack of chastity nor the victim's consent is a
29 defense to the crime proscribed under this subsection.

30 Section 19. Section 914.16, Florida Statutes, is
31 amended to read:

1 914.16 Child abuse and sexual abuse of victims under
2 age 16 or persons with mental retardation; limits on
3 interviews.--The chief judge of each judicial circuit, after
4 consultation with the state attorney and the public defender
5 for the judicial circuit, the appropriate chief law
6 enforcement officer, and any other person deemed appropriate
7 by the chief judge, shall provide by order reasonable limits
8 on the number of interviews that a victim of a violation of s.
9 794.011, s. 794.05(2) or former s. 800.04, or s. 827.03 who is
10 under 16 years of age or a victim of a violation of s.
11 794.011, s. 800.02, s. 800.03, or s. 825.102 who is a person
12 with mental retardation as defined in s. 393.063(41) must
13 submit to for law enforcement or discovery purposes. The
14 order shall, to the extent possible, protect the victim from
15 the psychological damage of repeated interrogations while
16 preserving the rights of the public, the victim, and the
17 person charged with the violation.

18 Section 20. Paragraph (g) of subsection (3) of section
19 921.0022, Florida Statutes, is amended to read:

20 921.0022 Criminal Punishment Code; offense severity
21 ranking chart.--

22 (3) OFFENSE SEVERITY RANKING CHART

23

24 Florida	Felony	
25 Statute	Degree	Description
		(e) LEVEL 5
28 316.027(1)(a)	3rd	Accidents involving personal 29 injuries, failure to stop; 30 leaving scene.
31 316.1935(3)	3rd	Aggravated fleeing or eluding.

1	322.34(3)	3rd	Careless operation of motor
2			vehicle with suspended license,
3			resulting in death or serious
4			bodily injury.
5	327.30(5)	3rd	Vessel accidents involving
6			personal injury; leaving scene.
7	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
8			knowing HIV positive.
9	790.01(2)	3rd	Carrying a concealed firearm.
10	790.162	2nd	Threat to throw or discharge
11			destructive device.
12	790.163	2nd	False report of deadly explosive.
13	790.165(2)	3rd	Manufacture, sell, possess, or
14			deliver hoax bomb.
15	790.221(1)	2nd	Possession of short-barreled
16			shotgun or machine gun.
17	790.23	2nd	Felons in possession of firearms
18			or electronic weapons or devices.
19	806.111(1)	3rd	Possess, manufacture, or dispense
20			fire bomb with intent to damage
21			any structure or property.
22	812.019(1)	2nd	Stolen property; dealing in or
23			trafficking in.
24	812.16(2)	3rd	Owning, operating, or conducting
25			a chop shop.
26	817.034(4)(a)2.	2nd	Communications fraud, value
27			\$20,000 to \$50,000.
28	825.1025(4)	3rd	Lewd or lascivious exhibition in
29			the presence of an elderly person
30			or disabled adult.
31			

1	827.071(4)	2nd	Possess with intent to promote
2			any photographic material, motion
3			picture, etc., which includes
4			sexual conduct by a child.
5	843.01	3rd	Resist officer with violence to
6			person; resist arrest with
7			violence.
8	874.05(2)	2nd	Encouraging or recruiting another
9			to join a criminal street gang;
10			second or subsequent offense.
11	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
12			cocaine (or other s.
13			893.03(1)(a), (1)(b), (1)(d),
14			(2)(a), or (2)(b) drugs).
15	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
16			cannabis (or other s.
17			893.03(1)(c), (2)(c), (3), or (4)
18			drugs) within 1,000 feet of a
19			school.
20	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
21			cocaine (or other s.
22			893.03(1)(a), (1)(b), (1)(d),
23			(2)(a), or (2)(b) drugs) within
24			200 feet of university, public
25			housing facility, or public park.
26	893.13(4)(b)	2nd	Deliver to minor cannabis (or
27			other s. 893.03(1)(c), (2)(c),
28			(3), or (4) drugs).
29			(f) LEVEL 6
30	316.027(1)(b)	2nd	Accident involving death, failure
31			to stop; leaving scene.

1	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent
2			conviction.
3	775.0875(1)	3rd	Taking firearm from law
4			enforcement officer.
5	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
6			without intent to kill.
7	784.021(1)(b)	3rd	Aggravated assault; intent to
8			commit felony.
9	784.048(3)	3rd	Aggravated stalking; credible
10			threat.
11	784.07(2)(c)	2nd	Aggravated assault on law
12			enforcement officer.
13	784.08(2)(b)	2nd	Aggravated assault on a person 65
14			years of age or older.
15	784.081(2)	2nd	Aggravated assault on specified
16			official or employee.
17	784.082(2)	2nd	Aggravated assault by detained
18			person on visitor or other
19			detainee.
20	787.02(2)	3rd	False imprisonment; restraining
21			with purpose other than those in
22			s. 787.01.
23	790.115(2)(d)	2nd	Discharging firearm or weapon on
24			school property.
25	790.161(2)	2nd	Make, possess, or throw
26			destructive device with intent to
27			do bodily harm or damage
28			property.
29	790.164(1)	2nd	False report of deadly explosive
30			or act of arson or violence to
31			state property.

1	790.19	2nd	Shooting or throwing deadly
2			missiles into dwellings, vessels,
3			or vehicles.
4	794.011(8)(a)	3rd	Solicitation of minor to
5			participate in sexual activity by
6			custodial adult.
7	794.05(1)	2nd	Unlawful sexual activity with
8			specified minor.
9	806.031(2)	2nd	Arson resulting in great bodily
10			harm to firefighter or any other
11			person.
12	810.02(3)(c)	2nd	Burglary of occupied structure;
13			unarmed; no assault or battery.
14	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
15			but less than \$100,000, grand
16			theft in 2nd degree.
17	812.13(2)(c)	2nd	Robbery, no firearm or other
18			weapon (strong-arm robbery).
19	817.034(4)(a)1.	1st	Communications fraud, value
20			greater than \$50,000.
21	817.4821(5)	2nd	Possess cloning paraphernalia
22			with intent to create cloned
23			cellular telephones.
24	825.102(1)	3rd	Abuse of an elderly person or
25			disabled adult.
26	825.102(3)(c)	3rd	Neglect of an elderly person or
27			disabled adult.
28	825.1025(3)	3rd	Lewd or lascivious molestation of
29			an elderly person or disabled
30			adult.
31			

1	825.103(2)(c)	3rd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at \$100 or more, but less
4			than \$20,000.
5	827.03(1)	3rd	Abuse of a child.
6	827.03(3)(c)	3rd	Neglect of a child.
7	827.071(2)&(3)	2nd	Use or induce a child in a sexual
8			performance, or promote or direct
9			such performance.
10	836.05	2nd	Threats; extortion.
11	836.10	2nd	Written threats to kill or do
12			bodily injury.
13	843.12	3rd	Aids or assists person to escape.
14	914.23	2nd	Retaliation against a witness,
15			victim, or informant, with bodily
16			injury.
17	944.35(3)(a)2.	3rd	Committing malicious battery upon
18			or inflicting cruel or inhuman
19			treatment on an inmate or
20			offender on community
21			supervision, resulting in great
22			bodily harm.
23	944.40	2nd	Escapes.
24	944.46	3rd	Harboring, concealing, aiding
25			escaped prisoners.
26	944.47(1)(a)5.	2nd	Introduction of contraband
27			(firearm, weapon, or explosive)
28			into correctional facility.
29	951.22(1)	3rd	Intoxicating drug, firearm, or
30			weapon introduced into county
31			facility.

1			(g) LEVEL 7
2	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
3			injury.
4	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
5			bodily injury.
6	409.920(2)	3rd	Medicaid provider fraud.
7	494.0018(2)	1st	Conviction of any violation of
8			ss. 494.001-494.0077 in which the
9			total money and property
10			unlawfully obtained exceeded
11			\$50,000 and there were five or
12			more victims.
13	782.07(1)	2nd	Killing of a human being by the
14			act, procurement, or culpable
15			negligence of another
16			(manslaughter).
17	782.071	3rd	Killing of human being by the
18			operation of a motor vehicle in a
19			reckless manner (vehicular
20			homicide).
21	782.072	3rd	Killing of a human being by the
22			operation of a vessel in a
23			reckless manner (vessel
24			homicide).
25	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
26			causing great bodily harm or
27			disfigurement.
28	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
29			weapon.
30	784.045(1)(b)	2nd	Aggravated battery; perpetrator
31			aware victim pregnant.

1	784.048(4)	3rd	Aggravated stalking; violation of
2			injunction or court order.
3	784.07(2)(d)	1st	Aggravated battery on law
4			enforcement officer.
5	784.08(2)(a)	1st	Aggravated battery on a person 65
6			years of age or older.
7	784.081(1)	1st	Aggravated battery on specified
8			official or employee.
9	784.082(1)	1st	Aggravated battery by detained
10			person on visitor or other
11			detainee.
12	790.07(4)	1st	Specified weapons violation
13			subsequent to previous conviction
14			of s. 790.07(1) or (2).
15	790.16(1)	1st	Discharge of a machine gun under
16			specified circumstances.
17	<u>794.05(2)(a)</u>	<u>2nd</u>	<u>Handle, fondle, or assault child</u>
18			<u>under 16 years in lewd,</u>
19			<u>lascivious, or indecent manner.</u>
20	796.03	2nd	Procuring any person under 16
21			years for prostitution.
22	800.04	2nd	Handle, fondle, or assault child
23			under 16 years in lewd,
24			lascivious, or indecent manner.
25	806.01(2)	2nd	Maliciously damage structure by
26			fire or explosive.
27	810.02(3)(a)	2nd	Burglary of occupied dwelling;
28			unarmed; no assault or battery.
29	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
30			unarmed; no assault or battery.
31			

1	810.02(3)(d)	2nd	Burglary of occupied conveyance;
2			unarmed; no assault or battery.
3	812.014(2)(a)	1st	Property stolen, valued at
4			\$100,000 or more; property stolen
5			while causing other property
6			damage; 1st degree grand theft.
7	812.019(2)	1st	Stolen property; initiates,
8			organizes, plans, etc., the theft
9			of property and traffics in
10			stolen property.
11	812.133(2)(b)	1st	Carjacking; no firearm, deadly
12			weapon, or other weapon.
13	825.102(3)(b)	2nd	Neglecting an elderly person or
14			disabled adult causing great
15			bodily harm, disability, or
16			disfigurement.
17	825.1025(2)	2nd	Lewd or lascivious battery upon
18			an elderly person or disabled
19			adult.
20	825.103(2)(b)	2nd	Exploiting an elderly person or
21			disabled adult and property is
22			valued at \$20,000 or more, but
23			less than \$100,000.
24	827.03(3)(b)	2nd	Neglect of a child causing great
25			bodily harm, disability, or
26			disfigurement.
27	827.04(4)	3rd	Impregnation of a child under 16
28			years of age by person 21 years
29			of age or older.
30	872.06	2nd	Abuse of a dead human body.
31			

1	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
2			cocaine (or other s.
3			893.03(1)(a), (1)(b), (1)(d),
4			(2)(a), or (2)(b) drugs) within
5			1,000 feet of a school.
6	893.13(4)(a)	1st	Deliver to minor cocaine (or
7			other s. 893.03(1)(a), (1)(b),
8			(1)(d), (2)(a), or (2)(b) drugs).
9	893.135(1)(a)1.	1st	Trafficking in cannabis, more
10			than 50 lbs., less than 2,000
11			lbs.
12	893.135		
13	(1)(b)1.a.	1st	Trafficking in cocaine, more than
14			28 grams, less than 200 grams.
15	893.135		
16	(1)(c)1.a.	1st	Trafficking in illegal drugs,
17			more than 4 grams, less than 14
18			grams.
19	893.135		
20	(1)(d)1.	1st	Trafficking in phencyclidine,
21			more than 28 grams, less than 200
22			grams.
23	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
24			than 200 grams, less than 5
25			kilograms.
26	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
27			than 14 grams, less than 28
28			grams.
29	Section 21. Paragraph (a) of subsection (1) of section		
30	943.0435, Florida Statutes, is amended to read:		
31			

1 943.0435 Sex offenders required to report to the
2 department; penalty.--

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

4 (a) "Sex offender" means a person who has been:

5 1. Convicted of committing, or attempting, soliciting,
6 or conspiring to commit, any of the criminal offenses
7 proscribed in the following statutes in this state or
8 analogous offenses in another jurisdiction: s. 787.025,
9 chapter 794, s. 796.03, former s. 800.04, s. 827.071, s.
10 847.0133, s. 847.0135, s. 847.0145, or any similar offense
11 committed in this state which has been redesignated from a
12 former statute number to one of those listed in this
13 subparagraph.

14 2. Released on or after October 1, 1997, from the
15 sanction imposed for any conviction of an offense described in
16 subparagraph 1. For purposes of subparagraph 1., a sanction
17 imposed in this state or in any other jurisdiction includes,
18 but is not limited to, a fine, probation, community control,
19 parole, conditional release, control release, or incarceration
20 in a state prison, federal prison, private correctional
21 facility, or local detention facility.

22 Section 22. Section 943.0585, Florida Statutes, is
23 amended to read:

24 943.0585 Court-ordered expunction of criminal history
25 records.--The courts of this state have jurisdiction over
26 their own procedures, including the maintenance, expunction,
27 and correction of judicial records containing criminal history
28 information to the extent such procedures are not inconsistent
29 with the conditions, responsibilities, and duties established
30 by this section. Any court of competent jurisdiction may
31 order a criminal justice agency to expunge the criminal

1 history record of a minor or an adult who complies with the
2 requirements of this section. The court shall not order a
3 criminal justice agency to expunge a criminal history record
4 until the person seeking to expunge a criminal history record
5 has applied for and received a certificate of eligibility for
6 expunction pursuant to subsection (2). A criminal history
7 record that relates to a violation of chapter 794, former s.
8 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
9 violation enumerated in s. 907.041 may not be expunged,
10 without regard to whether adjudication was withheld, if the
11 defendant was found guilty of or pled guilty or nolo
12 contendere to the offense, or if the defendant, as a minor,
13 was found to have committed, or pled guilty or nolo contendere
14 to committing, the offense as a delinquent act. The court may
15 only order expunction of a criminal history record pertaining
16 to one arrest or one incident of alleged criminal activity,
17 except as provided in this section. The court may, at its sole
18 discretion, order the expunction of a criminal history record
19 pertaining to more than one arrest if the additional arrests
20 directly relate to the original arrest. If the court intends
21 to order the expunction of records pertaining to such
22 additional arrests, such intent must be specified in the
23 order. A criminal justice agency may not expunge any record
24 pertaining to such additional arrests if the order to expunge
25 does not articulate the intention of the court to expunge a
26 record pertaining to more than one arrest. This section does
27 not prevent the court from ordering the expunction of only a
28 portion of a criminal history record pertaining to one arrest
29 or one incident of alleged criminal activity. Notwithstanding
30 any law to the contrary, a criminal justice agency may comply
31 with laws, court orders, and official requests of other

1 jurisdictions relating to expunction, correction, or
2 confidential handling of criminal history records or
3 information derived therefrom. This section does not confer
4 any right to the expunction of any criminal history record,
5 and any request for expunction of a criminal history record
6 may be denied at the sole discretion of the court.

7 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY
8 RECORD.--Each petition to a court to expunge a criminal
9 history record is complete only when accompanied by:

10 (a) A certificate of eligibility for expunction issued
11 by the department pursuant to subsection (2).

12 (b) The petitioner's sworn statement attesting that
13 the petitioner:

14 1. Has never previously been adjudicated guilty of a
15 criminal offense or comparable ordinance violation or
16 adjudicated delinquent for committing a felony or a
17 misdemeanor specified in s. 943.051(3)(b).

18 2. Has not been adjudicated guilty of, or adjudicated
19 delinquent for committing, any of the acts stemming from the
20 arrest or alleged criminal activity to which the petition
21 pertains.

22 3. Has never secured a prior sealing or expunction of
23 a criminal history record under this section, former s.
24 893.14, former s. 901.33, or former s. 943.058, or from any
25 jurisdiction outside the state.

26 4. Is eligible for such an expunction to the best of
27 his or her knowledge or belief and does not have any other
28 petition to expunge or any petition to seal pending before any
29 court.

30
31

1 Any person who knowingly provides false information on such
2 sworn statement to the court commits a felony of the third
3 degree, punishable as provided in s. 775.082, s. 775.083, or
4 s. 775.084.

5 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
6 to petitioning the court to expunge a criminal history record,
7 a person seeking to expunge a criminal history record shall
8 apply to the department for a certificate of eligibility for
9 expunction. The department shall, by rule adopted pursuant to
10 chapter 120, establish procedures pertaining to the
11 application for and issuance of certificates of eligibility
12 for expunction. The department shall issue a certificate of
13 eligibility for expunction to a person who is the subject of a
14 criminal history record if that person:

15 (a) Has obtained, and submitted to the department, a
16 written, certified statement from the appropriate state
17 attorney or statewide prosecutor which indicates:

18 1. That an indictment, information, or other charging
19 document was not filed or issued in the case.

20 2. That an indictment, information, or other charging
21 document, if filed or issued in the case, was dismissed or
22 nolle prosequi by the state attorney or statewide prosecutor,
23 or was dismissed by a court of competent jurisdiction.

24 3. That the criminal history record does not relate to
25 a violation of chapter 794, former s. 800.04, s. 817.034, s.
26 827.071, chapter 839, s. 893.135, or a violation enumerated in
27 s. 907.041, where the defendant was found guilty of, or pled
28 guilty or nolo contendere to any such offense, or that the
29 defendant, as a minor, was found to have committed, or pled
30 guilty or nolo contendere to committing, such an offense as a
31

1 delinquent act, without regard to whether adjudication was
2 withheld.

3 (b) Remits a \$75 processing fee to the department for
4 placement in the Department of Law Enforcement Operating Trust
5 Fund, unless such fee is waived by the executive director.

6 (c) Has submitted to the department a certified copy
7 of the disposition of the charge to which the petition to
8 expunge pertains.

9 (d) Has never previously been adjudicated guilty of a
10 criminal offense or comparable ordinance violation or
11 adjudicated delinquent for committing a felony or a
12 misdemeanor specified in s. 943.051(3)(b).

13 (e) Has not been adjudicated guilty of, or adjudicated
14 delinquent for committing, any of the acts stemming from the
15 arrest or alleged criminal activity to which the petition to
16 expunge pertains.

17 (f) Has never secured a prior sealing or expunction of
18 a criminal history record under this section, former s.
19 893.14, former s. 901.33, or former s. 943.058.

20 (g) Is no longer under court supervision applicable to
21 the disposition of the arrest or alleged criminal activity to
22 which the petition to expunge pertains.

23 (h) Is not required to wait a minimum of 10 years
24 prior to being eligible for an expunction of such records
25 because all charges related to the arrest or criminal activity
26 to which the petition to expunge pertains were dismissed prior
27 to trial, adjudication, or the withholding of adjudication.
28 Otherwise, such criminal history record must be sealed under
29 this section, former s. 893.14, former s. 901.33, or former s.
30 943.058 for at least 10 years before such record is eligible
31 for expunction.

1 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

2 (a) In judicial proceedings under this section, a copy
3 of the completed petition to expunge shall be served upon the
4 appropriate state attorney or the statewide prosecutor and
5 upon the arresting agency; however, it is not necessary to
6 make any agency other than the state a party. The appropriate
7 state attorney or the statewide prosecutor and the arresting
8 agency may respond to the court regarding the completed
9 petition to expunge.

10 (b) If relief is granted by the court, the clerk of
11 the court shall certify copies of the order to the appropriate
12 state attorney or the statewide prosecutor and the arresting
13 agency. The arresting agency is responsible for forwarding the
14 order to any other agency to which the arresting agency
15 disseminated the criminal history record information to which
16 the order pertains. The department shall forward the order to
17 expunge to the Federal Bureau of Investigation. The clerk of
18 the court shall certify a copy of the order to any other
19 agency which the records of the court reflect has received the
20 criminal history record from the court.

21 (c) For an order to expunge entered by a court prior
22 to July 1, 1992, the department shall notify the appropriate
23 state attorney or statewide prosecutor of an order to expunge
24 which is contrary to law because the person who is the subject
25 of the record has previously been convicted of a crime or
26 comparable ordinance violation or has had a prior criminal
27 history record sealed or expunged. Upon receipt of such
28 notice, the appropriate state attorney or statewide prosecutor
29 shall take action, within 60 days, to correct the record and
30 petition the court to void the order to expunge. The

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1 department shall seal the record until such time as the order
2 is voided by the court.

3 (d) On or after July 1, 1992, the department or any
4 other criminal justice agency is not required to act on an
5 order to expunge entered by a court when such order does not
6 comply with the requirements of this section. Upon receipt of
7 such an order, the department must notify the issuing court,
8 the appropriate state attorney or statewide prosecutor, the
9 petitioner or the petitioner's attorney, and the arresting
10 agency of the reason for noncompliance. The appropriate state
11 attorney or statewide prosecutor shall take action within 60
12 days to correct the record and petition the court to void the
13 order. No cause of action, including contempt of court, shall
14 arise against any criminal justice agency for failure to
15 comply with an order to expunge when the petitioner for such
16 order failed to obtain the certificate of eligibility as
17 required by this section or such order does not otherwise
18 comply with the requirements of this section.

19 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
20 criminal history record of a minor or an adult which is
21 ordered expunged by a court of competent jurisdiction pursuant
22 to this section must be physically destroyed or obliterated by
23 any criminal justice agency having custody of such record;
24 except that any criminal history record in the custody of the
25 department must be retained in all cases. A criminal history
26 record ordered expunged that is retained by the department is
27 confidential and exempt from the provisions of s. 119.07(1)
28 and s. 24(a), Art. I of the State Constitution and not
29 available to any person or entity except upon order of a court
30 of competent jurisdiction. A criminal justice agency may

31

1 retain a notation indicating compliance with an order to
2 expunge.

3 (a) The person who is the subject of a criminal
4 history record that is expunged under this section or under
5 other provisions of law, including former s. 893.14, former s.
6 901.33, and former s. 943.058, may lawfully deny or fail to
7 acknowledge the arrests covered by the expunged record, except
8 when the subject of the record:

- 9 1. Is a candidate for employment with a criminal
10 justice agency;
- 11 2. Is a defendant in a criminal prosecution;
- 12 3. Concurrently or subsequently petitions for relief
13 under this section or s. 943.059;
- 14 4. Is a candidate for admission to The Florida Bar;
- 15 5. Is seeking to be employed or licensed by or to
16 contract with the Department of Health and Rehabilitative
17 Services or to be employed or used by such contractor or
18 licensee in a sensitive position having direct contact with
19 children, the developmentally disabled, the aged, or the
20 elderly as provided in s. 39.076, s. 110.1127(3), s.
21 393.063(14), s. 394.4572(1), s. 397.451, s. 402.302(8), s.
22 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.1075(4),
23 or chapter 400; or
- 24 6. Is seeking to be employed or licensed by the Office
25 of Teacher Education, Certification, Staff Development, and
26 Professional Practices of the Department of Education, any
27 district school board, or any local governmental entity that
28 licenses child care facilities.

29 (b) Subject to the exceptions in paragraph (a), a
30 person who has been granted an expunction under this section,
31 former s. 893.14, former s. 901.33, or former s. 943.058 may

1 not be held under any provision of law of this state to commit
2 perjury or to be otherwise liable for giving a false statement
3 by reason of such person's failure to recite or acknowledge an
4 expunged criminal history record.

5 (c) Information relating to the existence of an
6 expunged criminal history record which is provided in
7 accordance with paragraph (a) is confidential and exempt from
8 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
9 State Constitution, except that the department shall disclose
10 the existence of a criminal history record ordered expunged to
11 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
12 for their respective licensing and employment purposes, and to
13 criminal justice agencies for their respective criminal
14 justice purposes. It is unlawful for any employee of an
15 entity set forth in subparagraph (a)1., subparagraph (a)4.,
16 subparagraph (a)5., or subparagraph (a)6. to disclose
17 information relating to the existence of an expunged criminal
18 history record of a person seeking employment or licensure
19 with such entity or contractor, except to the person to whom
20 the criminal history record relates or to persons having
21 direct responsibility for employment or licensure decisions.
22 Any person who violates this paragraph commits a misdemeanor
23 of the first degree, punishable as provided in s. 775.082 or
24 s. 775.083.

25 Section 23. Section 943.059, Florida Statutes, is
26 amended to read:

27 943.059 Court-ordered sealing of criminal history
28 records.--The courts of this state shall continue to have
29 jurisdiction over their own procedures, including the
30 maintenance, sealing, and correction of judicial records
31 containing criminal history information to the extent such

1 procedures are not inconsistent with the conditions,
2 responsibilities, and duties established by this section. Any
3 court of competent jurisdiction may order a criminal justice
4 agency to seal the criminal history record of a minor or an
5 adult who complies with the requirements of this section. The
6 court shall not order a criminal justice agency to seal a
7 criminal history record until the person seeking to seal a
8 criminal history record has applied for and received a
9 certificate of eligibility for sealing pursuant to subsection
10 (2). A criminal history record that relates to a violation of
11 chapter 794, former s. 800.04, s. 817.034, s. 827.071, chapter
12 839, s. 893.135, or a violation enumerated in s. 907.041 may
13 not be sealed, without regard to whether adjudication was
14 withheld, if the defendant was found guilty of or pled guilty
15 or nolo contendere to the offense, or if the defendant, as a
16 minor, was found to have committed or pled guilty or nolo
17 contendere to committing the offense as a delinquent act. The
18 court may only order sealing of a criminal history record
19 pertaining to one arrest or one incident of alleged criminal
20 activity, except as provided in this section. The court may,
21 at its sole discretion, order the sealing of a criminal
22 history record pertaining to more than one arrest if the
23 additional arrests directly relate to the original arrest. If
24 the court intends to order the sealing of records pertaining
25 to such additional arrests, such intent must be specified in
26 the order. A criminal justice agency may not seal any record
27 pertaining to such additional arrests if the order to seal
28 does not articulate the intention of the court to seal records
29 pertaining to more than one arrest. This section does not
30 prevent the court from ordering the sealing of only a portion
31 of a criminal history record pertaining to one arrest or one

1 incident of alleged criminal activity. Notwithstanding any law
2 to the contrary, a criminal justice agency may comply with
3 laws, court orders, and official requests of other
4 jurisdictions relating to sealing, correction, or confidential
5 handling of criminal history records or information derived
6 therefrom. This section does not confer any right to the
7 sealing of any criminal history record, and any request for
8 sealing a criminal history record may be denied at the sole
9 discretion of the court.

10 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
11 petition to a court to seal a criminal history record is
12 complete only when accompanied by:

13 (a) A certificate of eligibility for sealing issued by
14 the department pursuant to subsection (2).

15 (b) The petitioner's sworn statement attesting that
16 the petitioner:

17 1. Has never previously been adjudicated guilty of a
18 criminal offense or comparable ordinance violation or
19 adjudicated delinquent for committing a felony or a
20 misdemeanor specified in s. 943.051(3)(b).

21 2. Has not been adjudicated guilty of or adjudicated
22 delinquent for committing any of the acts stemming from the
23 arrest or alleged criminal activity to which the petition to
24 seal pertains.

25 3. Has never secured a prior sealing or expunction of
26 a criminal history record under this section, former s.
27 893.14, former s. 901.33, former s. 943.058, or from any
28 jurisdiction outside the state.

29 4. Is eligible for such a sealing to the best of his
30 or her knowledge or belief and does not have any other
31

1 petition to seal or any petition to expunge pending before any
2 court.

3

4 Any person who knowingly provides false information on such
5 sworn statement to the court commits a felony of the third
6 degree, punishable as provided in s. 775.082, s. 775.083, or
7 s. 775.084.

8 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
9 petitioning the court to seal a criminal history record, a
10 person seeking to seal a criminal history record shall apply
11 to the department for a certificate of eligibility for
12 sealing. The department shall, by rule adopted pursuant to
13 chapter 120, establish procedures pertaining to the
14 application for and issuance of certificates of eligibility
15 for sealing. The department shall issue a certificate of
16 eligibility for sealing to a person who is the subject of a
17 criminal history record provided that such person:

18 (a) Has submitted to the department a certified copy
19 of the disposition of the charge to which the petition to seal
20 pertains.

21 (b) Remits a \$75 processing fee to the department for
22 placement in the Department of Law Enforcement Operating Trust
23 Fund, unless such fee is waived by the executive director.

24 (c) Has never previously been adjudicated guilty of a
25 criminal offense or comparable ordinance violation or
26 adjudicated delinquent for committing a felony or a
27 misdemeanor specified in s. 943.051(3)(b).

28 (d) Has not been adjudicated guilty of or adjudicated
29 delinquent for committing any of the acts stemming from the
30 arrest or alleged criminal activity to which the petition to
31 seal pertains.

1 (e) Has never secured a prior sealing or expunction of
2 a criminal history record under this section, former s.
3 893.14, former s. 901.33, or former s. 943.058.

4 (f) Is no longer under court supervision applicable to
5 the disposition of the arrest or alleged criminal activity to
6 which the petition to seal pertains.

7 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

8 (a) In judicial proceedings under this section, a copy
9 of the completed petition to seal shall be served upon the
10 appropriate state attorney or the statewide prosecutor and
11 upon the arresting agency; however, it is not necessary to
12 make any agency other than the state a party. The appropriate
13 state attorney or the statewide prosecutor and the arresting
14 agency may respond to the court regarding the completed
15 petition to seal.

16 (b) If relief is granted by the court, the clerk of
17 the court shall certify copies of the order to the appropriate
18 state attorney or the statewide prosecutor and to the
19 arresting agency. The arresting agency is responsible for
20 forwarding the order to any other agency to which the
21 arresting agency disseminated the criminal history record
22 information to which the order pertains. The department shall
23 forward the order to seal to the Federal Bureau of
24 Investigation. The clerk of the court shall certify a copy of
25 the order to any other agency which the records of the court
26 reflect has received the criminal history record from the
27 court.

28 (c) For an order to seal entered by a court prior to
29 July 1, 1992, the department shall notify the appropriate
30 state attorney or statewide prosecutor of any order to seal
31 which is contrary to law because the person who is the subject

1 of the record has previously been convicted of a crime or
2 comparable ordinance violation or has had a prior criminal
3 history record sealed or expunged. Upon receipt of such
4 notice, the appropriate state attorney or statewide prosecutor
5 shall take action, within 60 days, to correct the record and
6 petition the court to void the order to seal. The department
7 shall seal the record until such time as the order is voided
8 by the court.

9 (d) On or after July 1, 1992, the department or any
10 other criminal justice agency is not required to act on an
11 order to seal entered by a court when such order does not
12 comply with the requirements of this section. Upon receipt of
13 such an order, the department must notify the issuing court,
14 the appropriate state attorney or statewide prosecutor, the
15 petitioner or the petitioner's attorney, and the arresting
16 agency of the reason for noncompliance. The appropriate state
17 attorney or statewide prosecutor shall take action within 60
18 days to correct the record and petition the court to void the
19 order. No cause of action, including contempt of court, shall
20 arise against any criminal justice agency for failure to
21 comply with an order to seal when the petitioner for such
22 order failed to obtain the certificate of eligibility as
23 required by this section or when such order does not comply
24 with the requirements of this section.

25 (e) An order sealing a criminal history record
26 pursuant to this section does not require that such record be
27 surrendered to the court, and such record shall continue to be
28 maintained by the department and other criminal justice
29 agencies.

30 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
31 criminal history record of a minor or an adult which is

1 ordered sealed by a court of competent jurisdiction pursuant
2 to this section is confidential and exempt from the provisions
3 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
4 and is available only to the person who is the subject of the
5 record, to the subject's attorney, to criminal justice
6 agencies for their respective criminal justice purposes, or to
7 those entities set forth in subparagraphs (a)1., 4., 5., and
8 6. for their respective licensing and employment purposes.

9 (a) The subject of a criminal history record sealed
10 under this section or under other provisions of law, including
11 former s. 893.14, former s. 901.33, and former s. 943.058, may
12 lawfully deny or fail to acknowledge the arrests covered by
13 the sealed record, except when the subject of the record:

- 14 1. Is a candidate for employment with a criminal
15 justice agency;
- 16 2. Is a defendant in a criminal prosecution;
- 17 3. Concurrently or subsequently petitions for relief
18 under this section or s. 943.0585;
- 19 4. Is a candidate for admission to The Florida Bar;
- 20 5. Is seeking to be employed or licensed by or to
21 contract with the Department of Health and Rehabilitative
22 Services or the Department of Juvenile Justice or to be
23 employed or used by such contractor or licensee in a sensitive
24 position having direct contact with children, the
25 developmentally disabled, the aged, or the elderly as provided
26 in s. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.4572(1),
27 s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(i), s.
28 415.102(4), s. 415.103, or chapter 400; or
- 29 6. Is seeking to be employed or licensed by the Office
30 of Teacher Education, Certification, Staff Development, and
31 Professional Practices of the Department of Education, any

1 district school board, or any local governmental entity which
2 licenses child care facilities.

3 (b) Subject to the exceptions in paragraph (a), a
4 person who has been granted a sealing under this section,
5 former s. 893.14, former s. 901.33, or former s. 943.058 may
6 not be held under any provision of law of this state to commit
7 perjury or to be otherwise liable for giving a false statement
8 by reason of such person's failure to recite or acknowledge a
9 sealed criminal history record.

10 (c) Information relating to the existence of a sealed
11 criminal record provided in accordance with the provisions of
12 paragraph (a) is confidential and exempt from the provisions
13 of s. 119.07(1) and s. 24(a), Art. I of the State
14 Constitution, except that the department shall disclose the
15 sealed criminal history record to the entities set forth in
16 subparagraphs (a)1., 4., 5., and 6. for their respective
17 licensing and employment purposes. It is unlawful for any
18 employee of an entity set forth in subparagraph (a)1.,
19 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
20 to disclose information relating to the existence of a sealed
21 criminal history record of a person seeking employment or
22 licensure with such entity or contractor, except to the person
23 to whom the criminal history record relates or to persons
24 having direct responsibility for employment or licensure
25 decisions. Any person who violates the provisions of this
26 paragraph commits a misdemeanor of the first degree,
27 punishable as provided in s. 775.082 or s. 775.083.

28 Section 24. Paragraph (b) of subsection (1) of section
29 944.606, Florida Statutes, is amended to read:

30 944.606 Sexual offenders; notification upon release.--

31 (1) As used in this section:

1 (b) "Sexual offender" means a person who has been
2 convicted of a felony violation of chapter 794, former s.
3 800.04, s. 827.071, or s. 847.0145, or a violation of a
4 similar law of another jurisdiction, when the department has
5 received verified information regarding such conviction; an
6 offender's computerized criminal history record is not, in and
7 of itself, verified information.

8 Section 25. Paragraph (a) of subsection (1) of section
9 944.607, Florida Statutes, is amended to read:

10 944.607 Notification to Department of Law Enforcement
11 of information on sex offenders.--

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

13 (a) "Sex offender" means a person who is in the
14 custody or control of, or under the supervision of, the
15 department or is in the custody of a private correctional
16 facility on or after October 1, 1997, as a result of a
17 conviction for committing, or attempting, soliciting, or
18 conspiring to commit, any of the criminal offenses proscribed
19 in the following statutes in this state or analogous offenses
20 in another jurisdiction: s. 787.025, chapter 794, s. 796.03,
21 former s. 800.04, s. 827.071, s. 847.0133, s. 847.0135, s.
22 847.0145, or any similar offense committed in this state which
23 has been redesignated from a former statute number to one of
24 those listed in this paragraph.

25 Section 26. Subsection (7) of section 947.1405,
26 Florida Statutes, is amended to read:

27 947.1405 Conditional release program.--

28 (7)(a) Any inmate who is convicted of a crime
29 committed on or after October 1, 1995, or who has been
30 previously convicted of a crime committed on or after October
31 1, 1995, in violation of chapter 794, former s. 800.04, s.

1 827.071, or s. 847.0145, and is subject to conditional release
2 supervision, shall have, in addition to any other conditions
3 imposed, the following special conditions imposed by the
4 commission:

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

11 2. If the victim was under the age of 18, a
12 prohibition on living within 1,000 feet of a school, day care
13 center, park, playground, or other place where children
14 regularly congregate.

15 3. Active participation in and successful completion
16 of a sex offender treatment program with therapists
17 specifically trained to treat sex offenders, at the releasee's
18 own expense. If a specially trained therapist is not available
19 within a 50-mile radius of the releasee's residence, the
20 offender shall participate in other appropriate therapy.

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

25 5. If the victim was under the age of 18, a
26 prohibition, until successful completion of a sex offender
27 treatment program, on unsupervised contact with a child under
28 the age of 18, unless authorized by the commission without
29 another adult present who is responsible for the child's
30 welfare, has been advised of the crime, and is approved by the
31 commission.

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

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

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

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

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

23 (b) For a releasee whose crime was committed on or
24 after October 1, 1997, in violation of chapter 794, former s.
25 800.04, s. 827.071, or s. 847.0145, and who is subject to
26 conditional release supervision, in addition to any other
27 provision of this subsection, the commission shall impose the
28 following additional conditions of conditional release
29 supervision:

30 1. As part of a treatment program, participation in a
31 minimum of one annual polygraph examination to obtain

1 information necessary for risk management and treatment and to
2 reduce the sex offender's denial mechanisms. The polygraph
3 examination must be conducted by a polygrapher trained
4 specifically in the use of the polygraph for the monitoring of
5 sex offenders, where available, and at the expense of the sex
6 offender. The results of the polygraph examination shall not
7 be used as evidence in a hearing to prove that a violation of
8 supervision has occurred.

9 2. Maintenance of a driving log and a prohibition
10 against driving a motor vehicle alone without the prior
11 approval of the supervising officer.

12 3. A prohibition against obtaining or using a post
13 office box without the prior approval of the supervising
14 officer.

15 4. If there was sexual contact, a submission to, at
16 the probationer's or community controllee's expense, an HIV
17 test with the results to be released to the victim or the
18 victim's parent or guardian.

19 5. Electronic monitoring when deemed necessary by the
20 community control or probation officer and his or her
21 supervisor, and ordered by the court at the recommendation of
22 the Department of Corrections.

23 Section 27. Subsections (5) and (6) of section 948.03,
24 Florida Statutes, are amended to read:

25 948.03 Terms and conditions of probation or community
26 control.--

27 (4) The court shall require a diagnosis and evaluation
28 to determine the need of a probationer or offender in
29 community control for treatment. If the court determines that
30 a need therefor is established by such diagnosis and
31 evaluation process, the court shall require outpatient

1 counseling as a term or condition of probation or community
2 control for any person who was found guilty of any of the
3 following, or whose plea of guilty or nolo contendere to any
4 of the following was accepted by the court:

5 (a) A lewd, lascivious, or indecent assault or act
6 upon, or in the presence of, a child.

7 (b) Sexual battery, as defined in chapter 794, against
8 a child.

9 (c) Exploitation of a child as provided in s. 450.151,
10 or for prostitution.

11

12 Such counseling shall be required to be obtained from a
13 community mental health center, a recognized social service
14 agency providing mental health services, or a private mental
15 health professional or through other professional counseling.
16 The plan for counseling for the individual shall be provided
17 to the court for review.

18 (5)(a) Effective for probationers or community
19 controllees whose crime was committed on or after October 1,
20 1995, and who are placed under supervision for violation of
21 chapter 794 or former s. 800.04, s. 827.071, or s. 847.0145,
22 the court must impose the following conditions in addition to
23 all other standard and special conditions imposed:

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

30 2. If the victim was under the age of 18, a
31 prohibition on living within 1,000 feet of a school, day care

1 center, park, playground, or other place where children
2 regularly congregate, as prescribed by the court.

3 3. Active participation in and successful completion
4 of a sex offender treatment program with therapists
5 specifically trained to treat sex offenders, at the
6 probationer's or community controllee's own expense. If a
7 specially trained therapist is not available within a 50-mile
8 radius of the probationer's or community controllee's
9 residence, the offender shall participate in other appropriate
10 therapy.

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

15 5. If the victim was under the age of 18, a
16 prohibition, until successful completion of a sex offender
17 treatment program, on unsupervised contact with a child under
18 the age of 18, unless authorized by the sentencing court
19 without another adult present who is responsible for the
20 child's welfare, has been advised of the crime, and is
21 approved by the sentencing court.

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

26 7. Unless otherwise indicated in the treatment plan
27 provided by the sexual offender treatment program, a
28 prohibition on viewing, owning, or possessing any obscene,
29 pornographic, or sexually stimulating visual or auditory
30 material, including telephone, electronic media, computer
31

1 programs, or computer services that are relevant to the
2 offender's deviant behavior pattern.

3 8. A requirement that the probationer or community
4 controllee must submit two specimens of blood to the Florida
5 Department of Law Enforcement to be registered with the DNA
6 data bank.

7 9. A requirement that the probationer or community
8 controllee make restitution to the victim, as ordered by the
9 court under s. 775.089, for all necessary medical and related
10 professional services relating to physical, psychiatric, and
11 psychological care.

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

15 (b) Effective for a probationer or community
16 controllee whose crime was committed on or after October 1,
17 1997, and who is placed on sex offender probation for a
18 violation of chapter 794, former s. 800.04, s. 827.071, or s.
19 847.0145, in addition to any other provision of this
20 subsection, the court must impose the following conditions of
21 probation or community control:

22 1. As part of a treatment program, participation at
23 least annually in polygraph examinations to obtain information
24 necessary for risk management and treatment and to reduce the
25 sex offender's denial mechanisms. A polygraph examination must
26 be conducted by a polygrapher trained specifically in the use
27 of the polygraph for the monitoring of sex offenders, where
28 available, and shall be paid by the sex offender. The results
29 of the polygraph examination shall not be used as evidence in
30 court to prove that a violation of community supervision has
31 occurred.

1 2. Maintenance of a driving log and a prohibition
2 against driving a motor vehicle alone without the prior
3 approval of the supervising officer.

4 3. A prohibition against obtaining or using a post
5 office box without the prior approval of the supervising
6 officer.

7 4. If there was sexual contact, a submission to, at
8 the probationer's or community controllee's expense, an HIV
9 test with the results to be released to the victim and/or the
10 victim's parent or guardian.

11 5. Electronic monitoring when deemed necessary by the
12 community control or probation officer and his or her
13 supervisor, and ordered by the court at the recommendation of
14 the Department of Corrections.

15 (6) The enumeration of specific kinds of terms and
16 conditions shall not prevent the court from adding thereto
17 such other or others as it considers proper. However, the
18 sentencing court may only impose a condition of supervision
19 allowing an offender convicted of s. 794.011, s. 794.05(2) or
20 former s. 800.04, s. 827.071, or s. 847.0145, to reside in
21 another state, if the order stipulates that it is contingent
22 upon the approval of the receiving state interstate compact
23 authority. The court may rescind or modify at any time the
24 terms and conditions theretofore imposed by it upon the
25 probationer or offender in community control. However, if the
26 court withholds adjudication of guilt or imposes a period of
27 incarceration as a condition of probation or community
28 control, the period shall not exceed 364 days, and
29 incarceration shall be restricted to either a county facility,
30 a probation and restitution center under the jurisdiction of
31 the Department of Corrections, a probation program drug

1 | punishment phase I secure residential treatment institution,
2 | or a community residential facility owned or operated by any
3 | entity providing such services.

4 | Section 28. Paragraph (a) of subsection (2) of section
5 | 948.06, Florida Statutes, is amended to read:

6 | 948.06 Violation of probation or community control;
7 | revocation; modification; continuance; failure to pay
8 | restitution or cost of supervision.--

9 | (2)(a) When any state or local law enforcement agency
10 | investigates or arrests a person for committing, or
11 | attempting, soliciting, or conspiring to commit, a violation
12 | of s. 787.025, chapter 794, s. 796.03, ~~s. 800.04~~, s. 827.071,
13 | s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
14 | agency shall contact the Department of Corrections to verify
15 | whether the person under investigation or under arrest is on
16 | probation, community control, parole, conditional release, or
17 | control release.

18 | Section 29. Paragraph (a) of subsection (33) of
19 | section 985.03, Florida Statutes, is amended to read:

20 | 985.03 Definitions.--When used in this chapter, the
21 | term:

22 | (7) "Child eligible for an intensive residential
23 | treatment program for offenders less than 13 years of age"
24 | means a child who has been found to have committed a
25 | delinquent act or a violation of law in the case currently
26 | before the court and who meets at least one of the following
27 | criteria:

28 | (a) The child is less than 13 years of age at the time
29 | of the disposition for the current offense and has been
30 | adjudicated on the current offense for:

31 | 1. Arson;

- 1 2. Sexual battery;
- 2 3. Robbery;
- 3 4. Kidnapping;
- 4 5. Aggravated child abuse;
- 5 6. Aggravated assault;
- 6 7. Aggravated stalking;
- 7 8. Murder;
- 8 9. Manslaughter;
- 9 10. Unlawful throwing, placing, or discharging of a
- 10 destructive device or bomb;
- 11 11. Armed burglary;
- 12 12. Aggravated battery;
- 13 13. Lewd or lascivious assault or act in the presence
- 14 of a child; or
- 15 14. Carrying, displaying, using, threatening, or
- 16 attempting to use a weapon or firearm during the commission of
- 17 a felony.

18 (33) "Juvenile sexual offender" means:

19 (a) A juvenile who has been found by the court

20 pursuant to s. 985.228 to have committed a violation of

21 chapter 794, chapter 796, chapter 800, former s. 800.04, s.

22 827.071, or s. 847.0133;

23

24 Juvenile sexual offender behavior ranges from noncontact

25 sexual behavior such as making obscene phone calls,

26 exhibitionism, voyeurism, and the showing or taking of lewd

27 photographs to varying degrees of direct sexual contact, such

28 as frottage, fondling, digital penetration, rape, fellatio,

29 sodomy, and various other sexually aggressive acts.

30 (47) "Serious or habitual juvenile offender," for

31 purposes of commitment to a residential facility and for

1 purposes of records retention, means a child who has been
2 found to have committed a delinquent act or a violation of
3 law, in the case currently before the court, and who meets at
4 least one of the following criteria:

5 (a) The youth is at least 13 years of age at the time
6 of the disposition for the current offense and has been
7 adjudicated on the current offense for:

- 8 1. Arson;
- 9 2. Sexual battery;
- 10 3. Robbery;
- 11 4. Kidnapping;
- 12 5. Aggravated child abuse;
- 13 6. Aggravated assault;
- 14 7. Aggravated stalking;
- 15 8. Murder;
- 16 9. Manslaughter;
- 17 10. Unlawful throwing, placing, or discharging of a
18 destructive device or bomb;
- 19 11. Armed burglary;
- 20 12. Aggravated battery;
- 21 13. Lewd or lascivious assault or act in the presence
22 of a child; or
- 23 14. Carrying, displaying, using, threatening, or
24 attempting to use a weapon or firearm during the commission of
25 a felony.

26 Section 30. Subsection (1) of section 827.01, Florida
27 Statutes, is amended to read:

28 827.01 Definitions.--As used in this chapter:

29 (1) "Caregiver" means a child's parent, adult
30 household member, legal guardian, legal custodian, adult next
31 of kin, or foster parent; an employee of a public or private

1 school; an employee of a public or private day care center; an
2 employee of a residential home, institution, or facility; a
3 protective investigator of the Department of Children and
4 Family Services; the child's guardian ad litem; or any other
5 person responsible for the a child's welfare, supervision, or
6 custody.

7 Section 31. Paragraph (d) is added to subsection (1)
8 of section 827.03, Florida Statutes, to read:

9 827.03 Abuse, aggravated abuse, and neglect of a
10 child; penalties.--

11 (1) "Child abuse" means:

12 (a) Intentional infliction of physical or mental
13 injury upon a child;

14 (b) An intentional act that could reasonably be
15 expected to result in physical or mental injury to a child; ~~or~~

16 (c) Active encouragement of any person to commit an
17 act that results or could reasonably be expected to result in
18 physical or mental injury to a child; ~~or-~~

19 (d) A caregiver's failure to report any known or
20 suspected child abuse as defined in paragraph (a), paragraph
21 (b), or paragraph (c) within 24 hours of knowing or being made
22 aware of the abuse, or having reasonable cause to know of or
23 suspect the abuse, to the appropriate law enforcement agency
24 having jurisdiction over the offense.

25
26 A person who knowingly or willfully abuses a child without
27 causing great bodily harm, permanent disability, or permanent
28 disfigurement to the child commits a felony of the third
29 degree, punishable as provided in s. 775.082, s. 775.083, or
30 s. 775.084.

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1 Section 32. For the purpose of incorporating the
2 amendment to section 827.03, Florida Statutes, in references
3 thereto, paragraph (b) of subsection (4) of section 415.5018,
4 Florida Statutes, is reenacted to read:

5 415.5018 District authority and responsibilities.--

6 (4) FLEXIBILITY AUTHORIZATION.--

7 (b) The following statutory mandates may not be
8 subject to change or modification as part of a family services
9 response system:

10 1. All reports of child abuse, neglect, or abandonment
11 must continue to be received at the central abuse registry and
12 tracking system.

13 2. All initial responses must continue to be completed
14 as currently mandated in order to ensure face-to-face contact
15 with the child victim.

16 3. The department retains responsibility for notifying
17 the state attorney and law enforcement agency, as required by
18 s. 415.505, immediately upon receipt of a report alleging, or
19 immediately upon learning in the course of providing services,
20 that:

21 a. A child died as a result of abuse or neglect;

22 b. A child is a victim of aggravated child abuse as
23 defined in s. 827.03;

24 c. A child is a victim of sexual battery or of sexual
25 abuse as defined in s. 415.503; or

26 d. A child is a victim of institutional abuse as
27 defined in s. 415.503.

28 Section 33. For the purpose of incorporating the
29 amendment to section 827.03, Florida Statutes, in references
30 thereto, subsection (5) of section 787.04, Florida Statutes,
31 is reenacted to read:

1 787.04 Removing minors from state or concealing minors
2 contrary to state agency order or court order.--

3 (5) It is a defense under this section that a person
4 who leads, takes, entices, or removes a minor beyond the
5 limits of the state reasonably believes that his or her action
6 was necessary to protect the minor from child abuse as defined
7 in s. 827.03.

8 Section 34. Subsections (4) and (5) of section
9 827.071, Florida Statutes, are amended to read:

10 827.071 Sexual performance by a child; penalties.--

11 (4) It is unlawful for any person to possess with the
12 intent to promote any photograph, motion picture, videotape,
13 video laser disk, exhibition, show, representation, audiotape,
14 compact disk, computer diskette or computer hard drive, or
15 other presentation which, in whole or in part, includes any
16 sexual conduct by a child. The possession of three or more
17 copies of such photograph, motion picture, videotape, video
18 laser disk, exhibition, show, representation, audiotape,
19 compact disk, computer diskette or computer hard drive, or
20 presentation is prima facie evidence of an intent to promote.
21 A person who ~~Whoever~~ violates this subsection commits is
22 ~~guilty of~~ a felony of the second degree, punishable as
23 provided in s. 775.082, s. 775.083, or s. 775.084.

24 (5) It is unlawful for any person to knowingly possess
25 a photograph, motion picture, videotape, video laser disk,
26 exhibition, show, representation, audiotape, compact disk,
27 computer diskette or computer hard drive, or other
28 presentation which, in whole or in part, he or she knows to
29 include any sexual conduct by a child. The possession of each
30 such photograph, motion picture, videotape, video laser disk,
31 exhibition, show, representation, audiotape, compact disk,

1 computer diskette or computer hard drive, or presentation is a
2 separate offense. A person who ~~whoever~~ violates this
3 subsection commits ~~is guilty of~~ a felony of the third degree,
4 punishable as provided in s. 775.082, s. 775.083, or s.
5 775.084.

6 Section 35. For the purpose of incorporating the
7 amendment to s. 827.071, Florida Statutes, in references
8 thereto, paragraph (a) of subsection (1) of section 772.102,
9 Florida Statutes, is reenacted to read:

10 772.102 Definitions.--As used in this chapter, the
11 term:

12 (1) "Criminal activity" means to commit, to attempt to
13 commit, to conspire to commit, or to solicit, coerce, or
14 intimidate another person to commit:

15 (a) Any crime which is chargeable by indictment or
16 information under the following provisions:

17 1. Section 210.18, relating to evasion of payment of
18 cigarette taxes.

19 2. Section 414.39, relating to public assistance
20 fraud.

21 3. Section 440.105 or s. 440.106, relating to workers'
22 compensation.

23 4. Part IV of chapter 501, relating to telemarketing.

24 5. Chapter 517, relating to securities transactions.

25 6. Section 550.235, s. 550.3551, or s. 550.3605,
26 relating to dogracing and horseracing.

27 7. Chapter 550, relating to jai alai frontons.

28 8. Chapter 552, relating to the manufacture,
29 distribution, and use of explosives.

30 9. Chapter 562, relating to beverage law enforcement.
31

- 1 10. Section 624.401, relating to transacting insurance
2 without a certificate of authority, s. 624.437(4)(c)1.,
3 relating to operating an unauthorized multiple-employer
4 welfare arrangement, or s. 626.902(1)(b), relating to
5 representing or aiding an unauthorized insurer.
- 6 11. Chapter 687, relating to interest and usurious
7 practices.
- 8 12. Section 721.08, s. 721.09, or s. 721.13, relating
9 to real estate timeshare plans.
- 10 13. Chapter 782, relating to homicide.
- 11 14. Chapter 784, relating to assault and battery.
- 12 15. Chapter 787, relating to kidnapping.
- 13 16. Chapter 790, relating to weapons and firearms.
- 14 17. Section 796.01, s. 796.03, s. 796.04, s. 796.05,
15 or s. 796.07, relating to prostitution.
- 16 18. Chapter 806, relating to arson.
- 17 19. Section 810.02(2)(c), relating to specified
18 burglary of a dwelling or structure.
- 19 20. Chapter 812, relating to theft, robbery, and
20 related crimes.
- 21 21. Chapter 815, relating to computer-related crimes.
- 22 22. Chapter 817, relating to fraudulent practices,
23 false pretenses, fraud generally, and credit card crimes.
- 24 23. Section 827.071, relating to commercial sexual
25 exploitation of children.
- 26 24. Chapter 831, relating to forgery and
27 counterfeiting.
- 28 25. Chapter 832, relating to issuance of worthless
29 checks and drafts.
- 30 26. Section 836.05, relating to extortion.
- 31 27. Chapter 837, relating to perjury.

- 1 28. Chapter 838, relating to bribery and misuse of
2 public office.
- 3 29. Chapter 843, relating to obstruction of justice.
- 4 30. Section 847.011, s. 847.012, s. 847.013, s.
5 847.06, or s. 847.07, relating to obscene literature and
6 profanity.
- 7 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
8 or s. 849.25, relating to gambling.
- 9 32. Chapter 893, relating to drug abuse prevention and
10 control.
- 11 33. Section 914.22 or s. 914.23, relating to
12 witnesses, victims, or informants.
- 13 34. Section 918.12 or s. 918.13, relating to tampering
14 with jurors and evidence.
- 15 Section 36. For the purpose of incorporating the
16 amendment to section 827.071, Florida Statutes, in references
17 thereto, paragraph (a) of subsection (1) of section 895.02,
18 Florida Statutes, is reenacted to read:
- 19 895.02 Definitions.--As used in ss. 895.01-895.08, the
20 term:
- 21 (1) "Racketeering activity" means to commit, to
22 attempt to commit, to conspire to commit, or to solicit,
23 coerce, or intimidate another person to commit:
- 24 (a) Any crime which is chargeable by indictment or
25 information under the following provisions of the Florida
26 Statutes:
- 27 1. Section 210.18, relating to evasion of payment of
28 cigarette taxes.
- 29 2. Section 403.727(3)(b), relating to environmental
30 control.
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- 1 3. Section 414.39, relating to public assistance
- 2 fraud.
- 3 4. Section 409.920, relating to Medicaid provider
- 4 fraud.
- 5 5. Section 440.105 or s. 440.106, relating to workers'
- 6 compensation.
- 7 6. Part IV of chapter 501, relating to telemarketing.
- 8 7. Chapter 517, relating to sale of securities and
- 9 investor protection.
- 10 8. Section 550.235, s. 550.3551, or s. 550.3605,
- 11 relating to dogracing and horseracing.
- 12 9. Chapter 550, relating to jai alai frontons.
- 13 10. Chapter 552, relating to the manufacture,
- 14 distribution, and use of explosives.
- 15 11. Chapter 562, relating to beverage law enforcement.
- 16 12. Section 624.401, relating to transacting insurance
- 17 without a certificate of authority, s. 624.437(4)(c)1.,
- 18 relating to operating an unauthorized multiple-employer
- 19 welfare arrangement, or s. 626.902(1)(b), relating to
- 20 representing or aiding an unauthorized insurer.
- 21 13. Section 655.50, relating to reports of currency
- 22 transactions, when such violation is punishable as a felony.
- 23 14. Chapter 687, relating to interest and usurious
- 24 practices.
- 25 15. Section 721.08, s. 721.09, or s. 721.13, relating
- 26 to real estate timeshare plans.
- 27 16. Chapter 782, relating to homicide.
- 28 17. Chapter 784, relating to assault and battery.
- 29 18. Chapter 787, relating to kidnapping.
- 30 19. Chapter 790, relating to weapons and firearms.
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- 1 20. Section 796.03, s. 796.04, s. 796.05, or s.
2 796.07, relating to prostitution.
- 3 21. Chapter 806, relating to arson.
- 4 22. Section 810.02(2)(c), relating to specified
5 burglary of a dwelling or structure.
- 6 23. Chapter 812, relating to theft, robbery, and
7 related crimes.
- 8 24. Chapter 815, relating to computer-related crimes.
- 9 25. Chapter 817, relating to fraudulent practices,
10 false pretenses, fraud generally, and credit card crimes.
- 11 26. Chapter 825, relating to abuse, neglect, or
12 exploitation of an elderly person or disabled adult.
- 13 27. Section 827.071, relating to commercial sexual
14 exploitation of children.
- 15 28. Chapter 831, relating to forgery and
16 counterfeiting.
- 17 29. Chapter 832, relating to issuance of worthless
18 checks and drafts.
- 19 30. Section 836.05, relating to extortion.
- 20 31. Chapter 837, relating to perjury.
- 21 32. Chapter 838, relating to bribery and misuse of
22 public office.
- 23 33. Chapter 843, relating to obstruction of justice.
- 24 34. Section 847.011, s. 847.012, s. 847.013, s.
25 847.06, or s. 847.07, relating to obscene literature and
26 profanity.
- 27 35. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
28 or s. 849.25, relating to gambling.
- 29 36. Chapter 874, relating to criminal street gangs.
- 30 37. Chapter 893, relating to drug abuse prevention and
31 control.

1 38. Chapter 896, relating to offenses related to
2 financial transactions.

3 39. Sections 914.22 and 914.23, relating to tampering
4 with a witness, victim, or informant, and retaliation against
5 a witness, victim, or informant.

6 40. Sections 918.12 and 918.13, relating to tampering
7 with jurors and evidence.

8 Section 37. For the purpose of incorporating the
9 amendment to section 827.071, Florida Statutes, in references
10 thereto, section 934.07, Florida Statutes, is reenacted to
11 read:

12 934.07 Authorization for interception of wire, oral,
13 or electronic communications.--The Governor, the Attorney
14 General, the statewide prosecutor, or any state attorney may
15 authorize an application to a judge of competent jurisdiction
16 for, and such judge may grant in conformity with ss.
17 934.03-934.09, an order authorizing or approving the
18 interception of wire, oral, or electronic communications by
19 the Department of Law Enforcement or any law enforcement
20 agency as defined in s. 934.02 having responsibility for the
21 investigation of the offense as to which the application is
22 made when such interception may provide or has provided
23 evidence of the commission of the offense of murder,
24 kidnapping, arson, gambling, robbery, burglary, theft, dealing
25 in stolen property, prostitution, criminal usury, bribery, or
26 extortion; any violation of chapter 893; any violation of the
27 provisions of the Florida Anti-Fencing Act; any violation of
28 chapter 895; any violation of chapter 896; any violation of
29 chapter 815; any violation of chapter 847; any violation of s.
30 827.071; any violation of s. 944.40; or any conspiracy to

31

1 | commit any violation of the laws of this state relating to the
2 | crimes specifically enumerated above.

3 | Section 38. For the purpose of incorporating the
4 | amendments to sections 827.03 and 827.071, Florida Statutes,
5 | in references thereto, subsection (1) of section 794.024,
6 | Florida Statutes, is reenacted to read:

7 | 794.024 Unlawful to disclose identifying
8 | information.--

9 | (1) A public employee or officer who has access to the
10 | photograph, name, or address of a person who is alleged to be
11 | the victim of an offense described in this chapter, chapter
12 | 800, s. 827.03, s. 827.04, or s. 827.071 may not willfully and
13 | knowingly disclose it to a person who is not assisting in the
14 | investigation or prosecution of the alleged offense or to any
15 | person other than the defendant, the defendant's attorney, or
16 | a person specified in an order entered by the court having
17 | jurisdiction of the alleged offense, or to organizations
18 | authorized to receive such information pursuant to s.
19 | 119.07(3)(h).

20 | Section 39. This act shall take effect October 1 of
21 | the year in which enacted.

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HOUSE SUMMARY

Consolidates and revises various provisions related to sexual offenses against children. Expands certain notification requirements. Provides for identification, investigation, and prosecution of sexual offenders against children. Requires the Department of Children and Family Services to report within a specified period each alleged juvenile offense involving a child victim under 16 years of age to the appropriate law enforcement agency having jurisdiction over the offense. Prohibits any person at least 21 years of age from engaging in "sexual activity," as redefined, with a person 16 or 17 years of age. Prohibits certain acts against children under 16 years of age, or forcing or enticing the child to commit such acts. Requires establishment of paternity and imposes liability of offender for child support under specified circumstances. Redefines "caregiver" with respect to ch. 827, F.S., relating to abuse of children, and redefines "child abuse." Prohibits failure by a caregiver to report certain known or suspected abuse to the appropriate law enforcement agency having jurisdiction over the offense. Prohibits possession, with intent to promote, of a videotape, video laser disk, audiotape, compact disk, computer diskette, or computer hard drive which in whole or in part includes any sexual conduct by a child. Provides penalties.