

By the Committee on Criminal Justice and Senator Bronson

307-1126-99

1 A bill to be entitled
2 An act relating to criminal offenses involving
3 minors; creating the Children's Protection Act
4 of 1999; amending s. 775.084, F.S., and
5 reenacting s. 775.084(6), F.S., relating to
6 violent career criminal sentencing, to conform
7 to the act; amending ss. 787.01, 787.02, F.S.,
8 relating to kidnapping and false imprisonment,
9 to conform to the act; amending s. 800.04,
10 F.S.; creating the offenses of "lewd or
11 lascivious battery," "lewd or lascivious
12 molestation," "lewd or lascivious conduct," and
13 "lewd or lascivious exhibition"; providing
14 definitions; providing penalties; precluding
15 consent from being raised as a defense if the
16 victim is under a specified age; precluding
17 ignorance or belief of age from being raised as
18 a defense; providing an exception for maternal
19 breastfeeding; deleting provisions that define
20 and provide penalties for "lewd, lascivious, or
21 indecent assault or act upon or in the presence
22 of a child"; reenacting ss. 775.15(7),
23 787.025(2)(a), 914.16, and 944.606(1)(b), F.S.,
24 relating to time limitations, luring or
25 enticing a child, limits on interviews, and sex
26 offender notification upon release, to
27 incorporate the amendments to s. 800.04, F.S.,
28 in cross-references; amending s. 921.0022,
29 F.S.; ranking offenses created in the act in
30 the Criminal Punishment Code offense severity
31 ranking chart; amending s. 948.03, F.S., and

1 reenacting s. 948.03(6), F.S., relating to
2 terms and conditions of probation or community
3 control, to conform to the act; amending ss.
4 119.07, 947.146, 985.03, 985.227, 985.313,
5 F.S.; revising a description of certain lewd or
6 lascivious offenses for certain purposes;
7 providing an effective date.
8

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

10
11 Section 1. This act shall be known and may be cited as
12 the "Children's Protection Act of 1999."

13 Section 2. Paragraph (f) of subsection (3) of section
14 119.07, Florida Statutes, 1998 Supplement, is amended to read:

15 119.07 Inspection, examination, and duplication of
16 records; exemptions.--

17 (3)

18 (f) Any criminal intelligence information or criminal
19 investigative information including the photograph, name,
20 address, or other fact or information which reveals the
21 identity of the victim of the crime of sexual battery as
22 defined in chapter 794; the identity of the victim of a the
23 ~~crime of lewd or lascivious offense committed, or indecent~~
24 ~~assault~~ upon or in the presence of a person less than 16 years
25 of age child, as defined in chapter 800; or the identity of
26 the victim of the crime of child abuse as defined by chapter
27 827 and any criminal intelligence information or criminal
28 investigative information or other criminal record, including
29 those portions of court records and court proceedings, which
30 may reveal the identity of a person who is a victim of any
31 sexual offense, including a sexual offense proscribed in

1 chapter 794, chapter 800, or chapter 827, is exempt from the
2 provisions of subsection (1) and s. 24(a), Art. I of the State
3 Constitution.

4 Section 3. Paragraph (c) of subsection (1) of section
5 775.084, Florida Statutes, 1998 Supplement, is amended, and
6 subsection (6) of that section is reenacted, to read:

7 775.084 Violent career criminals; habitual felony
8 offenders and habitual violent felony offenders; definitions;
9 procedure; enhanced penalties.--

10 (1) As used in this act:

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

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

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

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

20 c. Aggravated child abuse, as described in s.
21 827.03(2);

22 d. Aggravated abuse of an elderly person or disabled
23 adult, as described in s. 825.102(2);

24 e. Lewd or lascivious battery, lewd or lascivious
25 molestation, lewd or lascivious conduct, or lewd or lascivious
26 exhibition, ~~lascivious, or indecent conduct~~, as described in
27 s. 800.04;

28 f. Escape, as described in s. 944.40; or

29 g. A felony violation of chapter 790 involving the use
30 or possession of a firearm.

31

1 2. The defendant has been incarcerated in a state
2 prison or a federal prison.

3 3. The primary felony offense for which the defendant
4 is to be sentenced is a felony enumerated in subparagraph 1.
5 and was committed on or after October 1, 1995, and:

6 a. While the defendant was serving a prison sentence
7 or other commitment imposed as a result of a prior conviction
8 for an enumerated felony; or

9 b. Within 5 years after the conviction of the last
10 prior enumerated felony, or within 5 years after the
11 defendant's release from a prison sentence or other commitment
12 imposed as a result of a prior conviction for an enumerated
13 felony, whichever is later.

14 4. The defendant has not received a pardon for any
15 felony or other qualified offense that is necessary for the
16 operation of this paragraph.

17 5. A conviction of a felony or other qualified offense
18 necessary to the operation of this paragraph has not been set
19 aside in any postconviction proceeding.

20 (6) The purpose of this section is to provide uniform
21 punishment for those crimes made punishable under this
22 section, and to this end, a reference to this section
23 constitutes a general reference under the doctrine of
24 incorporation by reference.

25 Section 4. Paragraph (a) of subsection (3) of section
26 787.01, Florida Statutes, is amended to read:

27 787.01 Kidnapping; kidnapping of child under age 13,
28 aggravating circumstances.--

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

- 1 1. Aggravated child abuse, as defined in s. 827.03;
2 2. Sexual battery, as defined in chapter 794, against
3 the child;
4 3. Lewd or lascivious battery, lewd or lascivious
5 molestation, lewd or lascivious conduct, or lewd or lascivious
6 exhibition ~~A lewd, lascivious, or indecent assault or act upon~~
7 ~~or in the presence of the child, in violation of s. 800.04;~~
8 4. A violation of s. 796.03 or s. 796.04, relating to
9 prostitution, upon the child; or
10 5. Exploitation of the child or allowing the child to
11 be exploited, in violation of s. 450.151,
12
13 commits a life felony, punishable as provided in s. 775.082,
14 s. 775.083, or s. 775.084.
15 Section 5. Paragraph (a) of subsection (3) of section
16 787.02, Florida Statutes, is amended to read:
17 787.02 False imprisonment; false imprisonment of child
18 under age 13, aggravating circumstances.--
19 (3)(a) A person who commits the offense of false
20 imprisonment upon a child under the age of 13 and who, in the
21 course of committing the offense, commits any offense
22 enumerated in subparagraphs 1.-5., commits a felony of the
23 first degree, punishable by imprisonment for a term of years
24 not exceeding life or as provided in s. 775.082, s. 775.083,
25 or s. 775.084.
26 1. Aggravated child abuse, as defined in s. 827.03;
27 2. Sexual battery, as defined in chapter 794, against
28 the child;
29 3. Lewd or lascivious battery, lewd or lascivious
30 molestation, lewd or lascivious conduct, or lewd or lascivious
31

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

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

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

7 Section 6. Section 800.04, Florida Statutes, is
8 amended to read:

9 800.04 Lewd or lascivious offenses committed upon or
10 in the presence of persons less than 16 years of age ~~Lewd,~~
11 ~~lascivious, or indecent assault or act upon or in presence of~~
12 ~~child.--~~

13 (1) DEFINITIONS.--As used in this section:

14 (a) "Sexual activity" means the oral, anal, or vaginal
15 penetration by, or union with, the sexual organ of another or
16 the anal or vaginal penetration of another by any other
17 object; however, sexual activity does not include an act done
18 for a bona fide medical purpose.

19 (b) "Consent" means intelligent, knowing, and
20 voluntary consent, and does not include submission by
21 coercion.

22 (c) "Coercion" means the use of exploitation, bribes,
23 threats of force, or intimidation to gain cooperation or
24 compliance.

25 (d) "Victim" means a person upon whom an offense
26 described in this section was committed or attempted or a
27 person who has reported a violation of this section to a law
28 enforcement officer.

29 (2) PROHIBITED DEFENSES.--Neither the victim's lack of
30 chastity nor the victim's consent is a defense to the crimes
31 proscribed by this section.

1 (3) IGNORANCE OR BELIEF OF VICTIM'S AGE.--The
2 perpetrator's ignorance of the victim's age, the victim's
3 misrepresentation of his or her age, or the perpetrator's bona
4 fide belief of the victim's age cannot be raised as a defense
5 in a prosecution under this section.

6 (4) LEWD OR LASCIVIOUS BATTERY.--A person who:

7 (a) Engages in sexual activity with a person 12 years
8 of age or older but less than 16 years of age; or

9 (b) Encourages, forces, or entices any person less
10 than 16 years of age to engage in sadomasochistic abuse,
11 sexual bestiality, prostitution, or any other act involving
12 sexual activity

13
14 commits lewd or lascivious battery, a felony of the second
15 degree, punishable as provided in s. 775.082, s. 775.083, or
16 s. 775.084.

17 (5) LEWD OR LASCIVIOUS MOLESTATION.--

18 (a) A person who intentionally touches in a lewd or
19 lascivious manner the breasts, genitals, genital area, or
20 buttocks, or the clothing covering them, of a person less than
21 16 years of age, or forces or entices a person under 16 years
22 of age to so touch the perpetrator, commits lewd or lascivious
23 molestation.

24 (b) An offender 18 years of age or older who commits
25 lewd or lascivious molestation against a victim less than 12
26 years of age commits a felony of the first degree, punishable
27 as provided in s. 775.082, s. 775.083, or s. 775.084.

28 (c)1. An offender less than 18 years of age who
29 commits lewd or lascivious molestation against a victim less
30 than 12 years of age; or

31

1 2. An offender 18 years of age or older who commits
2 lewd or lascivious molestation against a victim 12 years of
3 age or older but less than 16 years of age
4
5 commits a felony of the second degree, punishable as provided
6 in s. 775.082, s. 775.083, or s. 775.084.

7 (d) An offender less than 18 years of age who commits
8 lewd or lascivious molestation against a victim 12 years of
9 age or older but less than 16 years of age commits a felony of
10 the third degree, punishable as provided in s. 775.082, s.
11 775.083, or s. 775.084.

12 (6) LEWD OR LASCIVIOUS CONDUCT.--

13 (a) A person who:

14 1. Intentionally touches a person under 16 years of
15 age in a lewd or lascivious manner; or

16 2. Solicits a person under 16 years of age to commit a
17 lewd or lascivious act

18
19 commits lewd or lascivious conduct.

20 (b) An offender 18 years of age or older who commits
21 lewd or lascivious conduct commits a felony of the second
22 degree, punishable as provided in s. 775.082, s. 775.083, or
23 s. 775.084.

24 (c) An offender less than 18 years of age who commits
25 lewd or lascivious conduct commits a felony of the third
26 degree, punishable as provided in s. 775.082, s. 775.083, or
27 s. 775.084.

28 (7) LEWD OR LASCIVIOUS EXHIBITION.--

29 (a) A person who:

30 1. Intentionally masturbates;

31

1 2. Intentionally exposes the genitals in a lewd or
2 lascivious manner; or

3 3. Intentionally commits any other sexual act that
4 does not involve actual physical or sexual contact with the
5 victim, including, but not limited to, sadomasochistic abuse,
6 sexual bestiality, or the simulation of any act involving
7 sexual activity

8
9 in the presence of a victim who is less than 16 years of age,
10 commits lewd or lascivious exhibition.

11 (b) An offender 18 years of age or older who commits a
12 lewd or lascivious exhibition commits a felony of the second
13 degree, punishable as provided in s. 775.082, s. 775.083, or
14 s. 775.084.

15 (c) An offender less than 18 years of age who commits
16 a lewd or lascivious exhibition commits a felony of the third
17 degree, punishable as provided in s. 775.082, s. 775.083, or
18 s. 775.084.

19 (8) EXCEPTION.--A mother's breastfeeding of her baby
20 does not under any circumstance constitute a violation of this
21 section.~~A person who:~~

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

24 ~~(2) Commits actual or simulated sexual intercourse,~~
25 ~~deviate sexual intercourse, sexual bestiality, masturbation,~~
26 ~~sadomasochistic abuse, actual lewd exhibition of the genitals,~~
27 ~~or any act or conduct which simulates that sexual battery is~~
28 ~~being or will be committed upon any child under the age of 16~~
29 ~~years or forces or entices the child to commit any such act;~~

30 ~~(3) Commits an act defined as sexual battery under s.~~
31 ~~794.011(1)(h) upon any child under the age of 16 years; or~~

1 ~~(4) Knowingly commits any lewd or lascivious act in~~
2 ~~the presence of any child under the age of 16 years,~~
3
4 ~~without committing the crime of sexual battery, commits a~~
5 ~~felony of the second degree, punishable as provided in s.~~
6 ~~775.082, s. 775.083, or s. 775.084. Neither the victim's lack~~
7 ~~of chastity nor the victim's consent is a defense to the crime~~
8 ~~proscribed by this section. A mother's breastfeeding of her~~
9 ~~baby does not under any circumstance violate this section.~~

10 Section 7. For the purpose of incorporating the
11 amendments made by this act to section 800.04, Florida
12 Statutes, in references thereto, subsection (7) of section
13 775.15, Florida Statutes, 1998 Supplement, is reenacted to
14 read:

15 775.15 Time limitations.--

16 (7) If the victim of a violation of s. 794.011, former
17 s. 794.05, Florida Statutes 1995, s. 800.04, or s. 826.04 is
18 under the age of 16, the applicable period of limitation, if
19 any, does not begin to run until the victim has reached the
20 age of 16 or the violation is reported to a law enforcement
21 agency or other governmental agency, whichever occurs earlier.
22 Such law enforcement agency or other governmental agency shall
23 promptly report such allegation to the state attorney for the
24 judicial circuit in which the alleged violation occurred. If
25 the offense is a first or second degree felony violation of s.
26 794.011, and the crime is reported within 72 hours after its
27 commission, paragraph (1)(b) applies. This subsection applies
28 to any such offense except an offense the prosecution of which
29 would have been barred by subsection (2) on or before December
30 31, 1984.

31

1 Section 8. For the purpose of incorporating the
2 amendments made by this act to section 800.04, Florida
3 Statutes, in references thereto, paragraph (a) of subsection
4 (2) of section 787.025, Florida Statutes, is reenacted to
5 read:

6 787.025 Luring or enticing a child.--
7 (2)(a) A person over the age of 18 who, having been
8 previously convicted of a violation of chapter 794 or s.
9 800.04, or a violation of a similar law of another
10 jurisdiction, intentionally lures or entices, or attempts to
11 lure or entice, a child under the age of 12 into a structure,
12 dwelling, or conveyance for other than a lawful purpose
13 commits a felony of the third degree, punishable as provided
14 in s. 775.082, s. 775.083, or s. 775.084.

15 Section 9. For the purpose of incorporating the
16 amendments made by this act to section 800.04, Florida
17 Statutes, in references thereto, section 914.16, Florida
18 Statutes, is reenacted to read:

19 914.16 Child abuse and sexual abuse of victims under
20 age 16 or persons with mental retardation; limits on
21 interviews.--The chief judge of each judicial circuit, after
22 consultation with the state attorney and the public defender
23 for the judicial circuit, the appropriate chief law
24 enforcement officer, and any other person deemed appropriate
25 by the chief judge, shall provide by order reasonable limits
26 on the number of interviews that a victim of a violation of s.
27 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
28 or a victim of a violation of s. 794.011, s. 800.02, s.
29 800.03, or s. 825.102 who is a person with mental retardation
30 as defined in s. 393.063(41) must submit to for law
31 enforcement or discovery purposes. The order shall, to the

1 extent possible, protect the victim from the psychological
2 damage of repeated interrogations while preserving the rights
3 of the public, the victim, and the person charged with the
4 violation.

5 Section 10. For the purpose of incorporating the
6 amendments made by this act to section 800.04, Florida
7 Statutes, in references thereto, paragraph (b) of subsection
8 (1) of section 944.606, Florida Statutes, 1998 Supplement, is
9 reenacted to read:

10 944.606 Sexual offenders; notification upon release.--

11 (1) As used in this section:

12 (b) "Sexual offender" means a person who has been
13 convicted of committing, or attempting, soliciting, or
14 conspiring to commit, any of the criminal offenses proscribed
15 in the following statutes in this state or similar offenses in
16 another jurisdiction: s. 787.01 or s. 782.02, where the
17 victim is a minor and the defendant is not the victim's
18 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.
19 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145;
20 or any similar offense committed in this state which has been
21 redesignated from a former statute number to one of those
22 listed in this subsection, when the department has received
23 verified information regarding such conviction; an offender's
24 computerized criminal history record is not, in and of itself,
25 verified information.

26 Section 11. Paragraphs (d), (e), (f), (g), (h), (i),
27 and (j) of subsection (3) of section 921.0022, Florida
28 Statutes, 1998 Supplement, are amended to read:

29 921.0022 Criminal Punishment Code; offense severity
30 ranking chart.--

31 (3) OFFENSE SEVERITY RANKING CHART

1	2	3	4
5	6	7	8
9	10	11	12
13	Florida	Felony	
14	Statute	Degree	Description
15			(d) LEVEL 4
16	316.1935(3)	2nd	Driving at high speed or with
17			wanton disregard for safety while
18			fleeing or attempting to elude
19			law enforcement officer who is in
20			a marked patrol vehicle with
21			siren and lights activated.
22	784.07(2)(b)	3rd	Battery of law enforcement
23			officer, firefighter, intake
24			officer, etc.
25	784.075	3rd	Battery on detention or
26			commitment facility staff.
27	784.08(2)(c)	3rd	Battery on a person 65 years of
28			age or older.
29	784.081(3)	3rd	Battery on specified official or
30			employee.
31	784.082(3)	3rd	Battery by detained person on
32			visitor or other detainee.
33	784.083(3)	3rd	Battery on code inspector.
34	787.03(1)	3rd	Interference with custody;
35			wrongly takes child from
36			appointed guardian.
37	787.04(2)	3rd	Take, entice, or remove child
38			beyond state limits with criminal
39			intent pending custody
40			proceedings.

1	787.04(3)	3rd	Carrying child beyond state lines
2			with criminal intent to avoid
3			producing child at custody
4			hearing or delivering to
5			designated person.
6	790.115(1)	3rd	Exhibiting firearm or weapon
7			within 1,000 feet of a school.
8	790.115(2)(b)	3rd	Possessing electric weapon or
9			device, destructive device, or
10			other weapon on school property.
11	790.115(2)(c)	3rd	Possessing firearm on school
12			property.
13	<u>800.04(7)(c)</u>	<u>3rd</u>	<u>Lewd or lascivious exhibition;</u>
14			<u>offender less than 18 years.</u>
15	810.02(4)(a)	3rd	Burglary, or attempted burglary,
16			of an unoccupied structure;
17			unarmed; no assault or battery.
18	810.02(4)(b)	3rd	Burglary, or attempted burglary,
19			of an unoccupied conveyance;
20			unarmed; no assault or battery.
21	810.06	3rd	Burglary; possession of tools.
22	810.08(2)(c)	3rd	Trespass on property, armed with
23			firearm or dangerous weapon.
24	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000
25			or more but less than \$20,000.
26	812.014		
27	(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will,
28			firearm, motor vehicle,
29			livestock, etc.
30			
31			

1	817.563(1)	3rd	Sell or deliver substance other
2			than controlled substance agreed
3			upon, excluding s. 893.03(5)
4			drugs.
5	828.125(1)	2nd	Kill, maim, or cause great bodily
6			harm or permanent breeding
7			disability to any registered
8			horse or cattle.
9	837.02(1)	3rd	Perjury in official proceedings.
10	837.021(1)	3rd	Make contradictory statements in
11			official proceedings.
12	843.025	3rd	Deprive law enforcement,
13			correctional, or correctional
14			probation officer of means of
15			protection or communication.
16	843.15(1)(a)	3rd	Failure to appear while on bail
17			for felony (bond estreature or
18			bond jumping).
19	874.05(1)	3rd	Encouraging or recruiting another
20			to join a criminal street gang.
21	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s.
22			893.03(1)(a), (b), or (d), or
23			(2)(a) or (b) drugs).
24	914.14(2)	3rd	Witnesses accepting bribes.
25	914.22(1)	3rd	Force, threaten, etc., witness,
26			victim, or informant.
27	914.23(2)	3rd	Retaliation against a witness,
28			victim, or informant, no bodily
29			injury.
30	918.12	3rd	Tampering with jurors.
31			(e) LEVEL 5

1	316.027(1)(a)	3rd	Accidents involving personal
2			injuries, failure to stop;
3			leaving scene.
4	316.1935(4)	2nd	Aggravated fleeing or eluding.
5	322.34(3)	3rd	Careless operation of motor
6			vehicle with suspended license,
7			resulting in death or serious
8			bodily injury.
9	327.30(5)	3rd	Vessel accidents involving
10			personal injury; leaving scene.
11	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
12			knowing HIV positive.
13	790.01(2)	3rd	Carrying a concealed firearm.
14	790.162	2nd	Threat to throw or discharge
15			destructive device.
16	790.163	2nd	False report of deadly explosive.
17	790.165(2)	3rd	Manufacture, sell, possess, or
18			deliver hoax bomb.
19	790.221(1)	2nd	Possession of short-barreled
20			shotgun or machine gun.
21	790.23	2nd	Felons in possession of firearms
22			or electronic weapons or devices.
23	<u>800.04(6)(c)</u>	<u>3rd</u>	<u>Lewd or lascivious conduct;</u>
24			<u>offender less than 18 years.</u>
25	<u>800.04(7)(b)</u>	<u>2nd</u>	<u>Lewd or lascivious exhibition;</u>
26			<u>offender 18 years or older.</u>
27	806.111(1)	3rd	Possess, manufacture, or dispense
28			fire bomb with intent to damage
29			any structure or property.
30	812.019(1)	2nd	Stolen property; dealing in or
31			trafficking in.

1	812.16(2)	3rd	Owning, operating, or conducting
2			a chop shop.
3	817.034(4)(a)2.	2nd	Communications fraud, value
4			\$20,000 to \$50,000.
5	825.1025(4)	3rd	Lewd or lascivious exhibition in
6			the presence of an elderly person
7			or disabled adult.
8	827.071(4)	2nd	Possess with intent to promote
9			any photographic material, motion
10			picture, etc., which includes
11			sexual conduct by a child.
12	843.01	3rd	Resist officer with violence to
13			person; resist arrest with
14			violence.
15	874.05(2)	2nd	Encouraging or recruiting another
16			to join a criminal street gang;
17			second or subsequent offense.
18	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
19			cocaine (or other s.
20			893.03(1)(a), (1)(b), (1)(d),
21			(2)(a), or (2)(b) drugs).
22	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
23			cannabis (or other s.
24			893.03(1)(c), (2)(c), (3), or (4)
25			drugs) within 1,000 feet of a
26			child care facility or school.
27			
28			
29			
30			
31			

1	893.13(1)(d)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			200 feet of university or public
6			park.
7	893.13(1)(e)	2nd	Sell, manufacture, or deliver
8			cannabis or other drug prohibited
9			under s. 893.03(1)(c), (2)(c),
10			(3), or (4) within 1,000 feet of
11			property used for religious
12			services or a specified business
13			site.
14	893.13(1)(f)1.	1st	Sell, manufacture, or deliver
15			cocaine (or other s.
16			893.03(1)(a), (1)(b), (1)(d), or
17			(2)(a), or (2)(b) drugs) within
18			200 feet of public housing
19			facility.
20	893.13(4)(b)	2nd	Deliver to minor cannabis (or
21			other s. 893.03(1)(c), (2)(c),
22			(3), or (4) drugs).
23			(f) LEVEL 6
24	316.027(1)(b)	2nd	Accident involving death, failure
25			to stop; leaving scene.
26	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent
27			conviction.
28	775.0875(1)	3rd	Taking firearm from law
29			enforcement officer.
30			
31			

1	775.21(9)	3rd	Sexual predators; failure to
2			register; failure to renew
3			driver's license or
4			identification card.
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	784.041	3rd	Felony battery.
10	784.048(3)	3rd	Aggravated stalking; credible
11			threat.
12	784.048(5)	3rd	Aggravated stalking of person
13			under 16.
14	784.07(2)(c)	2nd	Aggravated assault on law
15			enforcement officer.
16	784.08(2)(b)	2nd	Aggravated assault on a person 65
17			years of age or older.
18	784.081(2)	2nd	Aggravated assault on specified
19			official or employee.
20	784.082(2)	2nd	Aggravated assault by detained
21			person on visitor or other
22			detainee.
23	784.083(2)	2nd	Aggravated assault on code
24			inspector.
25	787.02(2)	3rd	False imprisonment; restraining
26			with purpose other than those in
27			s. 787.01.
28	790.115(2)(d)	2nd	Discharging firearm or weapon on
29			school property.
30			
31			

1	790.161(2)	2nd	Make, possess, or throw
2			destructive device with intent to
3			do bodily harm or damage
4			property.
5	790.164(1)	2nd	False report of deadly explosive
6			or act of arson or violence to
7			state property.
8	790.19	2nd	Shooting or throwing deadly
9			missiles into dwellings, vessels,
10			or vehicles.
11	794.011(8)(a)	3rd	Solicitation of minor to
12			participate in sexual activity by
13			custodial adult.
14	794.05(1)	2nd	Unlawful sexual activity with
15			specified minor.
16	<u>800.04(5)(d)</u>	<u>3rd</u>	<u>Lewd or lascivious molestation;</u>
17			<u>victim 12 years of age or older</u>
18			<u>but less than 16 years; offender</u>
19			<u>less than 18 years.</u>
20	<u>800.04(6)(b)</u>	<u>2nd</u>	<u>Lewd or lascivious conduct;</u>
21			<u>offender 18 years of age or</u>
22			<u>older.</u>
23	806.031(2)	2nd	Arson resulting in great bodily
24			harm to firefighter or any other
25			person.
26	810.02(3)(c)	2nd	Burglary of occupied structure;
27			unarmed; no assault or battery.
28	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
29			but less than \$100,000, grand
30			theft in 2nd degree.
31			

1	812.13(2)(c)	2nd	Robbery, no firearm or other
2			weapon (strong-arm robbery).
3	817.034(4)(a)1.	1st	Communications fraud, value
4			greater than \$50,000.
5	817.4821(5)	2nd	Possess cloning paraphernalia
6			with intent to create cloned
7			cellular telephones.
8	825.102(1)	3rd	Abuse of an elderly person or
9			disabled adult.
10	825.102(3)(c)	3rd	Neglect of an elderly person or
11			disabled adult.
12	825.1025(3)	3rd	Lewd or lascivious molestation of
13			an elderly person or disabled
14			adult.
15	825.103(2)(c)	3rd	Exploiting an elderly person or
16			disabled adult and property is
17			valued at less than \$20,000.
18	827.03(1)	3rd	Abuse of a child.
19	827.03(3)(c)	3rd	Neglect of a child.
20	827.071(2)&(3)	2nd	Use or induce a child in a sexual
21			performance, or promote or direct
22			such performance.
23	836.05	2nd	Threats; extortion.
24	836.10	2nd	Written threats to kill or do
25			bodily injury.
26	843.12	3rd	Aids or assists person to escape.
27	847.0135(3)	3rd	Solicitation of a child, via a
28			computer service, to commit an
29			unlawful sex act.
30			
31			

1	914.23	2nd	Retaliation against a witness,
2			victim, or informant, with bodily
3			injury.
4	943.0435(6)	3rd	Sex offenders; failure to comply
5			with reporting requirements.
6	944.35(3)(a)2.	3rd	Committing malicious battery upon
7			or inflicting cruel or inhuman
8			treatment on an inmate or
9			offender on community
10			supervision, resulting in great
11			bodily harm.
12	944.40	2nd	Escapes.
13	944.46	3rd	Harboring, concealing, aiding
14			escaped prisoners.
15	944.47(1)(a)5.	2nd	Introduction of contraband
16			(firearm, weapon, or explosive)
17			into correctional facility.
18	951.22(1)	3rd	Intoxicating drug, firearm, or
19			weapon introduced into county
20			facility.
21			(g) LEVEL 7
22	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
23			injury.
24	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
25			bodily injury.
26	409.920(2)	3rd	Medicaid provider fraud.
27			
28			
29			
30			
31			

1	494.0018(2)	1st	Conviction of any violation of
2			ss. 494.001-494.0077 in which the
3			total money and property
4			unlawfully obtained exceeded
5			\$50,000 and there were five or
6			more victims.
7	782.051(3)	2nd	Attempted felony murder of a
8			person by a person other than the
9			perpetrator or the perpetrator of
10			an attempted felony.
11	782.07(1)	2nd	Killing of a human being by the
12			act, procurement, or culpable
13			negligence of another
14			(manslaughter).
15	782.071	3rd	Killing of human being or viable
16			fetus by the operation of a motor
17			vehicle in a reckless manner
18			(vehicular homicide).
19	782.072	3rd	Killing of a human being by the
20			operation of a vessel in a
21			reckless manner (vessel
22			homicide).
23	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
24			causing great bodily harm or
25			disfigurement.
26	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
27			weapon.
28	784.045(1)(b)	2nd	Aggravated battery; perpetrator
29			aware victim pregnant.
30	784.048(4)	3rd	Aggravated stalking; violation of
31			injunction or court order.

1	784.07(2)(d)	1st	Aggravated battery on law
2			enforcement officer.
3	784.08(2)(a)	1st	Aggravated battery on a person 65
4			years of age or older.
5	784.081(1)	1st	Aggravated battery on specified
6			official or employee.
7	784.082(1)	1st	Aggravated battery by detained
8			person on visitor or other
9			detainee.
10	784.083(1)	1st	Aggravated battery on code
11			inspector.
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	796.03	2nd	Procuring any person under 16
18			years for prostitution.
19	800.04 <u>(5)(c)1.</u>	2nd	<u>Lewd or lascivious molestation;</u>
20			<u>victim less than 12 years of age;</u>
21			<u>offender less than 18 years.</u>
22			Handle, fondle, or assault child
23			under 16 years in lewd,
24			lascivious, or indecent manner.
25	<u>800.04(5)(c)2.</u>	<u>2nd</u>	<u>Lewd or lascivious molestation;</u>
26			<u>victim 12 years of age or older</u>
27			<u>but less than 16 years; offender</u>
28			<u>18 years or older.</u>
29	806.01(2)	2nd	Maliciously damage structure by
30			fire or explosive.
31			

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

1	827.04(4)	3rd	Impregnation of a child under 16
2			years of age by person 21 years
3			of age or older.
4	837.05(2)	3rd	Giving false information about
5			alleged capital felony to a law
6			enforcement officer.
7	872.06	2nd	Abuse of a dead human body.
8	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
9			cocaine (or other drug prohibited
10			under s. 893.03(1)(a), (1)(b),
11			(1)(d), (2)(a), or (2)(b)) within
12			1,000 feet of a child care
13			facility or school.
14	893.13(1)(e)	1st	Sell, manufacture, or deliver
15			cocaine or other drug prohibited
16			under s. 893.03(1)(a), (1)(b),
17			(1)(d), (2)(a), or (2)(b), within
18			1,000 feet of property used for
19			religious services or a specified
20			business site.
21	893.13(4)(a)	1st	Deliver to minor cocaine (or
22			other s. 893.03(1)(a), (1)(b),
23			(1)(d), (2)(a), or (2)(b) drugs).
24	893.135(1)(a)1.	1st	Trafficking in cannabis, more
25			than 50 lbs., less than 2,000
26			lbs.
27	893.135		
28	(1)(b)1.a.	1st	Trafficking in cocaine, more than
29			28 grams, less than 200 grams.
30			
31			

1	893.135		
2	(1)(c)1.a.	1st	Trafficking in illegal drugs,
3			more than 4 grams, less than 14
4			grams.
5	893.135		
6	(1)(d)1.	1st	Trafficking in phencyclidine,
7			more than 28 grams, less than 200
8			grams.
9	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
10			than 200 grams, less than 5
11			kilograms.
12	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
13			than 14 grams, less than 28
14			grams.
15	893.135		
16	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
17			grams or more, less than 14
18			grams.
19			(h) LEVEL 8
20	316.193		
21	(3)(c)3.a.	2nd	DUI manslaughter.
22	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
23	777.03(2)(a)	1st	Accessory after the fact, capital
24			felony.
25	782.04(4)	2nd	Killing of human without design
26			when engaged in act or attempt of
27			any felony other than arson,
28			sexual battery, robbery,
29			burglary, kidnapping, aircraft
30			piracy, or unlawfully discharging
31			bomb.

1	782.051(2)	1st	Attempted felony murder while
2			perpetrating or attempting to
3			perpetrate a felony not
4			enumerated in s. 782.04(3).
5	782.071(2)	2nd	Committing vehicular homicide and
6			failing to render aid or give
7			information.
8	782.072(2)	2nd	Committing vessel homicide and
9			failing to render aid or give
10			information.
11	790.161(3)	1st	Discharging a destructive device
12			which results in bodily harm or
13			property damage.
14	794.011(5)	2nd	Sexual battery, victim 12 years
15			or over, offender does not use
16			physical force likely to cause
17			serious injury.
18	<u>800.04(4)</u>	<u>2nd</u>	<u>Lewd or lascivious battery.</u>
19	806.01(1)	1st	Maliciously damage dwelling or
20			structure by fire or explosive,
21			believing person in structure.
22	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
23	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
24			or dangerous weapon.
25	810.02(2)(c)	1st	Burglary of a dwelling or
26			structure causing structural
27			damage or \$1,000 or more property
28			damage.
29	812.13(2)(b)	1st	Robbery with a weapon.
30	812.135(2)	1st	Home-invasion robbery.
31			

1	825.102(2)	2nd	Aggravated abuse of an elderly
2			person or disabled adult.
3	825.103(2)(a)	1st	Exploiting an elderly person or
4			disabled adult and property is
5			valued at \$100,000 or more.
6	827.03(2)	2nd	Aggravated child abuse.
7	837.02(2)	2nd	Perjury in official proceedings
8			relating to prosecution of a
9			capital felony.
10	837.021(2)	2nd	Making contradictory statements
11			in official proceedings relating
12			to prosecution of a capital
13			felony.
14	860.121(2)(c)	1st	Shooting at or throwing any
15			object in path of railroad
16			vehicle resulting in great bodily
17			harm.
18	860.16	1st	Aircraft piracy.
19	893.13(1)(b)	1st	Sell or deliver in excess of 10
20			grams of any substance specified
21			in s. 893.03(1)(a) or (b).
22	893.13(2)(b)	1st	Purchase in excess of 10 grams of
23			any substance specified in s.
24			893.03(1)(a) or (b).
25	893.13(6)(c)	1st	Possess in excess of 10 grams of
26			any substance specified in s.
27			893.03(1)(a) or (b).
28	893.135(1)(a)2.	1st	Trafficking in cannabis, more
29			than 2,000 lbs., less than 10,000
30			lbs.
31			

1	893.135		
2	(1)(b)1.b.	1st	Trafficking in cocaine, more than
3			200 grams, less than 400 grams.
4	893.135		
5	(1)(c)1.b.	1st	Trafficking in illegal drugs,
6			more than 14 grams, less than 28
7			grams.
8	893.135		
9	(1)(d)1.b.	1st	Trafficking in phencyclidine,
10			more than 200 grams, less than
11			400 grams.
12	893.135		
13	(1)(e)1.b.	1st	Trafficking in methaqualone, more
14			than 5 kilograms, less than 25
15			kilograms.
16	893.135		
17	(1)(f)1.b.	1st	Trafficking in amphetamine, more
18			than 28 grams, less than 200
19			grams.
20	893.135		
21	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
22			grams or more, less than 28
23			grams.
24	895.03(1)	1st	Use or invest proceeds derived
25			from pattern of racketeering
26			activity.
27	895.03(2)	1st	Acquire or maintain through
28			racketeering activity any
29			interest in or control of any
30			enterprise or real property.
31			

1	895.03(3)	1st	Conduct or participate in any
2			enterprise through pattern of
3			racketeering activity.
4			(i) LEVEL 9
5	316.193		
6	(3)(c)3.b.	1st	DUI manslaughter; failing to
7			render aid or give information.
8	782.04(1)	1st	Attempt, conspire, or solicit to
9			commit premeditated murder.
10	782.04(3)	1st,PBL	Accomplice to murder in
11			connection with arson, sexual
12			battery, robbery, burglary, and
13			other specified felonies.
14	782.051(1)	1st	Attempted felony murder while
15			perpetrating or attempting to
16			perpetrate a felony enumerated in
17			s. 782.04(3).
18	782.07(2)	1st	Aggravated manslaughter of an
19			elderly person or disabled adult.
20	782.07(3)	1st	Aggravated manslaughter of a
21			child.
22	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
23			reward or as a shield or hostage.
24	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
25			or facilitate commission of any
26			felony.
27	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
28			interfere with performance of any
29			governmental or political
30			function.
31			

1	787.02(3)(a)	1st	False imprisonment; child under
2			age 13; perpetrator also commits
3			<u>aggravated child abuse, sexual</u>
4			battery, <u>or lewd, or lascivious</u>
5			<u>battery, molestation, conduct, or</u>
6			<u>exhibition act, etc.</u>
7	790.161	1st	Attempted capital destructive
8			device offense.
9	794.011(2)	1st	Attempted sexual battery; victim
10			less than 12 years of age.
11	794.011(2)	Life	Sexual battery; offender younger
12			than 18 years and commits sexual
13			battery on a person less than 12
14			years.
15	794.011(4)	1st	Sexual battery; victim 12 years
16			or older, certain circumstances.
17	794.011(8)(b)	1st	Sexual battery; engage in sexual
18			conduct with minor 12 to 18 years
19			by person in familial or
20			custodial authority.
21	<u>800.04(5)(b)</u>	<u>1st</u>	<u>Lewd or lascivious molestation;</u>
22			<u>victim less than 12 years;</u>
23			<u>offender 18 years or older.</u>
24	812.13(2)(a)	1st,PBL	Robbery with firearm or other
25			deadly weapon.
26	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
27			deadly weapon.
28	847.0145(1)	1st	Selling, or otherwise
29			transferring custody or control,
30			of a minor.
31			

1	847.0145(2)	1st	Purchasing, or otherwise
2			obtaining custody or control, of
3			a minor.
4	859.01	1st	Poisoning food, drink, medicine,
5			or water with intent to kill or
6			injure another person.
7	893.135	1st	Attempted capital trafficking
8			offense.
9	893.135(1)(a)3.	1st	Trafficking in cannabis, more
10			than 10,000 lbs.
11	893.135		
12	(1)(b)1.c.	1st	Trafficking in cocaine, more than
13			400 grams, less than 150
14			kilograms.
15	893.135		
16	(1)(c)1.c.	1st	Trafficking in illegal drugs,
17			more than 28 grams, less than 30
18			kilograms.
19	893.135		
20	(1)(d)1.c.	1st	Trafficking in phencyclidine,
21			more than 400 grams.
22	893.135		
23	(1)(e)1.c.	1st	Trafficking in methaqualone, more
24			than 25 kilograms.
25	893.135		
26	(1)(f)1.c.	1st	Trafficking in amphetamine, more
27			than 200 grams.
28			(j) LEVEL 10
29	782.04(2)	1st,PBL	Unlawful killing of human; act is
30			homicide, unpremeditated.
31			

1 787.01(1)(a)3. 1st,PBL Kidnapping; inflict bodily harm
2 upon or terrorize victim.
3 787.01(3)(a) Life Kidnapping; child under age 13,
4 perpetrator also commits
5 aggravated child abuse, sexual
6 battery, or lewd,or lascivious
7 battery, molestation, conduct, or
8 exhibition act, etc.
9 794.011(3) Life Sexual battery; victim 12 years
10 or older, offender uses or
11 threatens to use deadly weapon or
12 physical force to cause serious
13 injury.
14 876.32 1st Treason against the state.
15 Section 12. Subsection (3) of section 947.146, Florida
16 Statutes, 1998 Supplement, is amended to read:
17 947.146 Control Release Authority.--
18 (3) Within 120 days prior to the date the state
19 correctional system is projected pursuant to s. 216.136 to
20 exceed 99 percent of total capacity, the authority shall
21 determine eligibility for and establish a control release date
22 for an appropriate number of parole ineligible inmates
23 committed to the department and incarcerated within the state
24 who have been determined by the authority to be eligible for
25 discretionary early release pursuant to this section. In
26 establishing control release dates, it is the intent of the
27 Legislature that the authority prioritize consideration of
28 eligible inmates closest to their tentative release date. The
29 authority shall rely upon commitment data on the offender
30 information system maintained by the department to initially
31 identify inmates who are to be reviewed for control release

1 consideration. The authority may use a method of objective
2 risk assessment in determining if an eligible inmate should be
3 released. Such assessment shall be a part of the department's
4 management information system. However, the authority shall
5 have sole responsibility for determining control release
6 eligibility, establishing a control release date, and
7 effectuating the release of a sufficient number of inmates to
8 maintain the inmate population between 99 percent and 100
9 percent of total capacity. Inmates who are ineligible for
10 control release are inmates who are parole eligible or inmates
11 who:

12 (a) Are serving a sentence that includes a mandatory
13 minimum provision for a capital offense or drug trafficking
14 offense and have not served the number of days equal to the
15 mandatory minimum term less any jail-time credit awarded by
16 the court;

17 (b) Are serving the mandatory minimum portion of a
18 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

19 (c) Are convicted, or have been previously convicted,
20 of committing or attempting to commit sexual battery, incest,
21 or any of the following lewd or indecent assaults or acts:
22 masturbating in public; exposing the sexual organs in a
23 perverted manner; or nonconsensual handling or fondling of the
24 sexual organs of another person;

25 (d) Are convicted, or have been previously convicted,
26 of committing or attempting to commit assault, aggravated
27 assault, battery, or aggravated battery, and a sex act was
28 attempted or completed during commission of such offense;

29 (e) Are convicted, or have been previously convicted,
30 of committing or attempting to commit kidnapping, burglary, or
31 murder, and the offense was committed with the intent to

1 commit sexual battery or a sex act was attempted or completed
2 during commission of the offense;

3 (f) Are convicted, or have been previously convicted,
4 of committing or attempting to commit false imprisonment upon
5 a child under the age of 13 and, in the course of committing
6 the offense, the inmate committed aggravated child abuse,
7 sexual battery against the child, or a lewd or lascivious
8 offense committed, ~~or indecent assault or act~~ upon or in the
9 presence of a person less than 16 years of age ~~the child~~;

10 (g) Are sentenced, have previously been sentenced, or
11 have been sentenced at any time under s. 775.084, or have been
12 sentenced at any time in another jurisdiction as a habitual
13 offender;

14 (h) Are convicted, or have been previously convicted,
15 of committing or attempting to commit assault, aggravated
16 assault, battery, aggravated battery, kidnapping,
17 manslaughter, or murder against an officer as defined in s.
18 943.10(1), (2), (3), (6), (7), (8), or (9); against a state
19 attorney or assistant state attorney; or against a justice or
20 judge of a court described in Art. V of the State
21 Constitution; or against an officer, judge, or state attorney
22 employed in a comparable position by any other jurisdiction;
23 or

24 (i) Are convicted, or have been previously convicted,
25 of committing or attempting to commit murder in the first,
26 second, or third degree under s. 782.04(1), (2), (3), or (4),
27 or have ever been convicted of any degree of murder or
28 attempted murder in another jurisdiction;

29 (j) Are convicted, or have been previously convicted,
30 of DUI manslaughter under s. 316.193(3)(c)3., and are
31 sentenced, or have been sentenced at any time, as a habitual

1 offender for such offense, or have been sentenced at any time
2 in another jurisdiction as a habitual offender for such
3 offense;

4 (k)1. Are serving a sentence for an offense committed
5 on or after January 1, 1994, for a violation of the Law
6 Enforcement Protection Act under s. 775.0823(2), (3), (4), or
7 (5), and the subtotal of the offender's sentence points is
8 multiplied pursuant to former s. 921.0014 or s. 921.0024;

9 2. Are serving a sentence for an offense committed on
10 or after October 1, 1995, for a violation of the Law
11 Enforcement Protection Act under s. 775.0823(2), (3), (4),
12 (5), (6), (7), or (8), and the subtotal of the offender's
13 sentence points is multiplied pursuant to former s. 921.0014
14 or s. 921.0024;

15 (l) Are serving a sentence for an offense committed on
16 or after January 1, 1994, for possession of a firearm,
17 semiautomatic firearm, or machine gun in which additional
18 points are added to the subtotal of the offender's sentence
19 points pursuant to former s. 921.0014 or s. 921.0024; or

20 (m) Are convicted, or have been previously convicted,
21 of committing or attempting to commit manslaughter,
22 kidnapping, robbery, carjacking, home-invasion robbery, or a
23 burglary under s. 810.02(2).

24

25 In making control release eligibility determinations under
26 this subsection, the authority may rely on any document
27 leading to or generated during the course of the criminal
28 proceedings, including, but not limited to, any presentence or
29 postsentence investigation or any information contained in
30 arrest reports relating to circumstances of the offense.

31

1 Section 13. Paragraph (a) of subsection (4) and
2 paragraph (a) of subsection (5) of section 948.03, Florida
3 Statutes, 1998 Supplement, are amended, and subsection (6) of
4 that section is reenacted, to read:

5 948.03 Terms and conditions of probation or community
6 control.--

7 (4) The court shall require a diagnosis and evaluation
8 to determine the need of a probationer or offender in
9 community control for treatment. If the court determines that
10 a need therefor is established by such diagnosis and
11 evaluation process, the court shall require outpatient
12 counseling as a term or condition of probation or community
13 control for any person who was found guilty of any of the
14 following, or whose plea of guilty or nolo contendere to any
15 of the following was accepted by the court:

16 (a) Lewd or lascivious battery, lewd or lascivious
17 molestation, lewd or lascivious conduct, or lewd or lascivious
18 exhibition, as defined in s. 800.04 ~~A lewd, lascivious, or~~
19 ~~indecent assault or act upon, or in the presence of, a child.~~

20 (b) Sexual battery, as defined in chapter 794, against
21 a child.

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

24
25 Such counseling shall be required to be obtained from a
26 community mental health center, a recognized social service
27 agency providing mental health services, or a private mental
28 health professional or through other professional counseling.
29 The plan for counseling for the individual shall be provided
30 to the court for review.

31

1 (5) Conditions imposed pursuant to this subsection, as
2 specified in paragraphs (a) and (b), do not require oral
3 pronouncement at the time of sentencing and shall be
4 considered standard conditions of probation or community
5 control for offenders specified in this subsection.

6 (a) Effective for probationers or community
7 controllees whose crime was committed on or after October 1,
8 1995, and who are placed under supervision for violation of
9 chapter 794, or s. 800.04, s. 827.071, or s. 847.0145, the
10 court must impose the following conditions in addition to all
11 other standard and special conditions imposed:

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

18 2. If the victim was under the age of 18, a
19 prohibition on living within 1,000 feet of a school, day care
20 center, park, playground, or other place where children
21 regularly congregate, as prescribed by the court.

22 3. Active participation in and successful completion
23 of a sex offender treatment program with therapists
24 specifically trained to treat sex offenders, at the
25 probationer's or community controllee's own expense. If a
26 specially trained therapist is not available within a 50-mile
27 radius of the probationer's or community controllee's
28 residence, the offender shall participate in other appropriate
29 therapy.

30 4. A prohibition on any contact with the victim,
31 directly or indirectly, including through a third person,

1 unless approved by the victim, the offender's therapist, and
2 the sentencing court.

3 5. If the victim was under the age of 18, a
4 prohibition, until successful completion of a sex offender
5 treatment program, on unsupervised contact with a child under
6 the age of 18, unless authorized by the sentencing court
7 without another adult present who is responsible for the
8 child's welfare, has been advised of the crime, and is
9 approved by the sentencing court.

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

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

21 8. A requirement that the probationer or community
22 controllee must submit two specimens of blood to the Florida
23 Department of Law Enforcement to be registered with the DNA
24 data bank.

25 9. A requirement that the probationer or community
26 controllee make restitution to the victim, as ordered by the
27 court under s. 775.089, for all necessary medical and related
28 professional services relating to physical, psychiatric, and
29 psychological care.

30
31

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

4 (b) Effective for a probationer or community
5 controllee whose crime was committed on or after October 1,
6 1997, and who is placed on sex offender probation for a
7 violation of chapter 794, s. 800.04, s. 827.071, or s.
8 847.0145, in addition to any other provision of this
9 subsection, the court must impose the following conditions of
10 probation or community control:

11 1. As part of a treatment program, participation at
12 least annually in polygraph examinations to obtain information
13 necessary for risk management and treatment and to reduce the
14 sex offender's denial mechanisms. A polygraph examination must
15 be conducted by a polygrapher trained specifically in the use
16 of the polygraph for the monitoring of sex offenders, where
17 available, and shall be paid by the sex offender. The results
18 of the polygraph examination shall not be used as evidence in
19 court to prove that a violation of community supervision has
20 occurred.

21 2. Maintenance of a driving log and a prohibition
22 against driving a motor vehicle alone without the prior
23 approval of the supervising officer.

24 3. A prohibition against obtaining or using a post
25 office box without the prior approval of the supervising
26 officer.

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

31

1 5. Electronic monitoring when deemed necessary by the
2 community control or probation officer and his or her
3 supervisor, and ordered by the court at the recommendation of
4 the Department of Corrections.

5 (6) The enumeration of specific kinds of terms and
6 conditions shall not prevent the court from adding thereto
7 such other or others as it considers proper. However, the
8 sentencing court may only impose a condition of supervision
9 allowing an offender convicted of s. 794.011, s. 800.04, s.
10 827.071, or s. 847.0145, to reside in another state, if the
11 order stipulates that it is contingent upon the approval of
12 the receiving state interstate compact authority. The court
13 may rescind or modify at any time the terms and conditions
14 theretofore imposed by it upon the probationer or offender in
15 community control. However, if the court withholds
16 adjudication of guilt or imposes a period of incarceration as
17 a condition of probation or community control, the period
18 shall not exceed 364 days, and incarceration shall be
19 restricted to either a county facility, a probation and
20 restitution center under the jurisdiction of the Department of
21 Corrections, a probation program drug punishment phase I
22 secure residential treatment institution, or a community
23 residential facility owned or operated by any entity providing
24 such services.

25 Section 14. Paragraph (a) of subsection (7) and
26 paragraph (a) of subsection (48) of section 985.03, Florida
27 Statutes, 1998 Supplement, are amended to read:

28 985.03 Definitions.--When used in this chapter, the
29 term:

30 (7) "Child eligible for an intensive residential
31 treatment program for offenders less than 13 years of age"

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

5 (a) The child is less than 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. Any lewd or lascivious offense committed upon or
22 ~~assault or act~~ in the presence of a person less than 16 years
23 of age child; or
- 24 14. Carrying, displaying, using, threatening, or
25 attempting to use a weapon or firearm during the commission of
26 a felony.

27 (48) "Serious or habitual juvenile offender," for
28 purposes of commitment to a residential facility and for
29 purposes of records retention, means a child who has been
30 found to have committed a delinquent act or a violation of
31

1 law, in the case currently before the court, and who meets at
2 least one of the following criteria:

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

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

25 Section 15. Paragraph (a) of subsection (1) of section
26 985.227, Florida Statutes, is amended to read:

27 985.227 Prosecution of juveniles as adults by the
28 direct filing of an information in the criminal division of
29 the circuit court; discretionary criteria; mandatory
30 criteria.--

31 (1) DISCRETIONARY DIRECT FILE; CRITERIA.--

1 (a) With respect to any child who was 14 or 15 years
2 of age at the time the alleged offense was committed, the
3 state attorney may file an information when in the state
4 attorney's judgment and discretion the public interest
5 requires that adult sanctions be considered or imposed and
6 when the offense charged is:

- 7 1. Arson;
- 8 2. Sexual battery;
- 9 3. Robbery;
- 10 4. Kidnapping;
- 11 5. Aggravated child abuse;
- 12 6. Aggravated assault;
- 13 7. Aggravated stalking;
- 14 8. Murder;
- 15 9. Manslaughter;
- 16 10. Unlawful throwing, placing, or discharging of a
17 destructive device or bomb;
- 18 11. Armed burglary in violation of s. 810.02(2)(b) or
19 specified burglary of a dwelling or structure in violation of
20 s. 810.02(2)(c);
- 21 12. Aggravated battery;
- 22 13. Any lewd or lascivious offense committed upon or
23 ~~assault or act~~ in the presence of a person less than 16 years
24 of age child;
- 25 14. Carrying, displaying, using, threatening, or
26 attempting to use a weapon or firearm during the commission of
27 a felony; or
- 28 15. Grand theft in violation of s. 812.014(2)(a).

29 Section 16. Subsection (1) of section 985.313, Florida
30 Statutes, is amended to read:

31

1 985.313 Maximum-risk residential program.--A
2 maximum-risk residential program is a physically secure
3 residential commitment program with a designated length of
4 stay from 18 months to 36 months, primarily serving children
5 13 years of age to 19 years of age, or until the jurisdiction
6 of the court expires. The court may retain jurisdiction over
7 the child until the child reaches the age of 21, specifically
8 for the purpose of the child completing the program. Each
9 child committed to this level must meet one of the following
10 criteria:

11 (1) The youth is at least 13 years of age at the time
12 of the disposition for the current offense and has been
13 adjudicated on the current offense for:

14 (a) Arson;

15 (b) Sexual battery;

16 (c) Robbery;

17 (d) Kidnapping;

18 (e) Aggravated child abuse;

19 (f) Aggravated assault;

20 (g) Aggravated stalking;

21 (h) Murder;

22 (i) Manslaughter;

23 (j) Unlawful throwing, placing, or discharging of a
24 destructive device or bomb;

25 (k) Armed burglary;

26 (l) Aggravated battery;

27 (m) Any lewd or lascivious offense committed upon or
28 ~~assault or act~~ in the presence of a person less than 16 years
29 of age child; or
30
31

1 (n) Carrying, displaying, using, threatening to use,
2 or attempting to use a weapon or firearm during the commission
3 of a felony.

4 Section 17. This act shall take effect October 1,
5 1999.

6
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 Senate Bill 170

- 10 - Deletes changes to s. 826.04, F.S., which is the incest
11 statute.
12 - Expressly provides that the chastity of the victim or the
13 victim's consent to the act is not a defense to
14 prosecution in violation of s. 800.04, F.S.
15 - Incorporates additional cross-references to s. 800.04,
16 F.S., to make conforming changes.
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