

By Senator Saunders

25-1198-00

See HB 683

1 A bill to be entitled
2 An act relating to lewd or lascivious
3 exhibition; amending s. 800.04, F.S.; providing
4 a penalty for the transmission of lewd or
5 lascivious exhibition over the Internet under
6 certain circumstances; amending s. 921.0022,
7 F.S.; conforming a cross-reference; reenacting
8 ss. 394.912(9), 775.082(9)(a), 775.084(1)(d),
9 775.15(7), 775.21(4)(c) and (10)(b), 787.01(3),
10 787.02(3), 787.025(2)(a), 914.16,
11 943.0435(1)(a), 943.0585, 943.059,
12 944.606(1)(b), 944.607(1)(a), 947.1405(7),
13 948.01(15), 948.03(4), (5), and (6), and
14 948.06(2)(a), F.S., relating to definition of
15 "sexually violent offense" for purposes of pt.
16 IV of ch. 394, F.S., penalties, applicability
17 of sentencing structures, and mandatory minimum
18 sentences, violent career criminals, habitual
19 felony offenders and habitual violent felony
20 offenders, three-time violent felony offenders,
21 definitions, procedure, and enhanced penalties
22 or mandatory minimum prison terms, time
23 limitations, the Florida Sexual Predators Act,
24 kidnapping, false imprisonment, luring or
25 enticing a child, child abuse and sexual abuse
26 of victims under age 16 or persons with mental
27 retardation, and limits on interviews, sexual
28 offenders required to register with the
29 Department of Law Enforcement, court-ordered
30 expunction of criminal history records,
31 court-ordered sealing of criminal history

1 records, notification to law enforcement
2 agencies upon release of sexual offenders,
3 notification to Department of Law Enforcement
4 of information on sexual offenders, conditional
5 release program, when court may place defendant
6 on probation or into community control, terms
7 and conditions of probation or community
8 control, violation of probation or community
9 control, revocation, modification, continuance,
10 and failure to pay restitution or cost of
11 supervision, to incorporate the amendment to s.
12 800.04, F.S., in references thereto; providing
13 an effective date.
14

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

17 Section 1. Subsection (7) of section 800.04, Florida
18 Statutes, is amended to read:

19 800.04 Lewd or lascivious offenses committed upon or
20 in the presence of persons less than 16 years of age.--

21 (7) LEWD OR LASCIVIOUS EXHIBITION.--

22 (a) A person who:

23 1. Intentionally masturbates;

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

26 3. Intentionally commits any other sexual act that
27 does not involve actual physical or sexual contact with the
28 victim, including, but not limited to, sadomasochistic abuse,
29 sexual bestiality, or the simulation of any act involving
30 sexual activity
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1 in the presence of a victim who is less than 16 years of age,
2 commits lewd or lascivious exhibition.

3 (b) A person who:

4 1. Intentionally masturbates;

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

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

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13 live over a computer on-line service, Internet service, or
14 local bulletin board service and who knows or should know or
15 has reason to believe that the transmission is viewed on a
16 computer or television monitor by a victim in this state who
17 is less than 16 years of age, commits lewd or lascivious
18 exhibition. The fact that an undercover operative or law
19 enforcement officer was involved in the detection and
20 investigation of an offense under this paragraph shall not
21 constitute a defense to a prosecution under this paragraph.

22 (c)(b) An offender 18 years of age or older who
23 commits a lewd or lascivious exhibition commits a felony of
24 the second degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084.

26 (d)(e) An offender less than 18 years of age who
27 commits a lewd or lascivious exhibition commits a felony of
28 the third degree, punishable as provided in s. 775.082, s.
29 775.083, or s. 775.084.

30 Section 2. Paragraphs (d) and (e) of subsection (3) of
31 section 921.0022, Florida Statutes, are amended to read:

1	787.04(2)	3rd	Take, entice, or remove child
2			beyond state limits with criminal
3			intent pending custody
4			proceedings.
5	787.04(3)	3rd	Carrying child beyond state lines
6			with criminal intent to avoid
7			producing child at custody
8			hearing or delivering to
9			designated person.
10	790.115(1)	3rd	Exhibiting firearm or weapon
11			within 1,000 feet of a school.
12	790.115(2)(b)	3rd	Possessing electric weapon or
13			device, destructive device, or
14			other weapon on school property.
15	790.115(2)(c)	3rd	Possessing firearm on school
16			property.
17	800.04(7) <u>(d)</u> (c)	3rd	Lewd or lascivious exhibition;
18			offender less than 18 years.
19	810.02(4)(a)	3rd	Burglary, or attempted burglary,
20			of an unoccupied structure;
21			unarmed; no assault or battery.
22	810.02(4)(b)	3rd	Burglary, or attempted burglary,
23			of an unoccupied conveyance;
24			unarmed; no assault or battery.
25	810.06	3rd	Burglary; possession of tools.
26	810.08(2)(c)	3rd	Trespass on property, armed with
27			firearm or dangerous weapon.
28	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000
29			or more but less than \$20,000.
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1	812.014		
2	(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will,
3			firearm, motor vehicle,
4			livestock, etc.
5	817.563(1)	3rd	Sell or deliver substance other
6			than controlled substance agreed
7			upon, excluding s. 893.03(5)
8			drugs.
9	828.125(1)	2nd	Kill, maim, or cause great bodily
10			harm or permanent breeding
11			disability to any registered
12			horse or cattle.
13	837.02(1)	3rd	Perjury in official proceedings.
14	837.021(1)	3rd	Make contradictory statements in
15			official proceedings.
16	843.025	3rd	Deprive law enforcement,
17			correctional, or correctional
18			probation officer of means of
19			protection or communication.
20	843.15(1)(a)	3rd	Failure to appear while on bail
21			for felony (bond estreature or
22			bond jumping).
23	874.05(1)	3rd	Encouraging or recruiting another
24			to join a criminal street gang.
25	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s.
26			893.03(1)(a), (b), or (d), or
27			(2)(a) or (b) drugs).
28	914.14(2)	3rd	Witnesses accepting bribes.
29	914.22(1)	3rd	Force, threaten, etc., witness,
30			victim, or informant.
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1	914.23(2)	3rd	Retaliation against a witness,
2			victim, or informant, no bodily
3			injury.
4	918.12	3rd	Tampering with jurors.
5			(e) LEVEL 5
6	316.027(1)(a)	3rd	Accidents involving personal
7			injuries, failure to stop;
8			leaving scene.
9	316.1935(4)	2nd	Aggravated fleeing or eluding.
10	322.34(6)	3rd	Careless operation of motor
11			vehicle with suspended license,
12			resulting in death or serious
13			bodily injury.
14	327.30(5)	3rd	Vessel accidents involving
15			personal injury; leaving scene.
16	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
17			knowing HIV positive.
18	790.01(2)	3rd	Carrying a concealed firearm.
19	790.162	2nd	Threat to throw or discharge
20			destructive device.
21	790.163	2nd	False report of deadly explosive.
22	790.165(2)	3rd	Manufacture, sell, possess, or
23			deliver hoax bomb.
24	790.221(1)	2nd	Possession of short-barreled
25			shotgun or machine gun.
26	790.23	2nd	Felons in possession of firearms
27			or electronic weapons or devices.
28	800.04(6)(c)	3rd	Lewd or lascivious conduct;
29			offender less than 18 years.
30	800.04(7)(c) (b)	2nd	Lewd or lascivious exhibition;
31			offender 18 years or older.

1	806.111(1)	3rd	Possess, manufacture, or dispense
2			fire bomb with intent to damage
3			any structure or property.
4	812.019(1)	2nd	Stolen property; dealing in or
5			trafficking in.
6	812.131(2)(b)	3rd	Robbery by sudden snatching.
7	812.16(2)	3rd	Owning, operating, or conducting
8			a chop shop.
9	817.034(4)(a)2.	2nd	Communications fraud, value
10			\$20,000 to \$50,000.
11	825.1025(4)	3rd	Lewd or lascivious exhibition in
12			the presence of an elderly person
13			or disabled adult.
14	827.071(4)	2nd	Possess with intent to promote
15			any photographic material, motion
16			picture, etc., which includes
17			sexual conduct by a child.
18	843.01	3rd	Resist officer with violence to
19			person; resist arrest with
20			violence.
21	874.05(2)	2nd	Encouraging or recruiting another
22			to join a criminal street gang;
23			second or subsequent offense.
24	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
25			cocaine (or other s.
26			893.03(1)(a), (1)(b), (1)(d),
27			(2)(a), or (2)(b) drugs).
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1 893.13(1)(c)2. 2nd Sell, manufacture, or deliver
2 cannabis (or other s.
3 893.03(1)(c), (2)(c), (3), or (4)
4 drugs) within 1,000 feet of a
5 child care facility or school.
6 893.13(1)(d)1. 1st Sell, manufacture, or deliver
7 cocaine (or other s.
8 893.03(1)(a), (1)(b), (1)(d),
9 (2)(a), or (2)(b) drugs) within
10 200 feet of university or public
11 park.
12 893.13(1)(e) 2nd Sell, manufacture, or deliver
13 cannabis or other drug prohibited
14 under s. 893.03(1)(c), (2)(c),
15 (3), or (4) within 1,000 feet of
16 property used for religious
17 services or a specified business
18 site.
19 893.13(1)(f)1. 1st Sell, manufacture, or deliver
20 cocaine (or other s.
21 893.03(1)(a), (1)(b), (1)(d), or
22 (2)(a), or (2)(b) drugs) within
23 200 feet of public housing
24 facility.
25 893.13(4)(b) 2nd Deliver to minor cannabis (or
26 other s. 893.03(1)(c), (2)(c),
27 (3), or (4) drugs).

28 Section 3. For the purpose of incorporating the
29 amendment made by this act to section 800.04, Florida
30 Statutes, in references thereto, subsection (9) of section
31 394.912, Florida Statutes, is reenacted to read:

1 394.912 Definitions.--As used in this part, the term:
2 (9) "Sexually violent offense" means:
3 (a) Murder of a human being while engaged in sexual
4 battery in violation of s. 782.04(1)(a)2.;
5 (b) Kidnapping of a child under the age of 13 and, in
6 the course of that offense, committing:
7 1. Sexual battery; or
8 2. A lewd, lascivious, or indecent assault or act upon
9 or in the presence of the child;
10 (c) Committing the offense of false imprisonment upon
11 a child under the age of 13 and, in the course of that
12 offense, committing:
13 1. Sexual battery; or
14 2. A lewd, lascivious, or indecent assault or act upon
15 or in the presence of the child;
16 (d) Sexual battery in violation of s. 794.011;
17 (e) Lewd, lascivious, or indecent assault or act upon
18 or in presence of the child in violation of s. 800.04;
19 (f) An attempt, criminal solicitation, or conspiracy,
20 in violation of s. 777.04, of a sexually violent offense;
21 (g) Any conviction for a felony offense in effect at
22 any time before October 1, 1998, which is comparable to a
23 sexually violent offense under paragraphs (a)-(f) or any
24 federal conviction or conviction in another state for a felony
25 offense that in this state would be a sexually violent
26 offense; or
27 (h) Any criminal act that, either at the time of
28 sentencing for the offense or subsequently during civil
29 commitment proceedings under this part, has been determined
30 beyond a reasonable doubt to have been sexually motivated.
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1 Section 4. For the purpose of incorporating the
2 amendment made by this act to section 800.04, Florida
3 Statutes, in references thereto, paragraph (a) of subsection
4 (9) of section 775.082, Florida Statutes, is reenacted to
5 read:

6 775.082 Penalties; applicability of sentencing
7 structures; mandatory minimum sentences for certain
8 reoffenders previously released from prison.--

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

- 11 a. Treason;
- 12 b. Murder;
- 13 c. Manslaughter;
- 14 d. Sexual battery;
- 15 e. Carjacking;
- 16 f. Home-invasion robbery;
- 17 g. Robbery;
- 18 h. Arson;
- 19 i. Kidnapping;
- 20 j. Aggravated assault with a deadly weapon;
- 21 k. Aggravated battery;
- 22 l. Aggravated stalking;
- 23 m. Aircraft piracy;
- 24 n. Unlawful throwing, placing, or discharging of a
25 destructive device or bomb;
- 26 o. Any felony that involves the use or threat of
27 physical force or violence against an individual;
- 28 p. Armed burglary;
- 29 q. Burglary of an occupied structure or dwelling; or
- 30 r. Any felony violation of s. 790.07, s. 800.04, s.
31 827.03, or s. 827.071;

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2 within 3 years of being released from a state correctional
3 facility operated by the Department of Corrections or a
4 private vendor.

5 2. "Prison releasee reoffender" also means any
6 defendant who commits or attempts to commit any offense listed
7 in subparagraph (a)1.a.-r. while the defendant was serving a
8 prison sentence or on escape status from a state correctional
9 facility operated by the Department of Corrections or a
10 private vendor.

11 3. If the state attorney determines that a defendant
12 is a prison releasee reoffender as defined in subparagraph 1.,
13 the state attorney may seek to have the court sentence the
14 defendant as a prison releasee reoffender. Upon proof from the
15 state attorney that establishes by a preponderance of the
16 evidence that a defendant is a prison releasee reoffender as
17 defined in this section, such defendant is not eligible for
18 sentencing under the sentencing guidelines and must be
19 sentenced as follows:

20 a. For a felony punishable by life, by a term of
21 imprisonment for life;

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

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

26 d. For a felony of the third degree, by a term of
27 imprisonment of 5 years.

28 Section 5. For the purpose of incorporating the
29 amendment made by this act to section 800.04, Florida
30 Statutes, in references thereto, paragraph (d) of subsection
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1 (1) of section 775.084, Florida Statutes, is reenacted to
2 read:

3 775.084 Violent career criminals; habitual felony
4 offenders and habitual violent felony offenders; three-time
5 violent felony offenders; definitions; procedure; enhanced
6 penalties or mandatory minimum prison terms.--

7 (1) As used in this act:

8 (d) "Violent career criminal" means a defendant for
9 whom the court must impose imprisonment pursuant to paragraph
10 (4)(d), if it finds that:

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

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

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

17 c. Aggravated child abuse, as described in s.
18 827.03(2);

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

21 e. Lewd or lascivious battery, lewd or lascivious
22 molestation, lewd or lascivious conduct, or lewd or lascivious
23 exhibition, as described in s. 800.04;

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

25 g. A felony violation of chapter 790 involving the use
26 or possession of a firearm.

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

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

1 a. While the defendant was serving a prison sentence
2 or other sentence, or court-ordered or lawfully imposed
3 supervision that is imposed as a result of a prior conviction
4 for an enumerated felony; or

5 b. Within 5 years after the conviction of the last
6 prior enumerated felony, or within 5 years after the
7 defendant's release from a prison sentence, probation,
8 community control, control release, conditional release,
9 parole, or court-ordered or lawfully imposed supervision or
10 other sentence that is imposed as a result of a prior
11 conviction for an enumerated felony, whichever is later.

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

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

18 Section 6. For the purpose of incorporating the
19 amendment made by this act to section 800.04, Florida
20 Statutes, in references thereto, subsection (7) of section
21 775.15, Florida Statutes, is reenacted to read:

22 775.15 Time limitations.--

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

1 the offense is a first or second degree felony violation of s.
2 794.011, and the crime is reported within 72 hours after its
3 commission, paragraph (1)(b) applies. This subsection applies
4 to any such offense except an offense the prosecution of which
5 would have been barred by subsection (2) on or before December
6 31, 1984.

7 Section 7. For the purpose of incorporating the
8 amendment made by this act to section 800.04, Florida
9 Statutes, in references thereto, paragraph (c) of subsection
10 (4) and paragraph (b) of subsection (10) of section 775.21,
11 Florida Statutes, are reenacted to read:

12 775.21 The Florida Sexual Predators Act; definitions;
13 legislative findings, purpose, and intent; criteria;
14 designation; registration; community and public notification;
15 immunity; penalties.--

16 (4) SEXUAL PREDATOR CRITERIA.--

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

22 1. The felony meets the criteria of former ss.
23 775.22(2) and 775.23(2), specifically, the felony is:

24 a. A capital, life, or first-degree felony violation
25 of s. 787.01 or s. 787.02, where the victim is a minor and the
26 defendant is not the victim's parent, or of chapter 794 or s.
27 847.0145, or a violation of a similar law of another
28 jurisdiction;

29 b. An attempt to commit a capital, life, or
30 first-degree felony violation of chapter 794, where the victim
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1 is a minor, or a violation of a similar law of another
2 jurisdiction; or

3 c. Any second-degree or greater felony violation of s.
4 787.01 or s. 787.02, where the victim is a minor and the
5 defendant is not the victim's parent; chapter 794; s. 796.03;
6 s. 800.04; s. 825.1025(2)(b); s. 827.071; or s. 847.0145; or a
7 violation of a similar law of another jurisdiction, and the
8 offender has previously been convicted of or found to have
9 committed, or has pled nolo contendere or guilty to,
10 regardless of adjudication, any violation of s. 787.01 or s.
11 787.02, where the victim is a minor and the defendant is not
12 the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s.
13 794.023; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
14 847.0133; s. 847.0135; or s. 847.0145, or a violation of a
15 similar law of another jurisdiction;

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

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

22 (10) PENALTIES.--

23 (b) A sexual predator who has been convicted of or
24 found to have committed, or has pled nolo contendere or guilty
25 to, regardless of adjudication, any violation of s.
26 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 800.04; s.
27 827.071; s. 847.0133; or s. 847.0145, or a violation of a
28 similar law of another jurisdiction, when the victim of the
29 offense was a minor, and who works, whether for compensation
30 or as a volunteer, at any business, school, day care center,
31 park, playground, or other place where children regularly

1 | congregate, commits a felony of the third degree, punishable
2 | as provided in s. 775.082, s. 775.083, or s. 775.084.

3 | Section 8. For the purpose of incorporating the
4 | amendment made by this act to section 800.04, Florida
5 | Statutes, in references thereto, subsection (3) of section
6 | 787.01, Florida Statutes, is reenacted to read:

7 | 787.01 Kidnapping; kidnapping of child under age 13,
8 | aggravating circumstances.--

9 | (3)(a) A person who commits the offense of kidnapping
10 | upon a child under the age of 13 and who, in the course of
11 | committing the offense, commits one or more of the following:

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

13 | 2. Sexual battery, as defined in chapter 794, against
14 | the child;

15 | 3. Lewd or lascivious battery, lewd or lascivious
16 | molestation, lewd or lascivious conduct, or lewd or lascivious
17 | exhibition, in violation of s. 800.04;

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

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

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23 | commits a life felony, punishable as provided in s. 775.082,
24 | s. 775.083, or s. 775.084.

25 | (b) Pursuant to s. 775.021(4), nothing contained
26 | herein shall be construed to prohibit the imposition of
27 | separate judgments and sentences for the life felony described
28 | in paragraph (a) and for each separate offense enumerated in
29 | subparagraphs (a)1.-5.

30 | Section 9. For the purpose of incorporating the
31 | amendment made by this act to section 800.04, Florida

1 Statutes, in references thereto, subsection (3) of section
2 787.02, Florida Statutes, is reenacted to read:

3 787.02 False imprisonment; false imprisonment of child
4 under age 13, aggravating circumstances.--

5 (3)(a) A person who commits the offense of false
6 imprisonment upon a child under the age of 13 and who, in the
7 course of committing the offense, commits any offense
8 enumerated in subparagraphs 1.-5., commits a felony of the
9 first degree, punishable by imprisonment for a term of years
10 not exceeding life or as provided in s. 775.082, s. 775.083,
11 or s. 775.084.

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

13 2. Sexual battery, as defined in chapter 794, against
14 the child;

15 3. Lewd or lascivious battery, lewd or lascivious
16 molestation, lewd or lascivious conduct, or lewd or lascivious
17 exhibition, in violation of s. 800.04;

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

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

22 (b) Pursuant to s. 775.021(4), nothing contained
23 herein shall be construed to prohibit the imposition of
24 separate judgments and sentences for the first degree offense
25 described in paragraph (a) and for each separate offense
26 enumerated in subparagraphs (a)1.-5.

27 Section 10. For the purpose of incorporating the
28 amendment made by this act to section 800.04, Florida
29 Statutes, in references thereto, paragraph (a) of subsection
30 (2) of section 787.025, Florida Statutes, is reenacted to
31 read:

1 787.025 Luring or enticing a child.--

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

10 Section 11. For the purpose of incorporating the
11 amendment made by this act to section 800.04, Florida
12 Statutes, in references thereto, section 914.16, Florida
13 Statutes, is reenacted to read:

14 914.16 Child abuse and sexual abuse of victims under
15 age 16 or persons with mental retardation; limits on
16 interviews.--The chief judge of each judicial circuit, after
17 consultation with the state attorney and the public defender
18 for the judicial circuit, the appropriate chief law
19 enforcement officer, and any other person deemed appropriate
20 by the chief judge, shall provide by order reasonable limits
21 on the number of interviews that a victim of a violation of s.
22 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
23 or a victim of a violation of s. 794.011, s. 800.02, s.
24 800.03, or s. 825.102 who is a person with mental retardation
25 as defined in s. 393.063(44) must submit to for law
26 enforcement or discovery purposes. The order shall, to the
27 extent possible, protect the victim from the psychological
28 damage of repeated interrogations while preserving the rights
29 of the public, the victim, and the person charged with the
30 violation.

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1 Section 12. For the purpose of incorporating the
2 amendment made by this act to section 800.04, Florida
3 Statutes, in references thereto, paragraph (a) of subsection
4 (1) of section 943.0435, Florida Statutes, is reenacted to
5 read:

6 943.0435 Sexual offenders required to register with
7 the department; penalty.--

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

9 (a) "Sexual offender" means a person who has been:

10 1. Convicted of committing, or attempting, soliciting,
11 or conspiring to commit, any of the criminal offenses
12 proscribed in the following statutes in this state or similar
13 offenses in another jurisdiction: s. 787.01 or s. 787.02,
14 where the victim is a minor and the defendant is not the
15 victim's parent; s. 787.025; chapter 794; s. 796.03; s.
16 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s.
17 847.0145; or any similar offense committed in this state which
18 has been redesignated from a former statute number to one of
19 those listed in this subparagraph.

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

28 Section 13. For the purpose of incorporating the
29 amendment made by this act to section 800.04, Florida
30 Statutes, in references thereto, section 943.0585, Florida
31 Statutes, is reenacted to read:

1 943.0585 Court-ordered expunction of criminal history
2 records.--The courts of this state have jurisdiction over
3 their own procedures, including the maintenance, expunction,
4 and correction of judicial records containing criminal history
5 information to the extent such procedures are not inconsistent
6 with the conditions, responsibilities, and duties established
7 by this section. Any court of competent jurisdiction may
8 order a criminal justice agency to expunge the criminal
9 history record of a minor or an adult who complies with the
10 requirements of this section. The court shall not order a
11 criminal justice agency to expunge a criminal history record
12 until the person seeking to expunge a criminal history record
13 has applied for and received a certificate of eligibility for
14 expunction pursuant to subsection (2). A criminal history
15 record that relates to a violation of chapter 794, s. 800.04,
16 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
17 violation enumerated in s. 907.041 may not be expunged,
18 without regard to whether adjudication was withheld, if the
19 defendant was found guilty of or pled guilty or nolo
20 contendere to the offense, or if the defendant, as a minor,
21 was found to have committed, or pled guilty or nolo contendere
22 to committing, the offense as a delinquent act. The court may
23 only order expunction of a criminal history record pertaining
24 to one arrest or one incident of alleged criminal activity,
25 except as provided in this section. The court may, at its sole
26 discretion, order the expunction of a criminal history record
27 pertaining to more than one arrest if the additional arrests
28 directly relate to the original arrest. If the court intends
29 to order the expunction of records pertaining to such
30 additional arrests, such intent must be specified in the
31 order. A criminal justice agency may not expunge any record

1 | pertaining to such additional arrests if the order to expunge
2 | does not articulate the intention of the court to expunge a
3 | record pertaining to more than one arrest. This section does
4 | not prevent the court from ordering the expunction of only a
5 | portion of a criminal history record pertaining to one arrest
6 | or one incident of alleged criminal activity. Notwithstanding
7 | any law to the contrary, a criminal justice agency may comply
8 | with laws, court orders, and official requests of other
9 | jurisdictions relating to expunction, correction, or
10 | confidential handling of criminal history records or
11 | information derived therefrom. This section does not confer
12 | any right to the expunction of any criminal history record,
13 | and any request for expunction of a criminal history record
14 | may be denied at the sole discretion of the court.

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

18 | (a) A certificate of eligibility for expunction issued
19 | by the department pursuant to subsection (2).

20 | (b) The petitioner's sworn statement attesting that
21 | the petitioner:

22 | 1. Has never, prior to the date on which the petition
23 | is filed, been adjudicated guilty of a criminal offense or
24 | comparable ordinance violation or adjudicated delinquent for
25 | committing a felony or a misdemeanor specified in s.
26 | 943.051(3)(b).

27 | 2. Has not been adjudicated guilty of, or adjudicated
28 | delinquent for committing, any of the acts stemming from the
29 | arrest or alleged criminal activity to which the petition
30 | pertains.

31 |

1 3. 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, or from any
4 jurisdiction outside the state.

5 4. Is eligible for such an expunction to the best of
6 his or her knowledge or belief and does not have any other
7 petition to expunge or any petition to seal pending before any
8 court.

9
10 Any person who knowingly provides false information on such
11 sworn statement to the court commits a felony of the third
12 degree, punishable as provided in s. 775.082, s. 775.083, or
13 s. 775.084.

14 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
15 to petitioning the court to expunge a criminal history record,
16 a person seeking to expunge a criminal history record shall
17 apply to the department for a certificate of eligibility for
18 expunction. The department shall, by rule adopted pursuant to
19 chapter 120, establish procedures pertaining to the
20 application for and issuance of certificates of eligibility
21 for expunction. The department shall issue a certificate of
22 eligibility for expunction to a person who is the subject of a
23 criminal history record if that person:

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

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

29 2. That an indictment, information, or other charging
30 document, if filed or issued in the case, was dismissed or
31

1 nolle prosequi by the state attorney or statewide prosecutor,
2 or was dismissed by a court of competent jurisdiction.

3 3. That the criminal history record does not relate to
4 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
5 chapter 839, s. 893.135, or a violation enumerated in s.
6 907.041, where the defendant was found guilty of, or pled
7 guilty or nolo contendere to any such offense, or that the
8 defendant, as a minor, was found to have committed, or pled
9 guilty or nolo contendere to committing, such an offense as a
10 delinquent act, without regard to whether adjudication was
11 withheld.

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

15 (c) Has submitted to the department a certified copy
16 of the disposition of the charge to which the petition to
17 expunge pertains.

18 (d) Has never, prior to the date on which the
19 application for a certificate of eligibility is filed, been
20 adjudicated guilty of a criminal offense or comparable
21 ordinance violation or adjudicated delinquent for committing a
22 felony or a misdemeanor specified in s. 943.051(3)(b).

23 (e) Has not been adjudicated guilty of, or adjudicated
24 delinquent for committing, any of the acts stemming from the
25 arrest or alleged criminal activity to which the petition to
26 expunge pertains.

27 (f) Has never secured a prior sealing or expunction of
28 a criminal history record under this section, former s.
29 893.14, former s. 901.33, or former s. 943.058.

30
31

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

4 (h) Is not required to wait a minimum of 10 years
5 prior to being eligible for an expunction of such records
6 because all charges related to the arrest or criminal activity
7 to which the petition to expunge pertains were dismissed prior
8 to trial, adjudication, or the withholding of adjudication.
9 Otherwise, such criminal history record must be sealed under
10 this section, former s. 893.14, former s. 901.33, or former s.
11 943.058 for at least 10 years before such record is eligible
12 for expunction.

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

14 (a) In judicial proceedings under this section, a copy
15 of the completed petition to expunge shall be served upon the
16 appropriate state attorney or the statewide prosecutor and
17 upon the arresting agency; however, it is not necessary to
18 make any agency other than the state a party. The appropriate
19 state attorney or the statewide prosecutor and the arresting
20 agency may respond to the court regarding the completed
21 petition to expunge.

22 (b) If relief is granted by the court, the clerk of
23 the court shall certify copies of the order to the appropriate
24 state attorney or the statewide prosecutor and the arresting
25 agency. The arresting agency is responsible for forwarding the
26 order to any other agency to which the arresting agency
27 disseminated the criminal history record information to which
28 the order pertains. The department shall forward the order to
29 expunge to the Federal Bureau of Investigation. The clerk of
30 the court shall certify a copy of the order to any other

31

1 agency which the records of the court reflect has received the
2 criminal history record from the court.

3 (c) For an order to expunge entered by a court prior
4 to July 1, 1992, the department shall notify the appropriate
5 state attorney or statewide prosecutor of an order to expunge
6 which is contrary to law because the person who is the subject
7 of the record has previously been convicted of a crime or
8 comparable ordinance violation or has had a prior criminal
9 history record sealed or expunged. Upon receipt of such
10 notice, the appropriate state attorney or statewide prosecutor
11 shall take action, within 60 days, to correct the record and
12 petition the court to void the order to expunge. The
13 department shall seal the record until such time as the order
14 is voided by the court.

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

31

1 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
2 criminal history record of a minor or an adult which is
3 ordered expunged by a court of competent jurisdiction pursuant
4 to this section must be physically destroyed or obliterated by
5 any criminal justice agency having custody of such record;
6 except that any criminal history record in the custody of the
7 department must be retained in all cases. A criminal history
8 record ordered expunged that is retained by the department is
9 confidential and exempt from the provisions of s. 119.07(1)
10 and s. 24(a), Art. I of the State Constitution and not
11 available to any person or entity except upon order of a court
12 of competent jurisdiction. A criminal justice agency may
13 retain a notation indicating compliance with an order to
14 expunge.

15 (a) The person who is the subject of a criminal
16 history record that is expunged under this section or under
17 other provisions of law, including former s. 893.14, former s.
18 901.33, and former s. 943.058, may lawfully deny or fail to
19 acknowledge the arrests covered by the expunged record, except
20 when the subject of the record:

- 21 1. Is a candidate for employment with a criminal
22 justice agency;
- 23 2. Is a defendant in a criminal prosecution;
- 24 3. Concurrently or subsequently petitions for relief
25 under this section or s. 943.059;
- 26 4. Is a candidate for admission to The Florida Bar;
- 27 5. Is seeking to be employed or licensed by or to
28 contract with the Department of Children and Family Services
29 or the Department of Juvenile Justice or to be employed or
30 used by such contractor or licensee in a sensitive position
31 having direct contact with children, the developmentally

1 disabled, the aged, or the elderly as provided in s.
2 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
3 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
4 415.1075(4), s. 985.407, or chapter 400; or

5 6. Is seeking to be employed or licensed by the Office
6 of Teacher Education, Certification, Staff Development, and
7 Professional Practices of the Department of Education, any
8 district school board, or any local governmental entity that
9 licenses child care facilities.

10 (b) Subject to the exceptions in paragraph (a), a
11 person who has been granted an expunction under this section,
12 former s. 893.14, former s. 901.33, or former s. 943.058 may
13 not be held under any provision of law of this state to commit
14 perjury or to be otherwise liable for giving a false statement
15 by reason of such person's failure to recite or acknowledge an
16 expunged criminal history record.

17 (c) Information relating to the existence of an
18 expunged criminal history record which is provided in
19 accordance with paragraph (a) is confidential and exempt from
20 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
21 State Constitution, except that the department shall disclose
22 the existence of a criminal history record ordered expunged to
23 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
24 for their respective licensing and employment purposes, and to
25 criminal justice agencies for their respective criminal
26 justice purposes. It is unlawful for any employee of an
27 entity set forth in subparagraph (a)1., subparagraph (a)4.,
28 subparagraph (a)5., or subparagraph (a)6. to disclose
29 information relating to the existence of an expunged criminal
30 history record of a person seeking employment or licensure
31 with such entity or contractor, except to the person to whom

1 the criminal history record relates or to persons having
2 direct responsibility for employment or licensure decisions.
3 Any person who violates this paragraph commits a misdemeanor
4 of the first degree, punishable as provided in s. 775.082 or
5 s. 775.083.

6 (5) STATUTORY REFERENCES.--Any reference to any other
7 chapter, section, or subdivision of the Florida Statutes in
8 this section constitutes a general reference under the
9 doctrine of incorporation by reference.

10 Section 14. For the purpose of incorporating the
11 amendment made by this act to section 800.04, Florida
12 Statutes, in references thereto, section 943.059, Florida
13 Statutes, is reenacted to read:

14 943.059 Court-ordered sealing of criminal history
15 records.--The courts of this state shall continue to have
16 jurisdiction over their own procedures, including the
17 maintenance, sealing, and correction of judicial records
18 containing criminal history information to the extent such
19 procedures are not inconsistent with the conditions,
20 responsibilities, and duties established by this section. Any
21 court of competent jurisdiction may order a criminal justice
22 agency to seal the criminal history record of a minor or an
23 adult who complies with the requirements of this section. The
24 court shall not order a criminal justice agency to seal a
25 criminal history record until the person seeking to seal a
26 criminal history record has applied for and received a
27 certificate of eligibility for sealing pursuant to subsection
28 (2). A criminal history record that relates to a violation of
29 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
30 s. 893.135, or a violation enumerated in s. 907.041 may not be
31 sealed, without regard to whether adjudication was withheld,

1 | if the defendant was found guilty of or pled guilty or nolo
2 | contendere to the offense, or if the defendant, as a minor,
3 | was found to have committed or pled guilty or nolo contendere
4 | to committing the offense as a delinquent act. The court may
5 | only order sealing of a criminal history record pertaining to
6 | one arrest or one incident of alleged criminal activity,
7 | except as provided in this section. The court may, at its sole
8 | discretion, order the sealing of a criminal history record
9 | pertaining to more than one arrest if the additional arrests
10 | directly relate to the original arrest. If the court intends
11 | to order the sealing of records pertaining to such additional
12 | arrests, such intent must be specified in the order. A
13 | criminal justice agency may not seal any record pertaining to
14 | such additional arrests if the order to seal does not
15 | articulate the intention of the court to seal records
16 | pertaining to more than one arrest. This section does not
17 | prevent the court from ordering the sealing of only a portion
18 | of a criminal history record pertaining to one arrest or one
19 | incident of alleged criminal activity. Notwithstanding any law
20 | to the contrary, a criminal justice agency may comply with
21 | laws, court orders, and official requests of other
22 | jurisdictions relating to sealing, correction, or confidential
23 | handling of criminal history records or information derived
24 | therefrom. This section does not confer any right to the
25 | sealing of any criminal history record, and any request for
26 | sealing a criminal history record may be denied at the sole
27 | discretion of the court.

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

31 |

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

3 (b) The petitioner's sworn statement attesting that
4 the petitioner:

5 1. Has never, prior to the date on which the petition
6 is filed, been adjudicated guilty of a criminal offense or
7 comparable ordinance violation or adjudicated delinquent for
8 committing a felony or a misdemeanor specified in s.
9 943.051(3)(b).

10 2. Has not been adjudicated guilty of or adjudicated
11 delinquent for committing any of the acts stemming from the
12 arrest or alleged criminal activity to which the petition to
13 seal pertains.

14 3. Has never secured a prior sealing or expunction of
15 a criminal history record under this section, former s.
16 893.14, former s. 901.33, former s. 943.058, or from any
17 jurisdiction outside the state.

18 4. Is eligible for such a sealing to the best of his
19 or her knowledge or belief and does not have any other
20 petition to seal or any petition to expunge pending before any
21 court.

22
23 Any person who knowingly provides false information on such
24 sworn statement to the court commits a felony of the third
25 degree, punishable as provided in s. 775.082, s. 775.083, or
26 s. 775.084.

27 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
28 petitioning the court to seal a criminal history record, a
29 person seeking to seal a criminal history record shall apply
30 to the department for a certificate of eligibility for
31 sealing. The department shall, by rule adopted pursuant to

1 chapter 120, establish procedures pertaining to the
2 application for and issuance of certificates of eligibility
3 for sealing. The department shall issue a certificate of
4 eligibility for sealing to a person who is the subject of a
5 criminal history record provided that such person:

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

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

12 (c) Has never, prior to the date on which the
13 application for a certificate of eligibility is filed, been
14 adjudicated guilty of a criminal offense or comparable
15 ordinance violation or adjudicated delinquent for committing a
16 felony or a misdemeanor specified in s. 943.051(3)(b).

17 (d) Has not been adjudicated guilty of or adjudicated
18 delinquent for committing any of the acts stemming from the
19 arrest or alleged criminal activity to which the petition to
20 seal pertains.

21 (e) Has never secured a prior sealing or expunction of
22 a criminal history record under this section, former s.
23 893.14, former s. 901.33, or former s. 943.058.

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

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

28 (a) In judicial proceedings under this section, a copy
29 of the completed petition to seal shall be served upon the
30 appropriate state attorney or the statewide prosecutor and
31 upon the arresting agency; however, it is not necessary to

1 make any agency other than the state a party. The appropriate
2 state attorney or the statewide prosecutor and the arresting
3 agency may respond to the court regarding the completed
4 petition to seal.

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

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

29 (d) On or after July 1, 1992, the department or any
30 other criminal justice agency is not required to act on an
31 order to seal entered by a court when such order does not

1 comply with the requirements of this section. Upon receipt of
2 such an order, the department must notify the issuing court,
3 the appropriate state attorney or statewide prosecutor, the
4 petitioner or the petitioner's attorney, and the arresting
5 agency of the reason for noncompliance. The appropriate state
6 attorney or statewide prosecutor shall take action within 60
7 days to correct the record and petition the court to void the
8 order. No cause of action, including contempt of court, shall
9 arise against any criminal justice agency for failure to
10 comply with an order to seal when the petitioner for such
11 order failed to obtain the certificate of eligibility as
12 required by this section or when such order does not comply
13 with the requirements of this section.

14 (e) An order sealing a criminal history record
15 pursuant to this section does not require that such record be
16 surrendered to the court, and such record shall continue to be
17 maintained by the department and other criminal justice
18 agencies.

19 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
20 criminal history record of a minor or an adult which is
21 ordered sealed by a court of competent jurisdiction pursuant
22 to this section is confidential and exempt from the provisions
23 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
24 and is available only to the person who is the subject of the
25 record, to the subject's attorney, to criminal justice
26 agencies for their respective criminal justice purposes, or to
27 those entities set forth in subparagraphs (a)1., 4., 5., and
28 6. for their respective licensing and employment purposes.

29 (a) The subject of a criminal history record sealed
30 under this section or under other provisions of law, including
31 former s. 893.14, former s. 901.33, and former s. 943.058, may

1 lawfully deny or fail to acknowledge the arrests covered by
2 the sealed record, except when the subject of the record:
3 1. Is a candidate for employment with a criminal
4 justice agency;
5 2. Is a defendant in a criminal prosecution;
6 3. Concurrently or subsequently petitions for relief
7 under this section or s. 943.0585;
8 4. Is a candidate for admission to The Florida Bar;
9 5. Is seeking to be employed or licensed by or to
10 contract with the Department of Children and Family Services
11 or the Department of Juvenile Justice or to be employed or
12 used by such contractor or licensee in a sensitive position
13 having direct contact with children, the developmentally
14 disabled, the aged, or the elderly as provided in s.
15 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
16 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
17 415.103, s. 985.407, or chapter 400; or
18 6. Is seeking to be employed or licensed by the Office
19 of Teacher Education, Certification, Staff Development, and
20 Professional Practices of the Department of Education, any
21 district school board, or any local governmental entity which
22 licenses child care facilities.
23 (b) Subject to the exceptions in paragraph (a), a
24 person who has been granted a sealing under this section,
25 former s. 893.14, former s. 901.33, or former s. 943.058 may
26 not be held under any provision of law of this state to commit
27 perjury or to be otherwise liable for giving a false statement
28 by reason of such person's failure to recite or acknowledge a
29 sealed criminal history record.
30 (c) Information relating to the existence of a sealed
31 criminal record provided in accordance with the provisions of

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

17 (5) STATUTORY REFERENCES.--Any reference to any other
18 chapter, section, or subdivision of the Florida Statutes in
19 this section constitutes a general reference under the
20 doctrine of incorporation by reference.

21 Section 15. For the purpose of incorporating the
22 amendment made by this act to section 800.04, Florida
23 Statutes, in references thereto, paragraph (b) of subsection
24 (1) of section 944.606, Florida Statutes, is reenacted to
25 read:

26 944.606 Sexual offenders; notification upon release.--

27 (1) As used in this section:

28 (b) "Sexual offender" means a person who has been
29 convicted of committing, or attempting, soliciting, or
30 conspiring to commit, any of the criminal offenses proscribed
31 in the following statutes in this state or similar offenses in

1 another jurisdiction: s. 787.01 or s. 787.02, where the
2 victim is a minor and the defendant is not the victim's
3 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.
4 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145;
5 or any similar offense committed in this state which has been
6 redesignated from a former statute number to one of those
7 listed in this subsection, when the department has received
8 verified information regarding such conviction; an offender's
9 computerized criminal history record is not, in and of itself,
10 verified information.

11 Section 16. For the purpose of incorporating the
12 amendment made by this act to section 800.04, Florida
13 Statutes, in references thereto, paragraph (a) of subsection
14 (1) of section 944.607, Florida Statutes, is reenacted to
15 read:

16 944.607 Notification to Department of Law Enforcement
17 of information on sexual offenders.--

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

19 (a) "Sexual offender" means a person who is in the
20 custody or control of, or under the supervision of, the
21 department or is in the custody of a private correctional
22 facility on or after October 1, 1997, as a result of a
23 conviction for committing, or attempting, soliciting, or
24 conspiring to commit, any of the criminal offenses proscribed
25 in the following statutes in this state or similar offenses in
26 another jurisdiction: s. 787.01 or s. 787.02, where the
27 victim is a minor and the defendant is not the victim's
28 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.
29 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145;
30 or any similar offense committed in this state which has been
31

1 redesignated from a former statute number to one of those
2 listed in this paragraph.

3 Section 17. For the purpose of incorporating the
4 amendment made by this act to section 800.04, Florida
5 Statutes, in references thereto, subsection (7) of section
6 947.1405, Florida Statutes, is reenacted to read:

7 947.1405 Conditional release program.--

8 (7)(a) Any inmate who is convicted of a crime
9 committed on or after October 1, 1995, or who has been
10 previously convicted of a crime committed on or after October
11 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071,
12 or s. 847.0145, and is subject to conditional release
13 supervision, shall have, in addition to any other conditions
14 imposed, the following special conditions imposed by the
15 commission:

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

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

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

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

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

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

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

23 8. A requirement that the releasee must submit two
24 specimens of blood to the Florida Department of Law
25 Enforcement to be registered with the DNA database.

26 9. A requirement that the releasee make restitution to
27 the victim, as determined by the sentencing court or the
28 commission, for all necessary medical and related professional
29 services relating to physical, psychiatric, and psychological
30 care.

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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) For a releasee whose crime was committed on or
5 after October 1, 1997, in violation of chapter 794, s. 800.04,
6 s. 827.071, or s. 847.0145, and who is subject to conditional
7 release supervision, in addition to any other provision of
8 this subsection, the commission shall impose the following
9 additional conditions of conditional release supervision:

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

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

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

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

30 5. Electronic monitoring when deemed necessary by the
31 community control or probation officer and his or her

1 supervisor, and ordered by the court at the recommendation of
2 the Department of Corrections.

3 Section 18. For the purpose of incorporating the
4 amendment made by this act to section 800.04, Florida
5 Statutes, in references thereto, subsection (15) of section
6 948.01, Florida Statutes, is reenacted to read:

7 948.01 When court may place defendant on probation or
8 into community control.--

9 (15) Effective for an offense committed on or after
10 July 1, 1998, a person is ineligible for placement on
11 administrative probation if the person is sentenced to or is
12 serving a term of probation or community control, regardless
13 of the conviction or adjudication, for committing, or
14 attempting, conspiring, or soliciting to commit, any of the
15 felony offenses described in s. 787.01 or s. 787.02, where the
16 victim is a minor and the defendant is not the victim's
17 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.
18 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s.
19 847.0145.

20 Section 19. For the purpose of incorporating the
21 amendment made by this act to section 800.04, Florida
22 Statutes, in references thereto, subsections (4), (5), and (6)
23 of section 948.03, Florida Statutes, are reenacted to read:

24 948.03 Terms and conditions of probation or community
25 control.--

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

1 control for any person who was found guilty of any of the
2 following, or whose plea of guilty or nolo contendere to any
3 of the following was accepted by the court:

4 (a) Lewd or lascivious battery, lewd or lascivious
5 molestation, lewd or lascivious conduct, or lewd or lascivious
6 exhibition, as defined in s. 800.04.

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

23 (a) Effective for probationers or community
24 controllees whose crime was committed on or after October 1,
25 1995, and who are placed under supervision for violation of
26 chapter 794, s. 800.04, s. 827.071, or s. 847.0145, the court
27 must impose the following conditions in addition to all other
28 standard and special conditions imposed:

29 1. A mandatory curfew from 10 p.m. to 6 a.m. The court
30 may designate another 8-hour period if the offender's
31 employment precludes the above specified time, and such

1 alternative is recommended by the Department of Corrections.
2 If the court determines that imposing a curfew would endanger
3 the victim, the court may consider alternative sanctions.

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

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

16 4. A prohibition on any contact with the victim,
17 directly or indirectly, including through a third person,
18 unless approved by the victim, the offender's therapist, and
19 the sentencing court.

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

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

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

8 8. A requirement that the probationer or community
9 controllee must submit two specimens of blood to the Florida
10 Department of Law Enforcement to be registered with the DNA
11 data bank.

12 9. A requirement that the probationer or community
13 controllee make restitution to the victim, as ordered by the
14 court under s. 775.089, for all necessary medical and related
15 professional services relating to physical, psychiatric, and
16 psychological care.

17 10. Submission to a warrantless search by the
18 community control or probation officer of the probationer's or
19 community controllee's person, residence, or vehicle.

20 (b) Effective for a probationer or community
21 controllee whose crime was committed on or after October 1,
22 1997, and who is placed on sex offender probation for a
23 violation of chapter 794, s. 800.04, s. 827.071, or s.
24 847.0145, in addition to any other provision of this
25 subsection, the court must impose the following conditions of
26 probation or community control:

27 1. As part of a treatment program, participation at
28 least annually in polygraph examinations to obtain information
29 necessary for risk management and treatment and to reduce the
30 sex offender's denial mechanisms. A polygraph examination must
31 be conducted by a polygrapher trained specifically in the use

1 of the polygraph for the monitoring of sex offenders, where
2 available, and shall be paid by the sex offender. The results
3 of the polygraph examination shall not be used as evidence in
4 court to prove that a violation of community supervision has
5 occurred.

6 2. Maintenance of a driving log and a prohibition
7 against driving a motor vehicle alone without the prior
8 approval of the supervising officer.

9 3. A prohibition against obtaining or using a post
10 office box without the prior approval of the supervising
11 officer.

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

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

20 (6) The enumeration of specific kinds of terms and
21 conditions shall not prevent the court from adding thereto
22 such other or others as it considers proper. However, the
23 sentencing court may only impose a condition of supervision
24 allowing an offender convicted of s. 794.011, s. 800.04, s.
25 827.071, or s. 847.0145, to reside in another state, if the
26 order stipulates that it is contingent upon the approval of
27 the receiving state interstate compact authority. The court
28 may rescind or modify at any time the terms and conditions
29 theretofore imposed by it upon the probationer or offender in
30 community control. However, if the court withholds
31 adjudication of guilt or imposes a period of incarceration as

1 a condition of probation or community control, the period
2 shall not exceed 364 days, and incarceration shall be
3 restricted to either a county facility, a probation and
4 restitution center under the jurisdiction of the Department of
5 Corrections, a probation program drug punishment phase I
6 secure residential treatment institution, or a community
7 residential facility owned or operated by any entity providing
8 such services.

9 Section 20. For the purpose of incorporating the
10 amendment made by this act to section 800.04, Florida
11 Statutes, in references thereto, paragraph (a) of subsection
12 (2) of section 948.06, Florida Statutes, is reenacted to read:

13 948.06 Violation of probation or community control;
14 revocation; modification; continuance; failure to pay
15 restitution or cost of supervision.--

16 (2)(a) When any state or local law enforcement agency
17 investigates or arrests a person for committing, or
18 attempting, soliciting, or conspiring to commit, a violation
19 of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 827.071,
20 s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
21 agency shall contact the Department of Corrections to verify
22 whether the person under investigation or under arrest is on
23 probation, community control, parole, conditional release, or
24 control release.

25 Section 21. This act shall take effect October 1,
26 2000.

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LEGISLATIVE SUMMARY

Expanding the offense of lewd and lascivious exhibition to include specified activities engaged-in live over a computer on-line service, Internet service, or local bulletin board service knowing or having reason to believe that the transmission is viewed on a computer or television monitor by a person under 16 years of age.