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HB 0479

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A bill to be entitled

An act relating to the offense of stalking; amending s. 784.048, F.S.; defining the term "cyberstalk" to mean communication by means of electronic mail or electronic communication which causes substantial emotional distress and does not serve a legitimate purpose; including within the offenses of stalking and aggravated stalking the willful, malicious, and repeated cyberstalking of another person; providing penalties; revising the elements of the offense of aggravated stalking to include placing a person in fear of death or bodily injury of the person or the person's child, sibling, spouse, parent, or dependent; reenacting ss. 775.084(1)(d), 790.065(2)(c), 921.0022(3)(f) and (g), and 960.001(1)(b), F.S., to incorporate the amendment to s. 784.048, F.S., in references thereto; providing an effective date.

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

Section 1. Section 784.048, Florida Statutes, is amended to read:

784.048 Stalking; definitions; penalties.--

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

(a) "Harass" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course



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of conduct." Such constitutionally protected activity includes picketing or other organized protests.

(c) "Credible threat" means a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.

(d) "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) Any person who willfully, maliciously, and repeatedly follows, ~~or~~ harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who willfully, maliciously, and repeatedly follows, ~~or~~ harasses, or cyberstalks another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent, commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who, after an injunction for protection against repeat violence or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that



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person's property, knowingly, willfully, maliciously, and repeatedly follows, ~~or~~ harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who willfully, maliciously, and repeatedly follows, ~~or~~ harasses, or cyberstalks a minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any law enforcement officer may arrest, without a warrant, any person he or she has probable cause to believe has violated the provisions of this section.

Section 2. For the purpose of incorporating the amendments made by this act to section 784.048, Florida Statutes, in references thereto, paragraph (d) of subsection(1) of section 775.084, Florida Statutes, is reenacted to read:

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

(1) As used in this act:

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

Section 3. For the purpose of incorporating the amendments made by this act to section 784.048, Florida Statutes, in references thereto, paragraph (c) of subsection(2) of section 790.065, Florida Statutes, is reenacted to read:

790.065 Sale and delivery of firearms.--

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(c)1. Review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a dangerous crime as specified in s. 907.041(4)(a) or for any of the following enumerated offenses:

- a. Criminal anarchy under ss. 876.01 and 876.02.
- b. Extortion under s. 836.05.
- c. Explosives violations under s. 552.22(1) and (2).
- d. Controlled substances violations under chapter 893.
- e. Resisting an officer with violence under s. 843.01.
- f. Weapons and firearms violations under this chapter.
- g. Treason under s. 876.32.
- h. Assisting self-murder under s. 782.08.



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- i. Sabotage under s. 876.38.
- j. Stalking or aggravated stalking under s. 784.048.

If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a conditional nonapproval number.

2. Within 24 working hours, the department shall determine the disposition of the indictment, information, or arrest and inform the licensee as to whether the potential buyer is prohibited from receiving or possessing a firearm. For purposes of this paragraph, "working hours" means the hours from 8 a.m. to 5 p.m. Monday through Friday, excluding legal holidays.

3. The office of the clerk of court, at no charge to the department, shall respond to any department request for data on the disposition of the indictment, information, or arrest as soon as possible, but in no event later than 8 working hours.

4. The department shall determine as quickly as possible within the allotted time period whether the potential buyer is prohibited from receiving or possessing a firearm.

5. If the potential buyer is not so prohibited, or if the department cannot determine the disposition information within the allotted time period, the department shall provide the licensee with a conditional approval number.

6. If the buyer is so prohibited, the conditional nonapproval number shall become a nonapproval number.

7. The department shall continue its attempts to obtain the disposition information and may retain a record of all approval numbers granted without sufficient disposition information. If the department later obtains disposition information which indicates:



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a. That the potential buyer is not prohibited from owning a firearm, it shall treat the record of the transaction in accordance with this section; or

b. That the potential buyer is prohibited from owning a firearm, it shall immediately revoke the conditional approval number and notify local law enforcement.

8. During the time that disposition of the indictment, information, or arrest is pending and until the department is notified by the potential buyer that there has been a final disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect.

Section 4. For the purpose of incorporating the amendments made by this act to section 784.048, Florida Statutes, in references thereto, paragraphs (f) and (g) of subsection (3) of section 921.0022, Florida Statutes, are reenacted to read:

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

(3) OFFENSE SEVERITY RANKING CHART

Florida Felony

Statute	Degree	Description
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(f) LEVEL 6

316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
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316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
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775.0875(1)	3rd	Taking firearm from law
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		enforcement officer.
775.21(10)	3rd	Sexual predators; failure to register; failure to renew driver's license or identification card.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.





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784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with



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specified minor.

800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
812.014(2)(b)2.	2nd	Property stolen; cargo valued at less than \$50,000, grand theft in 2nd degree.
812.015(9)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).



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817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
827.03(1)	3rd	Abuse of a child.
827.03(3)(c)	3rd	Neglect of a child.
827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.



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843.12	3rd	Aids or assists person to escape.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
943.0435(9)	3rd	Sex offenders; failure to comply with reporting requirements.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.



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(g) LEVEL 7

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920(2)	3rd	Medicaid provider fraud.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.



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461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.



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484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the



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act, procurement, or culpable  
negligence of another  
(manslaughter).

782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.





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784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.



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790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; cargo stolen



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		valued at \$50,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but



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less than \$100,000.

827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or(2)(c)4.) within 1,000 feet of a child care facility or school.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or(2)(c)4., within 1,000 feet of property used for religious services or a specified business site.



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893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a),(1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.



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893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
(1)(h)1.a.		
893.135	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
(1)(j)1.a.		
893.135	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
(1)(k)2.a.		
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

Section 5. For the purpose of incorporating the amendments made by this act to section 784.048, Florida Statutes, in references thereto, paragraph (b) of subsection(1) of section 960.001, Florida Statutes, is reenacted to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.--

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile



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Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement the provisions of s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(b) Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim.--In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048; or domestic violence, pursuant to s. 25.385:

1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to complete the victim notification card.

2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete the victim notification card, a copy of the victim notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident



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report or warrant originated. The notification card shall, at a minimum, consist of:

- a. The name, address, and phone number of the victim; or
- b. The name, address, and phone number of the appropriate next of kin of the victim; or
- c. The name, address, and phone number of a designated contact other than the victim or appropriate next of kin of the victim; and
- d. Any relevant identification or case numbers assigned to the case.

3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other designated contact a written notification of the defendant's release.

4. Unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or





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residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.

5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.207 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.207, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact, as provided in this paragraph, that the defendant has been or will be released.

Section 6. This act shall take effect October 1, 2003.