

By the Committee on Criminal Justice and Senator Saunders

307-1855A-00

1                                   A bill to be entitled  
2           An act relating to offenses against children or  
3           minors; amending s. 787.025, F.S.; redefining  
4           the crime of luring or enticing a child so that  
5           it applies to offenses against all minors;  
6           providing penalties; amending s. 800.04, F.S.;  
7           providing a penalty for the transmission of  
8           lewd or lascivious exhibition over the Internet  
9           under certain circumstances; amending s.  
10          847.0135, F.S.; prescribing the penalty for  
11          computer pornography; amending s. 921.0022,  
12          F.S.; conforming a cross-reference; reenacting  
13          ss. 394.912(9), 775.082(9)(a), 775.084(1)(d),  
14          775.15(7), 775.21(4)(c) and (10)(b), 787.01(3),  
15          787.02(3), 914.16, 943.0435(1)(a), 943.0585,  
16          943.059, 944.606(1)(b), 944.607(1)(a),  
17          947.1405(7), 948.01(15), 948.03(4), (5), and  
18          (6), and 948.06(2)(a), F.S., relating to  
19          definition of "sexually violent offense" for  
20          purposes of pt. IV of ch. 394, F.S., penalties,  
21          applicability of sentencing structures, and  
22          mandatory minimum sentences, violent career  
23          criminals, habitual felony offenders and  
24          habitual violent felony offenders, three-time  
25          violent felony offenders, definitions,  
26          procedure, and enhanced penalties or mandatory  
27          minimum prison terms, time limitations, the  
28          Florida Sexual Predators Act, kidnapping, false  
29          imprisonment, child abuse and sexual abuse of  
30          victims under age 16 or persons with mental  
31          retardation, and limits on interviews, sexual

1 offenders required to register with the  
2 Department of Law Enforcement, court-ordered  
3 expunction of criminal history records,  
4 court-ordered sealing of criminal history  
5 records, notification to law enforcement  
6 agencies upon release of sexual offenders,  
7 notification to Department of Law Enforcement  
8 of information on sexual offenders, conditional  
9 release program, when court may place defendant  
10 on probation or into community control, terms  
11 and conditions of probation or community  
12 control, violation of probation or community  
13 control, revocation, modification, continuance,  
14 and failure to pay restitution or cost of  
15 supervision, to incorporate the amendment to s.  
16 800.04, F.S., in references thereto; providing  
17 an effective date.

18

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

20

21 Section 1. Section 787.025, Florida Statutes, is  
22 amended to read:

23 787.025 Luring or enticing a minor ~~child~~.--

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

25 (a) "Structure" means a building of any kind, either  
26 temporary or permanent, which has a roof over it, together  
27 with the curtilage thereof.

28 (b) "Dwelling" means a building or conveyance of any  
29 kind, either temporary or permanent, mobile or immobile, which  
30 has a roof over it and is designed to be occupied by people

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1 lodging together therein at night, together with the curtilage  
2 thereof.

3 (c) "Conveyance" means any motor vehicle, ship,  
4 vessel, railroad car, trailer, aircraft, or sleeping car.

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

13 (b) For purposes of this section, the luring or  
14 enticing, or attempted luring or enticing, of a minor child  
15 ~~under the age of 12~~ into a structure, dwelling, or conveyance  
16 without the consent of the minor's child's parent or legal  
17 guardian shall be prima facie evidence of other than a lawful  
18 purpose.

19 (3) It is an affirmative defense to a prosecution  
20 under this section that:

21 (a) The person reasonably believed that his or her  
22 action was necessary to prevent the minor child from being  
23 seriously injured.

24 (b) The person lured or enticed, or attempted to lure  
25 or entice, the minor child ~~under the age of 12~~ into a  
26 structure, dwelling, or conveyance for a lawful purpose.

27 (c) The person's actions were reasonable under the  
28 circumstances and the defendant did not have any intent to  
29 harm the health, safety, or welfare of the minor child.

30 Section 2. Subsection (7) of section 800.04, Florida  
31 Statutes, is amended to read:

1           800.04 Lewd or lascivious offenses committed upon or  
2 in the presence of persons less than 16 years of age.--  
3           (7) LEWD OR LASCIVIOUS EXHIBITION.--  
4           (a) A person who:  
5           1. Intentionally masturbates;  
6           2. Intentionally exposes the genitals in a lewd or  
7 lascivious manner; or  
8           3. Intentionally commits any other sexual act that  
9 does not involve actual physical or sexual contact with the  
10 victim, including, but not limited to, sadomasochistic abuse,  
11 sexual bestiality, or the simulation of any act involving  
12 sexual activity  
13  
14 in the presence of a victim who is less than 16 years of age,  
15 commits lewd or lascivious exhibition.  
16           (b) A person who:  
17           1. Intentionally masturbates;  
18           2. Intentionally exposes the genitals in a lewd or  
19 lascivious manner; or  
20           3. Intentionally commits any other sexual act that  
21 does not involve actual physical or sexual contact with the  
22 victim, including, but not limited to, sadomasochistic abuse,  
23 sexual bestiality, or the simulation of any act involving  
24 sexual activity  
25  
26 live over a computer on-line service, Internet service, or  
27 local bulletin board service and who knows or should know or  
28 has reason to believe that the transmission is viewed on a  
29 computer or television monitor by a victim in this state who  
30 is less than 16 years of age, commits lewd or lascivious  
31 exhibition. The fact that an undercover operative or law

1 enforcement officer was involved in the detection and  
2 investigation of an offense under this paragraph shall not  
3 constitute a defense to a prosecution under this paragraph.

4 (c)~~(b)~~ An offender 18 years of age or older who  
5 commits a lewd or lascivious exhibition commits a felony of  
6 the second degree, punishable as provided in s. 775.082, s.  
7 775.083, or s. 775.084.

8 (d)~~(c)~~ An offender less than 18 years of age who  
9 commits a lewd or lascivious exhibition commits a felony of  
10 the third degree, punishable as provided in s. 775.082, s.  
11 775.083, or s. 775.084.

12 Section 3. Subsection (2) of section 847.0135, Florida  
13 Statutes, is amended to read:

14 847.0135 Computer pornography; penalties.--

15 (2) COMPUTER PORNOGRAPHY.--A person who:

16 (a) Knowingly compiles, enters into, or transmits by  
17 means of computer;

18 (b) Makes, prints, publishes, or reproduces by other  
19 computerized means;

20 (c) Knowingly causes or allows to be entered into or  
21 transmitted by means of computer; or

22 (d) Buys, sells, receives, exchanges, or disseminates,  
23

24 any notice, statement, or advertisement of,~~or~~ any minor's  
25 name, telephone number, place of residence, physical  
26 characteristics, or other descriptive or identifying  
27 information, for purposes of facilitating, encouraging,  
28 offering, or soliciting sexual conduct of or with any minor,  
29 or the visual depiction of such conduct, commits a felony of  
30 the third degree, punishable as provided in s. 775.082, s.

31 775.083, or s. 775.084. The fact that an undercover operative

1 or law enforcement officer was involved in the detection and  
2 investigation of an offense under this section shall not  
3 constitute a defense to a prosecution under this section. ~~Any~~  
4 ~~person who violates the provisions of this subsection commits~~  
5 ~~a felony of the third degree, punishable as provided for in s.~~  
6 ~~775.082, s. 775.083, or s. 775.084.~~

7 Section 4. Paragraphs (d) and (e) of subsection (3) of  
8 section 921.0022, Florida Statutes, are amended to read:

9 921.0022 Criminal Punishment Code; offense severity  
10 ranking chart.--

11 (3) OFFENSE SEVERITY RANKING CHART

12	13 Florida	14 Statute	15 Felony	16 Degree	17 Description
18					(d) LEVEL 4
19	316.1935(3)		2nd		Driving at high speed or with
20					wanton disregard for safety while
21					fleeing or attempting to elude
22					law enforcement officer who is in
23					a marked patrol vehicle with
24	784.07(2)(b)		3rd		siren and lights activated.
25					Battery of law enforcement
26					officer, firefighter, intake
27	784.075		3rd		officer, etc.
28					Battery on detention or
29	784.08(2)(c)		3rd		commitment facility staff.
30					Battery on a person 65 years of
31					age or older.

1	784.081(3)	3rd	Battery on specified official or
2			employee.
3	784.082(3)	3rd	Battery by detained person on
4			visitor or other detainee.
5	784.083(3)	3rd	Battery on code inspector.
6	787.03(1)	3rd	Interference with custody;
7			wrongly takes child from
8			appointed guardian.
9	787.04(2)	3rd	Take, entice, or remove child
10			beyond state limits with criminal
11			intent pending custody
12			proceedings.
13	787.04(3)	3rd	Carrying child beyond state lines
14			with criminal intent to avoid
15			producing child at custody
16			hearing or delivering to
17			designated person.
18	790.115(1)	3rd	Exhibiting firearm or weapon
19			within 1,000 feet of a school.
20	790.115(2)(b)	3rd	Possessing electric weapon or
21			device, destructive device, or
22			other weapon on school property.
23	790.115(2)(c)	3rd	Possessing firearm on school
24			property.
25	800.04(7) <u>(d)</u> <del>(e)</del>	3rd	Lewd or lascivious exhibition;
26			offender less than 18 years.
27	810.02(4)(a)	3rd	Burglary, or attempted burglary,
28			of an unoccupied structure;
29			unarmed; no assault or battery.
30			
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1	810.02(4)(b)	3rd	Burglary, or attempted burglary,
2			of an unoccupied conveyance;
3			unarmed; no assault or battery.
4	810.06	3rd	Burglary; possession of tools.
5	810.08(2)(c)	3rd	Trespass on property, armed with
6			firearm or dangerous weapon.
7	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000
8			or more but less than \$20,000.
9	812.014		
10	(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will,
11			firearm, motor vehicle,
12			livestock, etc.
13	817.563(1)	3rd	Sell or deliver substance other
14			than controlled substance agreed
15			upon, excluding s. 893.03(5)
16			drugs.
17	828.125(1)	2nd	Kill, maim, or cause great bodily
18			harm or permanent breeding
19			disability to any registered
20			horse or cattle.
21	837.02(1)	3rd	Perjury in official proceedings.
22	837.021(1)	3rd	Make contradictory statements in
23			official proceedings.
24	843.025	3rd	Deprive law enforcement,
25			correctional, or correctional
26			probation officer of means of
27			protection or communication.
28	843.15(1)(a)	3rd	Failure to appear while on bail
29			for felony (bond estreature or
30			bond jumping).
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1	874.05(1)	3rd	Encouraging or recruiting another
2			to join a criminal street gang.
3	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s.
4			893.03(1)(a), (b), or (d), or
5			(2)(a) or (b) drugs).
6	914.14(2)	3rd	Witnesses accepting bribes.
7	914.22(1)	3rd	Force, threaten, etc., witness,
8			victim, or informant.
9	914.23(2)	3rd	Retaliation against a witness,
10			victim, or informant, no bodily
11			injury.
12	918.12	3rd	Tampering with jurors.
13			(e) LEVEL 5
14	316.027(1)(a)	3rd	Accidents involving personal
15			injuries, failure to stop;
16			leaving scene.
17	316.1935(4)	2nd	Aggravated fleeing or eluding.
18	322.34(6)	3rd	Careless operation of motor
19			vehicle with suspended license,
20			resulting in death or serious
21			bodily injury.
22	327.30(5)	3rd	Vessel accidents involving
23			personal injury; leaving scene.
24	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
25			knowing HIV positive.
26	790.01(2)	3rd	Carrying a concealed firearm.
27	790.162	2nd	Threat to throw or discharge
28			destructive device.
29	790.163	2nd	False report of deadly explosive.
30	790.165(2)	3rd	Manufacture, sell, possess, or
31			deliver hoax bomb.

1	790.221(1)	2nd	Possession of short-barreled
2			shotgun or machine gun.
3	790.23	2nd	Felons in possession of firearms
4			or electronic weapons or devices.
5	800.04(6)(c)	3rd	Lewd or lascivious conduct;
6			offender less than 18 years.
7	800.04(7) <u>(c)</u> <del>(b)</del>	2nd	Lewd or lascivious exhibition;
8			offender 18 years or older.
9	806.111(1)	3rd	Possess, manufacture, or dispense
10			fire bomb with intent to damage
11			any structure or property.
12	812.019(1)	2nd	Stolen property; dealing in or
13			trafficking in.
14	812.131(2)(b)	3rd	Robbery by sudden snatching.
15	812.16(2)	3rd	Owning, operating, or conducting
16			a chop shop.
17	817.034(4)(a)2.	2nd	Communications fraud, value
18			\$20,000 to \$50,000.
19	825.1025(4)	3rd	Lewd or lascivious exhibition in
20			the presence of an elderly person
21			or disabled adult.
22	827.071(4)	2nd	Possess with intent to promote
23			any photographic material, motion
24			picture, etc., which includes
25			sexual conduct by a child.
26	843.01	3rd	Resist officer with violence to
27			person; resist arrest with
28			violence.
29	874.05(2)	2nd	Encouraging or recruiting another
30			to join a criminal street gang;
31			second or subsequent offense.

1	893.13(1)(a)1.	2nd	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).
5	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
6			cannabis (or other s.
7			893.03(1)(c), (2)(c), (3), or (4)
8			drugs) within 1,000 feet of a
9			child care facility or school.
10	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
11			cocaine (or other s.
12			893.03(1)(a), (1)(b), (1)(d),
13			(2)(a), or (2)(b) drugs) within
14			200 feet of university or public
15			park.
16	893.13(1)(e)	2nd	Sell, manufacture, or deliver
17			cannabis or other drug prohibited
18			under s. 893.03(1)(c), (2)(c),
19			(3), or (4) within 1,000 feet of
20			property used for religious
21			services or a specified business
22			site.
23	893.13(1)(f)1.	1st	Sell, manufacture, or deliver
24			cocaine (or other s.
25			893.03(1)(a), (1)(b), (1)(d), or
26			(2)(a), or (2)(b) drugs) within
27			200 feet of public housing
28			facility.
29	893.13(4)(b)	2nd	Deliver to minor cannabis (or
30			other s. 893.03(1)(c), (2)(c),
31			(3), or (4) drugs).

1           Section 5. For the purpose of incorporating the  
2 amendment made by this act to section 800.04, Florida  
3 Statutes, in references thereto, subsection (9) of section  
4 394.912, Florida Statutes, is reenacted to read:

5           394.912 Definitions.--As used in this part, the term:

6           (9) "Sexually violent offense" means:

7           (a) Murder of a human being while engaged in sexual  
8 battery in violation of s. 782.04(1)(a)2.;

9           (b) Kidnapping of a child under the age of 13 and, in  
10 the course of that offense, committing:

11           1. Sexual battery; or

12           2. A lewd, lascivious, or indecent assault or act upon  
13 or in the presence of the child;

14           (c) Committing the offense of false imprisonment upon  
15 a child under the age of 13 and, in the course of that  
16 offense, committing:

17           1. Sexual battery; or

18           2. A lewd, lascivious, or indecent assault or act upon  
19 or in the presence of the child;

20           (d) Sexual battery in violation of s. 794.011;

21           (e) Lewd, lascivious, or indecent assault or act upon  
22 or in presence of the child in violation of s. 800.04;

23           (f) An attempt, criminal solicitation, or conspiracy,  
24 in violation of s. 777.04, of a sexually violent offense;

25           (g) Any conviction for a felony offense in effect at  
26 any time before October 1, 1998, which is comparable to a  
27 sexually violent offense under paragraphs (a)-(f) or any  
28 federal conviction or conviction in another state for a felony  
29 offense that in this state would be a sexually violent  
30 offense; or

31

1 (h) Any criminal act that, either at the time of  
2 sentencing for the offense or subsequently during civil  
3 commitment proceedings under this part, has been determined  
4 beyond a reasonable doubt to have been sexually motivated.

5 Section 6. For the purpose of incorporating the  
6 amendment made by this act to section 800.04, Florida  
7 Statutes, in references thereto, paragraph (a) of subsection  
8 (9) of section 775.082, Florida Statutes, is reenacted to  
9 read:

10 775.082 Penalties; applicability of sentencing  
11 structures; mandatory minimum sentences for certain  
12 reoffenders previously released from prison.--

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

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

1           p. Armed burglary;  
2           q. Burglary of an occupied structure or dwelling; or  
3           r. Any felony violation of s. 790.07, s. 800.04, s.  
4 827.03, or s. 827.071;

5  
6 within 3 years of being released from a state correctional  
7 facility operated by the Department of Corrections or a  
8 private vendor.

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

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

24           a. For a felony punishable by life, by a term of  
25 imprisonment for life;

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

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

30           d. For a felony of the third degree, by a term of  
31 imprisonment of 5 years.

1           Section 7. For the purpose of incorporating the  
2 amendment made by this act to section 800.04, Florida  
3 Statutes, in references thereto, paragraph (d) of subsection  
4 (1) of section 775.084, Florida Statutes, is reenacted to  
5 read:

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

10           (1) As used in this act:

11           (d) "Violent career criminal" means a defendant for  
12 whom the court must impose imprisonment pursuant to paragraph  
13 (4)(d), 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, as described in s. 800.04;

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

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

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

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

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

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

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

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

21           Section 8. For the purpose of incorporating the  
22 amendment made by this act to section 800.04, Florida  
23 Statutes, in references thereto, subsection (7) of section  
24 775.15, Florida Statutes, is reenacted to read:

25           775.15 Time limitations.--

26           (7) If the victim of a violation of s. 794.011, former  
27 s. 794.05, Florida Statutes 1995, s. 800.04, or s. 826.04 is  
28 under the age of 16, the applicable period of limitation, if  
29 any, does not begin to run until the victim has reached the  
30 age of 16 or the violation is reported to a law enforcement  
31 agency or other governmental agency, whichever occurs earlier.



1 Such law enforcement agency or other governmental agency shall  
2 promptly report such allegation to the state attorney for the  
3 judicial circuit in which the alleged violation occurred. If  
4 the offense is a first or second degree felony violation of s.  
5 794.011, and the crime is reported within 72 hours after its  
6 commission, paragraph (1)(b) applies. This subsection applies  
7 to any such offense except an offense the prosecution of which  
8 would have been barred by subsection (2) on or before December  
9 31, 1984.

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

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

19 (4) SEXUAL PREDATOR CRITERIA.--

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

25 1. The felony meets the criteria of former ss.  
26 775.22(2) and 775.23(2), specifically, the felony is:

27 a. A capital, life, or first-degree felony violation  
28 of s. 787.01 or s. 787.02, where the victim is a minor and the  
29 defendant is not the victim's parent, or of chapter 794 or s.  
30 847.0145, or a violation of a similar law of another  
31 jurisdiction;

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

5           c. Any second-degree or greater felony violation of s.  
6 787.01 or s. 787.02, where the victim is a minor and the  
7 defendant is not the victim's parent; chapter 794; s. 796.03;  
8 s. 800.04; s. 825.1025(2)(b); s. 827.071; or s. 847.0145; or a  
9 violation of a similar law of another jurisdiction, and the  
10 offender has previously been convicted of or found to have  
11 committed, or has pled nolo contendere or guilty to,  
12 regardless of adjudication, any violation of s. 787.01 or s.  
13 787.02, where the victim is a minor and the defendant is not  
14 the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s.  
15 794.023; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.  
16 847.0133; s. 847.0135; or s. 847.0145, or a violation of a  
17 similar law of another jurisdiction;

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

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

24           (10) PENALTIES.--

25           (b) A sexual predator who has been convicted of or  
26 found to have committed, or has pled nolo contendere or guilty  
27 to, regardless of adjudication, any violation of s.  
28 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 800.04; s.  
29 827.071; s. 847.0133; or s. 847.0145, or a violation of a  
30 similar law of another jurisdiction, when the victim of the  
31 offense was a minor, and who works, whether for compensation

1 or as a volunteer, at any business, school, day care center,  
2 park, playground, or other place where children regularly  
3 congregate, commits a felony of the third degree, punishable  
4 as provided in s. 775.082, s. 775.083, or s. 775.084.

5 Section 10. For the purpose of incorporating the  
6 amendment made by this act to section 800.04, Florida  
7 Statutes, in references thereto, subsection (3) of section  
8 787.01, Florida Statutes, is reenacted to read:

9 787.01 Kidnapping; kidnapping of child under age 13,  
10 aggravating circumstances.--

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

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

15 2. Sexual battery, as defined in chapter 794, against  
16 the child;

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

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

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

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

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

1           Section 11. For the purpose of incorporating the  
2 amendment made by this act to section 800.04, Florida  
3 Statutes, in references thereto, subsection (3) of section  
4 787.02, Florida Statutes, is reenacted to read:

5           787.02 False imprisonment; false imprisonment of child  
6 under age 13, aggravating circumstances.--

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

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

15           2. Sexual battery, as defined in chapter 794, against  
16 the child;

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

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

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

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

29           Section 12. For the purpose of incorporating the  
30 amendment made by this act to section 800.04, Florida  
31

1 Statutes, in references thereto, section 914.16, Florida  
2 Statutes, is reenacted to read:  
3           914.16 Child abuse and sexual abuse of victims under  
4 age 16 or persons with mental retardation; limits on  
5 interviews.--The chief judge of each judicial circuit, after  
6 consultation with the state attorney and the public defender  
7 for the judicial circuit, the appropriate chief law  
8 enforcement officer, and any other person deemed appropriate  
9 by the chief judge, shall provide by order reasonable limits  
10 on the number of interviews that a victim of a violation of s.  
11 794.011, s. 800.04, or s. 827.03 who is under 16 years of age  
12 or a victim of a violation of s. 794.011, s. 800.02, s.  
13 800.03, or s. 825.102 who is a person with mental retardation  
14 as defined in s. 393.063(44) must submit to for law  
15 enforcement or discovery purposes. The order shall, to the  
16 extent possible, protect the victim from the psychological  
17 damage of repeated interrogations while preserving the rights  
18 of the public, the victim, and the person charged with the  
19 violation.

20           Section 13. For the purpose of incorporating the  
21 amendment made by this act to section 800.04, Florida  
22 Statutes, in references thereto, paragraph (a) of subsection  
23 (1) of section 943.0435, Florida Statutes, is reenacted to  
24 read:

25           943.0435 Sexual offenders required to register with  
26 the department; penalty.--

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

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

29           1. Convicted of committing, or attempting, soliciting,  
30 or conspiring to commit, any of the criminal offenses  
31 proscribed in the following statutes in this state or similar

1 offenses in another jurisdiction: s. 787.01 or s. 787.02,  
2 where the victim is a minor and the defendant is not the  
3 victim's parent; s. 787.025; chapter 794; s. 796.03; s.  
4 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s.  
5 847.0145; or any similar offense committed in this state which  
6 has been redesignated from a former statute number to one of  
7 those listed in this subparagraph.

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

16           Section 14. For the purpose of incorporating the  
17 amendment made by this act to section 800.04, Florida  
18 Statutes, in references thereto, section 943.0585, Florida  
19 Statutes, is reenacted to read:

20           943.0585 Court-ordered expunction of criminal history  
21 records.--The courts of this state have jurisdiction over  
22 their own procedures, including the maintenance, expunction,  
23 and correction of judicial records containing criminal history  
24 information to the extent such procedures are not inconsistent  
25 with the conditions, responsibilities, and duties established  
26 by this section. Any court of competent jurisdiction may  
27 order a criminal justice agency to expunge the criminal  
28 history record of a minor or an adult who complies with the  
29 requirements of this section. The court shall not order a  
30 criminal justice agency to expunge a criminal history record  
31 until the person seeking to expunge a criminal history record

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

1 and any request for expunction of a criminal history record  
2 may be denied at the sole discretion of the court.

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

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

8 (b) The petitioner's sworn statement attesting that  
9 the petitioner:

10 1. Has never, prior to the date on which the petition  
11 is filed, been adjudicated guilty of a criminal offense or  
12 comparable ordinance violation or adjudicated delinquent for  
13 committing a felony or a misdemeanor specified in s.  
14 943.051(3)(b).

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

19 3. Has never secured a prior sealing or expunction of  
20 a criminal history record under this section, former s.  
21 893.14, former s. 901.33, or former s. 943.058, or from any  
22 jurisdiction outside the state.

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

27  
28 Any person who knowingly provides false information on such  
29 sworn statement to the court commits a felony of the third  
30 degree, punishable as provided in s. 775.082, s. 775.083, or  
31 s. 775.084.



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

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

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

16           2. That an indictment, information, or other charging  
17 document, if filed or issued in the case, was dismissed or  
18 nolle prosequi by the state attorney or statewide prosecutor,  
19 or was dismissed by a court of competent jurisdiction.

20           3. That the criminal history record does not relate to  
21 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,  
22 chapter 839, s. 893.135, or a violation enumerated in s.  
23 907.041, where the defendant was found guilty of, or pled  
24 guilty or nolo contendere to any such offense, or that the  
25 defendant, as a minor, was found to have committed, or pled  
26 guilty or nolo contendere to committing, such an offense as a  
27 delinquent act, without regard to whether adjudication was  
28 withheld.

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

1 (c) Has submitted to the department a certified copy  
2 of the disposition of the charge to which the petition to  
3 expunge pertains.

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

9 (e) Has not been adjudicated guilty of, or adjudicated  
10 delinquent for committing, any of the acts stemming from the  
11 arrest or alleged criminal activity to which the petition to  
12 expunge pertains.

13 (f) Has never secured a prior sealing or expunction of  
14 a criminal history record under this section, former s.  
15 893.14, former s. 901.33, or former s. 943.058.

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

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

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

29 (a) In judicial proceedings under this section, a copy  
30 of the completed petition to expunge shall be served upon the  
31 appropriate state attorney or the statewide prosecutor and

1 upon the arresting agency; however, it is not necessary to  
2 make any agency other than the state a party. The appropriate  
3 state attorney or the statewide prosecutor and the arresting  
4 agency may respond to the court regarding the completed  
5 petition to expunge.

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

17 (c) For an order to expunge entered by a court prior  
18 to July 1, 1992, the department shall notify the appropriate  
19 state attorney or statewide prosecutor of an order to expunge  
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 expunge. The  
27 department shall seal the record until such time as the order  
28 is voided 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 expunge 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 expunge when the petitioner for such  
11 order failed to obtain the certificate of eligibility as  
12 required by this section or such order does not otherwise  
13 comply with the requirements of this section.

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

28 (a) The person who is the subject of a criminal  
29 history record that is expunged under this section or under  
30 other provisions of law, including former s. 893.14, former s.  
31 901.33, and former s. 943.058, may lawfully deny or fail to

1 acknowledge the arrests covered by the expunged record, except  
2 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. 943.059;
- 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.  
17 415.1075(4), 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 that  
22 licenses child care facilities.

23 (b) Subject to the exceptions in paragraph (a), a  
24 person who has been granted an expunction 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 an  
29 expunged criminal history record.

30 (c) Information relating to the existence of an  
31 expunged criminal history record which is provided in

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

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

23 Section 15. For the purpose of incorporating the  
24 amendment made by this act to section 800.04, Florida  
25 Statutes, in references thereto, section 943.059, Florida  
26 Statutes, is reenacted to read:

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

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

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

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

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

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

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

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

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

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



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

3

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

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

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

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

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

29 (d) Has not been adjudicated guilty of or adjudicated  
30 delinquent for committing any of the acts stemming from the  
31

1 arrest or alleged criminal activity to which the petition to  
2 seal pertains.

3 (e) Has never secured a prior sealing or expunction of  
4 a criminal history record under this section, former s.  
5 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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

30 (c) For an order to seal entered by a court prior to  
31 July 1, 1992, the department shall notify the appropriate

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

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

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

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

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

- 16           1. Is a candidate for employment with a criminal  
17 justice agency;
- 18           2. Is a defendant in a criminal prosecution;
- 19           3. Concurrently or subsequently petitions for relief  
20 under this section or s. 943.0585;
- 21           4. Is a candidate for admission to The Florida Bar;
- 22           5. Is seeking to be employed or licensed by or to  
23 contract with the Department of Children and Family Services  
24 or the Department of Juvenile Justice or to be employed or  
25 used by such contractor or licensee in a sensitive position  
26 having direct contact with children, the developmentally  
27 disabled, the aged, or the elderly as provided in s.  
28 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
29 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
30 415.103, s. 985.407, or chapter 400; or

31

1           6. Is seeking to be employed or licensed by the Office  
2 of Teacher Education, Certification, Staff Development, and  
3 Professional Practices of the Department of Education, any  
4 district school board, or any local governmental entity which  
5 licenses child care facilities.

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

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

31

1           (5) STATUTORY REFERENCES.--Any reference to any other  
2 chapter, section, or subdivision of the Florida Statutes in  
3 this section constitutes a general reference under the  
4 doctrine of incorporation by reference.

5           Section 16. For the purpose of incorporating the  
6 amendment 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, is reenacted to  
9 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. 787.02, 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 17. For the purpose of incorporating the  
27 amendment made by this act to section 800.04, Florida  
28 Statutes, in references thereto, paragraph (a) of subsection  
29 (1) of section 944.607, Florida Statutes, is reenacted to  
30 read:

31

1           944.607 Notification to Department of Law Enforcement  
2 of information on sexual offenders.--

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

4           (a) "Sexual offender" means a person who is in the  
5 custody or control of, or under the supervision of, the  
6 department or is in the custody of a private correctional  
7 facility on or after October 1, 1997, as a result of a  
8 conviction for committing, or attempting, soliciting, or  
9 conspiring to commit, any of the criminal offenses proscribed  
10 in the following statutes in this state or similar offenses in  
11 another jurisdiction: s. 787.01 or s. 787.02, where the  
12 victim is a minor and the defendant is not the victim's  
13 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.  
14 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0145;  
15 or any similar offense committed in this state which has been  
16 redesignated from a former statute number to one of those  
17 listed in this paragraph.

18           Section 18. 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  
21 947.1405, Florida Statutes, is reenacted to read:

22           947.1405 Conditional release program.--

23           (7)(a) Any inmate who is convicted of a crime  
24 committed on or after October 1, 1995, or who has been  
25 previously convicted of a crime committed on or after October  
26 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071,  
27 or s. 847.0145, and is subject to conditional release  
28 supervision, shall have, in addition to any other conditions  
29 imposed, the following special conditions imposed by the  
30 commission:

31

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

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

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

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

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

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



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 releasee must submit two  
9 specimens of blood to the Florida Department of Law  
10 Enforcement to be registered with the DNA database.

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

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

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

25           1. As part of a treatment program, participation in a  
26 minimum of one annual polygraph examination to obtain  
27 information necessary for risk management and treatment and to  
28 reduce the sex offender's denial mechanisms. The polygraph  
29 examination must be conducted by a polygrapher trained  
30 specifically in the use of the polygraph for the monitoring of  
31 sex offenders, where available, and at the expense of the sex

1 offender. The results of the polygraph examination shall not  
2 be used as evidence in a hearing to prove that a violation of  
3 supervision has occurred.

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

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

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

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

18           Section 19. For the purpose of incorporating the  
19 amendment made by this act to section 800.04, Florida  
20 Statutes, in references thereto, subsection (15) of section  
21 948.01, Florida Statutes, is reenacted to read:

22           948.01 When court may place defendant on probation or  
23 into community control.--

24           (15) Effective for an offense committed on or after  
25 July 1, 1998, a person is ineligible for placement on  
26 administrative probation if the person is sentenced to or is  
27 serving a term of probation or community control, regardless  
28 of the conviction or adjudication, for committing, or  
29 attempting, conspiring, or soliciting to commit, any of the  
30 felony offenses described in s. 787.01 or s. 787.02, where the  
31 victim is a minor and the defendant is not the victim's

1 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.  
2 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s.  
3 847.0145.

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

8 948.03 Terms and conditions of probation or community  
9 control.--

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

19 (a) Lewd or lascivious battery, lewd or lascivious  
20 molestation, lewd or lascivious conduct, or lewd or lascivious  
21 exhibition, as defined in s. 800.04.

22 (b) Sexual battery, as defined in chapter 794, against  
23 a child.

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

26  
27 Such counseling shall be required to be obtained from a  
28 community mental health center, a recognized social service  
29 agency providing mental health services, or a private mental  
30 health professional or through other professional counseling.

31

1 The plan for counseling for the individual shall be provided  
2 to the court for review.

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

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

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

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

24 3. Active participation in and successful completion  
25 of a sex offender treatment program with therapists  
26 specifically trained to treat sex offenders, at the  
27 probationer's or community controllee's own expense. If a  
28 specially trained therapist is not available within a 50-mile  
29 radius of the probationer's or community controllee's  
30 residence, the offender shall participate in other appropriate  
31 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 sentencing court  
9 without another adult present who is responsible for the  
10 child's welfare, has been advised of the crime, and is  
11 approved by the sentencing court.

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.

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 probationer or community  
24 controllee must submit two specimens of blood to the Florida  
25 Department of Law Enforcement to be registered with the DNA  
26 data bank.

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

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 21. For the purpose of incorporating the  
26 amendment made by this act to section 800.04, Florida  
27 Statutes, in references thereto, paragraph (a) of subsection  
28 (2) of section 948.06, Florida Statutes, is reenacted to read:

29           948.06 Violation of probation or community control;  
30 revocation; modification; continuance; failure to pay  
31 restitution or cost of supervision.--

1           (2)(a) When any state or local law enforcement agency  
2 investigates or arrests a person for committing, or  
3 attempting, soliciting, or conspiring to commit, a violation  
4 of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 827.071,  
5 s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement  
6 agency shall contact the Department of Corrections to verify  
7 whether the person under investigation or under arrest is on  
8 probation, community control, parole, conditional release, or  
9 control release.

10           Section 22. This act shall take effect October 1,  
11 2000.

12  
13                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
14   COMMITTEE SUBSTITUTE FOR  
15   Senate Bill 1618

- 16 -       Prohibits the luring or enticing of a minor into a  
17       building, structure, or conveyance for other than a  
18       lawful purpose.  
19 -       Corrects an omission in the section relating to computer  
20       pornography which does not expressly state the conduct  
21       described in that section is prohibited.  
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