

1 A bill to be entitled
2 An act relating to exploited children; amending s. 92.56,
3 F.S.; providing specified protections to victims in any
4 civil or criminal proceeding involving the production,
5 possession, or promotion of child pornography where the
6 victim depicted in the image or images is a party to the
7 case or a witness in the case; permitting use of a
8 pseudonym to designate the victim of a crime involving a
9 victim of production, possession, or promotion of child
10 pornography; revising provisions concerning use of victim
11 pseudonyms to specify that they may be used in civil and
12 criminal proceedings; amending s. 800.04, F.S., relating
13 to lewd or lascivious exhibition, to conform to changes
14 made by the act; creating s. 847.002, F.S.; requiring law
15 enforcement officers submitting a case for prosecution
16 that involves the creation, possession, or promotion of
17 child pornography to provide specified information to
18 prosecutors; requiring prosecutors to pursue prosecutions
19 regarding images of child pornography wherein a known
20 victim from within this state is depicted; requiring
21 prosecutors to enter specified information in a database
22 maintained by the Attorney General; creating s. 847.01355,
23 F.S., relating to lewd and lascivious exhibition on a
24 computer; providing an exception; providing penalties;
25 creating s. 847.01357, F.S.; providing a civil remedy for
26 any person who is a victim of a listed sexual abuse crime
27 wherein any portion of that abuse was used in the
28 production of child pornography and who suffers personal

29 or psychological injury as a result of the production,
30 promotion, or possession of such images; specifying
31 damages to persons who are further exploited following a
32 recovery under this section; providing for limitation of
33 actions; providing for confidential pseudonyms to
34 specified claimants; precluding a defense to certain civil
35 actions; permitting the Attorney General to pursue cases
36 on behalf of victims; providing for disposition of damages
37 and attorney's fees; amending s. 960.03, F.S.; including
38 crimes that result in psychological injury or trauma as
39 compensable crimes for purposes of victims compensation;
40 expanding the definition of "victim" for purposes of
41 victim compensation to include any minor who has suffered
42 physical or psychological injury as a result of online
43 sexual solicitation and including any person who, while a
44 child, was depicted in an image of child pornography;
45 amending ss. 90.404, 92.565, 394.912, 409.2355, 775.082,
46 775.084, 775.15, 775.21, 784.048, 787.01, 787.02, 787.025,
47 794.065, 914.16, 921.0022, 921.244, 938.10, 943.0435,
48 943.04354, 943.0585, 943.059, 944.606, 944.607, 947.1405,
49 948.013, 948.03, 948.06, 948.101, 948.30, 948.31, and
50 948.32, F.S.; conforming provisions to changes made by the
51 act; providing an effective date.

52
53 WHEREAS, children who are sexually abused and then
54 exploited by the creation of permanent images of that sexual
55 abuse through child pornography are further harmed by the

HB 605

2008

56 continued possession, promotion, and distribution of those
57 images on the Internet, and

58 WHEREAS, the possession of child pornography is not a
59 victimless crime, and over 1,200 victims of child pornography
60 are known by law enforcement, over 30 of whom were citizens of
61 this state at the time of their abuse, and

62 WHEREAS, victims of child pornography suffer repeated
63 unending abuse not only as children, but throughout their lives,
64 by those individuals who engage in the collection and
65 distribution of the image of the victim's sexual abuse and
66 exploitation, and

67 WHEREAS, victims of child pornography currently do not
68 receive notice, consideration, compensation, or any other rights
69 assured to crime victims in this state pursuant to chapter 960,
70 F.S., and

71 WHEREAS, victims of child pornography are entitled to be
72 heard and considered in any case involving the production,
73 possession, and promotion of an image of their sexual-abuse, and
74 these victims are due all the rights and protections afforded
75 every other crime victim in this state, NOW, THEREFORE,

76

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

78

79 Section 1. Subsections (1) and (3) of section 92.56,
80 Florida Statutes, are amended to read:

81 92.56 Judicial proceedings and court records involving
82 sexual offenses.--

HB 605

2008

83 (1) (a) All court records, including testimony from
84 witnesses, that reveal the photograph, name, or address of the
85 victim of an alleged offense described in chapter 794 or chapter
86 800, or act of child abuse, aggravated child abuse, or sexual
87 performance by a child as described in chapter 827, are
88 confidential and exempt from the provisions of s. 24(a), Art. I
89 of the State Constitution and may not be made public if, upon a
90 showing to the trial court with jurisdiction over the alleged
91 offense, the state or the victim demonstrates that:

92 ~~1.(a)~~ The identity of the victim is not already known in
93 the community;

94 ~~2.(b)~~ The victim has not voluntarily called public
95 attention to the offense;

96 ~~3.(e)~~ The identity of the victim has not otherwise become
97 a reasonable subject of public concern;

98 ~~4.(d)~~ The disclosure of the victim's identity would be
99 offensive to a reasonable person; and

100 ~~5.(e)~~ The disclosure of the victim's identity would:

101 ~~a.1-~~ Endanger the victim because the assailant has not
102 been apprehended and is not otherwise known to the victim;

103 ~~b.2-~~ Endanger the victim because of the likelihood of
104 retaliation, harassment, or intimidation;

105 ~~c.3-~~ Cause severe emotional or mental harm to the victim;

106 ~~d.4-~~ Make the victim unwilling to testify as a witness; or

107 ~~e.5-~~ Be inappropriate for other good cause shown.

108 (b) In any civil or criminal proceeding involving the
109 production, possession, or promotion of child pornography where
110 the victim depicted in the image or images is a party to the

111 case or a witness in the case, the showing required in
 112 subparagraph (a)1. is waived and all the protections under this
 113 section will apply to protect the victim's privacy.

114 (3) The state may use a pseudonym instead of the victim's
 115 name to designate the victim of a crime described in chapter 794
 116 or chapter 800, or of child abuse, aggravated child abuse, or
 117 sexual performance by a child as described in chapter 827, or
 118 any crime involving a victim of production, possession, or
 119 promotion of child pornography as described in chapter 827 or
 120 chapter 847, in all court records and records of court
 121 proceedings, both civil and criminal.

122 Section 2. Subsection (7) of section 800.04, Florida
 123 Statutes, is amended, and paragraph (b) of that subsection is
 124 renumbered as s. 847.01355, Florida Statutes, and amended, to
 125 read:

126 800.04 Lewd or lascivious offenses committed upon or in
 127 the presence of persons less than 16 years of age.--

128 (7) LEWD OR LASCIVIOUS EXHIBITION.--

129 (a) A person who:

130 1. Intentionally masturbates;

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

133 3. Intentionally commits any other sexual act that does
 134 not involve actual physical or sexual contact with the victim,
 135 including, but not limited to, sadomasochistic abuse, sexual
 136 bestiality, or the simulation of any act involving sexual
 137 activity

138

HB 605

2008

139 | in the presence of a victim who is less than 16 years of age,
 140 | commits lewd or lascivious exhibition.

141 | ~~(b)(e)~~ An offender 18 years of age or older who commits a
 142 | lewd or lascivious exhibition commits a felony of the second
 143 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 144 | 775.084.

145 | ~~(c)(d)~~ An offender less than 18 years of age who commits a
 146 | lewd or lascivious exhibition commits a felony of the third
 147 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 148 | 775.084.

149 | 847.01355 Lewd or lascivious exhibition using a
 150 | computer.--

151 | ~~(1)(b)~~ A person who:

152 | ~~(a)1-~~ Intentionally masturbates;

153 | ~~(b)2-~~ Intentionally exposes the genitals in a lewd or
 154 | lascivious manner; or

155 | ~~(c)3-~~ Intentionally commits any other sexual act that does
 156 | not involve actual physical or sexual contact with the victim,
 157 | including, but not limited to, sadomasochistic abuse, sexual
 158 | bestiality, or the simulation of any act involving sexual
 159 | activity

160 |
 161 | live over a computer online service, Internet service, or local
 162 | bulletin board service and who knows or should know or has
 163 | reason to believe that the transmission is viewed on a computer
 164 | or television monitor by a victim in this state who is less than
 165 | 16 years of age, commits lewd or lascivious exhibition in
 166 | violation of this section. The fact that an undercover operative

167 or law enforcement officer was involved in the detection and
 168 investigation of an offense under this section ~~paragraph~~ shall
 169 not constitute a defense to a prosecution under this section
 170 ~~paragraph~~.

171 (2) An offender 18 years of age or older who commits a
 172 lewd or lascivious exhibition using a computer commits a felony
 173 of the second degree, punishable as provided in s. 775.082, s.
 174 775.083, or s. 775.084.

175 (3) An offender less than 18 years of age who commits a
 176 lewd or lascivious exhibition using a computer commits a felony
 177 of the third degree, punishable as provided in s. 775.082, s.
 178 775.083, or s. 775.084.

179 (4) A mother's breastfeeding of her baby does not under
 180 any circumstance constitute a violation of this section.

181 Section 3. Section 847.002, Florida Statutes, is created
 182 to read:

183 847.002 Child pornography prosecutions.--

184 (1) Any law enforcement officer in this state submitting a
 185 case for prosecution that involves the creation, possession, or
 186 promotion of child pornography shall provide to the designated
 187 prosecutor, within 30 days of arrest of a person charged with
 188 the creation, possession, or promotion such child pornography a
 189 detailed list of all images involved in the case which contain
 190 the depiction of a known victim of child pornography as defined
 191 in s. 960.03. In addition, the arresting officer shall include
 192 the law enforcement contact information provided for that victim
 193 by the National Center for Missing and Exploited Children's
 194 Child Victim Identification Program.

195 (2) The state attorneys and the statewide prosecutor must,
 196 whenever possible, pursue prosecution of those involved in the
 197 creation, possession, or promotion of images of child
 198 pornography described in subsection (1) in which a known victim
 199 from within this state is depicted. Further, the prosecuting
 200 agency must, in every filed case involving child pornography,
 201 enter the following information into the Victims in Child
 202 Pornography Tracking Repeat Exploitation database maintained by
 203 the Office of the Attorney General:

- 204 (a) The case number and agency file number.
- 205 (b) The named defendant.
- 206 (c) The circuit court division and county.
- 207 (d) Current court dates and the status of the case.
- 208 (e) Contact information for the prosecutor assigned.
- 209 (f) Verification that the prosecutor is or is not in
 210 possession of a victim impact statement and will use the
 211 statement in sentencing.

212 Section 4. Section 847.01357, Florida Statutes, is created
 213 to read:

214 847.01357 Exploited children's civil remedy.--

215 (1) Any person who is a victim of a sexual abuse crime
 216 listed in chapter 794, chapter 800, chapter 827, or chapter 847
 217 wherein any portion of that abuse was used in the production of
 218 images of child sexual abuse, otherwise known as child
 219 pornography, and who suffers personal or psychological injury as
 220 a result of the production, promotion, or possession of such
 221 images, regardless of whether the sexual abuse occurred while
 222 such person was a minor, may bring an action in any appropriate

223 state court and shall recover the actual damages such person
224 sustains and the cost of the suit, including reasonable
225 attorney's fees. Any victim as described in this subsection who
226 is awarded damages under this subsection and who is thereafter
227 exploited by the further production, possession, or promotion of
228 pornographic images of his or her own victimization shall be
229 deemed to have sustained damages of no less than \$150,000 in
230 value in any instance of the further production, possession, or
231 promotion of such an image.

232 (2) Notwithstanding any other provisions of law, any
233 action commenced under this section must be filed within 3 years
234 of the later of:

235 (a) The conclusion of a related criminal case;

236 (b) The notification to the victim by a member of law
237 enforcement of the creation, possession, or promotion of
238 pornographic images; or

239 (c) In the case of a person under the age of 18, within 3
240 years after the person reaches the age of 18.

241 (3) Any victim who has a bona fide claim under this
242 section shall, upon request, be provided a confidential
243 pseudonym, pursuant to s. 92.56(1)(b), which shall be issued and
244 maintained by the Department of Legal Affairs for use in all
245 legal pleadings. This identifier shall be fully recognized in
246 all courts in this state as a valid legal identity.

247 (4) It is not a defense to a civil cause of action under
248 this section that the respondent did not know the complainant or
249 commit the abuse depicted in any image of child pornography.

250 (5) To prevent the further exploitation of victims for
 251 monetary gain by any other person, the Office of the Attorney
 252 General shall be designated to pursue cases on behalf of any
 253 victim under this section. All damages obtained in such cases
 254 shall go to the victims and the Office of the Attorney General
 255 may seek reasonable attorney's fees and costs for itself under
 256 this section.

257 Section 5. Paragraph (a) of subsection (3) of section
 258 960.03, Florida Statutes, is amended, subsections (10) through
 259 (13) of that section are renumbered as subsections (11) through
 260 (14), respectively, a new subsection (10) is added to that
 261 section, and present subsection (13) of that section is amended,
 262 to read:

263 960.03 Definitions; ss. 960.01-960.28.--As used in ss.
 264 960.01-960.28, unless the context otherwise requires, the term:

265 (3) "Crime" means:

266 (a) A felony or misdemeanor offense committed by either an
 267 adult or a juvenile which results in psychological injury or
 268 trauma, physical injury, or death. The term also includes any
 269 such criminal act which is committed within this state but which
 270 falls exclusively within federal jurisdiction.

271 (10) "Known victim of child pornography" means any person
 272 who, while under the age of 18, was depicted in any image of
 273 child pornography and who has been identified through a report
 274 generated by a member of law enforcement and provided to the
 275 National Center for Missing and Exploited Children's Child
 276 Victim Identification Program.

277 (14)-(13) "Victim" means:

278 (a) A person who suffers personal physical injury or death
 279 as a direct result of a crime;

280 (b) A person less than 16 years of age who was present at
 281 the scene of a crime, saw or heard the crime, and suffered a
 282 psychiatric or psychological injury because of the crime, but
 283 who was not physically injured; ~~or~~

284 (c) A person against whom a forcible felony was committed
 285 and who suffers a psychiatric or psychological injury as a
 286 direct result of that crime but who does not otherwise sustain a
 287 personal physical injury or death; ~~or~~

288 (d) A child less than 18 years of age who is a victim of
 289 online sexual exploitation under any provision of s. 827.071, s.
 290 847.0135, s. 847.0137, or s. 847.0138 and who suffers
 291 psychiatric or psychological injury as a direct result of that
 292 crime, but who does not otherwise sustain a personal physical
 293 injury or death; or

294 (e) Any resident of this state of any age who, while under
 295 the age of 18, was depicted in any image or video, regardless of
 296 length, of child pornography as defined in s. 847.001 and who
 297 has been identified by law enforcement and the National Center
 298 for Missing and Exploited Children as a known victim of child
 299 pornography, which image or video is recovered by a law
 300 enforcement investigation or is related to a criminal
 301 prosecution.

302 Section 6. Paragraph (b) of subsection (2) of section
 303 90.404, Florida Statutes, is amended to read:

304 90.404 Character evidence; when admissible.--

305 (2) OTHER CRIMES, WRONGS, OR ACTS.--

HB 605

2008

306 (b)1. In a criminal case in which the defendant is charged
307 with a crime involving child molestation, evidence of the
308 defendant's commission of other crimes, wrongs, or acts of child
309 molestation is admissible, and may be considered for its bearing
310 on any matter to which it is relevant.

311 2. For the purposes of this paragraph, the term "child
312 molestation" means conduct proscribed by s. 794.011, ~~or~~ s.
313 800.04, or s. 847.01355 when committed against a person 16 years
314 of age or younger.

315 Section 7. Subsection (2) of section 92.565, Florida
316 Statutes, is amended to read:

317 92.565 Admissibility of confession in sexual abuse
318 cases.--

319 (2) In any criminal action in which the defendant is
320 charged with a crime against a victim under s. 794.011; s.
321 794.05; s. 800.04; s. 826.04; s. 827.03, involving sexual abuse;
322 s. 827.04, involving sexual abuse; ~~or~~ s. 827.071; or s.
323 847.01355, or any other crime involving sexual abuse of another,
324 or with any attempt, solicitation, or conspiracy to commit any
325 of these crimes, the defendant's memorialized confession or
326 admission is admissible during trial without the state having to
327 prove a corpus delicti of the crime if the court finds in a
328 hearing conducted outside the presence of the jury that the
329 state is unable to show the existence of each element of the
330 crime, and having so found, further finds that the defendant's
331 confession or admission is trustworthy. Factors which may be
332 relevant in determining whether the state is unable to show the
333 existence of each element of the crime include, but are not

334 limited to, the fact that, at the time the crime was committed,
 335 the victim was:

- 336 (a) Physically helpless, mentally incapacitated, or
- 337 mentally defective, as those terms are defined in s. 794.011;
- 338 (b) Physically incapacitated due to age, infirmity, or any
- 339 other cause; or
- 340 (c) Less than 12 years of age.

341 Section 8. Paragraph (e) of subsection (9) of section
 342 394.912, Florida Statutes, is amended to read:

343 394.912 Definitions.--As used in this part, the term:

- 344 (9) "Sexually violent offense" means:
- 345 (e) Lewd, lascivious, or indecent assault or act upon or
- 346 in presence of the child in violation of s. 800.04 or s.
- 347 847.01355;

348 Section 9. Section 409.2355, Florida Statutes, is amended
 349 to read:

350 409.2355 Programs for prosecution of males over age 21 who
 351 commit certain offenses involving girls under age 16.--Subject
 352 to specific appropriated funds, the Department of Children and
 353 Family Services is directed to establish a program by which
 354 local communities, through the state attorney's office of each
 355 judicial circuit, may apply for grants to fund innovative
 356 programs for the prosecution of males over the age of 21 who
 357 victimize girls under the age of 16 in violation of s. 794.011,
 358 s. 794.05, s. 800.04, ~~or s. 827.04(3)~~, or s. 847.01355.

359 Section 10. Paragraph (a) of subsection (9) of section
 360 775.082, Florida Statutes, is amended to read:

361 775.082 Penalties; applicability of sentencing structures;
 362 mandatory minimum sentences for certain reoffenders previously
 363 released from prison.--

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

- 366 a. Treason;
- 367 b. Murder;
- 368 c. Manslaughter;
- 369 d. Sexual battery;
- 370 e. Carjacking;
- 371 f. Home-invasion robbery;
- 372 g. Robbery;
- 373 h. Arson;
- 374 i. Kidnapping;
- 375 j. Aggravated assault with a deadly weapon;
- 376 k. Aggravated battery;
- 377 l. Aggravated stalking;
- 378 m. Aircraft piracy;
- 379 n. Unlawful throwing, placing, or discharging of a
 380 destructive device or bomb;
- 381 o. Any felony that involves the use or threat of physical
 382 force or violence against an individual;
- 383 p. Armed burglary;
- 384 q. Burglary of a dwelling or burglary of an occupied
 385 structure; or
- 386 r. Any felony violation of s. 790.07, s. 800.04, s.
 387 827.03, ~~or~~ s. 827.071, or s. 847.01355;
- 388

HB 605

2008

389 within 3 years after being released from a state correctional
390 facility operated by the Department of Corrections or a private
391 vendor or within 3 years after being released from a
392 correctional institution of another state, the District of
393 Columbia, the United States, any possession or territory of the
394 United States, or any foreign jurisdiction, following
395 incarceration for an offense for which the sentence is
396 punishable by more than 1 year in this state.

397 2. "Prison releasee reoffender" also means any defendant
398 who commits or attempts to commit any offense listed in sub-
399 subparagraphs (a)1.a.-r. while the defendant was serving a
400 prison sentence or on escape status from a state correctional
401 facility operated by the Department of Corrections or a private
402 vendor or while the defendant was on escape status from a
403 correctional institution of another state, the District of
404 Columbia, the United States, any possession or territory of the
405 United States, or any foreign jurisdiction, following
406 incarceration for an offense for which the sentence is
407 punishable by more than 1 year in this state.

408 3. If the state attorney determines that a defendant is a
409 prison releasee reoffender as defined in subparagraph 1., the
410 state attorney may seek to have the court sentence the defendant
411 as a prison releasee reoffender. Upon proof from the state
412 attorney that establishes by a preponderance of the evidence
413 that a defendant is a prison releasee reoffender as defined in
414 this section, such defendant is not eligible for sentencing
415 under the sentencing guidelines and must be sentenced as
416 follows:

417 a. For a felony punishable by life, by a term of
418 imprisonment for life;

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

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

423 d. For a felony of the third degree, by a term of
424 imprisonment of 5 years.

425 Section 11. Paragraph (d) of subsection (1) of section
426 775.084, Florida Statutes, is amended to read:

427 775.084 Violent career criminals; habitual felony
428 offenders and habitual violent felony offenders; three-time
429 violent felony offenders; definitions; procedure; enhanced
430 penalties or mandatory minimum prison terms.--

431 (1) As used in this act:

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

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

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

439 b. Aggravated stalking, as described in s. 784.048(3) and
440 (4);

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

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

444 e. Lewd or lascivious battery, lewd or lascivious
 445 molestation, lewd or lascivious conduct, or lewd or lascivious
 446 exhibition, as described in s. 800.04 or s. 847.01355;

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

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

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

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

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

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

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

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

HB 605

2008

472 Section 12. Paragraph (a) of subsection (13) and paragraph
473 (a) of subsection (16) of section 775.15, Florida Statutes, are
474 amended to read:

475 775.15 Time limitations; general time limitations;
476 exceptions.--

477 (13)(a) If the victim of a violation of s. 794.011, former
478 s. 794.05, Florida Statutes 1995, s. 800.04, ~~or~~ s. 826.04, or s.
479 847.01355 is under the age of 18, the applicable period of
480 limitation, if any, does not begin to run until the victim has
481 reached the age of 18 or the violation is reported to a law
482 enforcement agency or other governmental agency, whichever
483 occurs earlier. Such law enforcement agency or other
484 governmental agency shall promptly report such allegation to the
485 state attorney for the judicial circuit in which the alleged
486 violation occurred. If the offense is a first or second degree
487 felony violation of s. 794.011, and the offense is reported
488 within 72 hours after its commission, the prosecution for such
489 offense may be commenced at any time. This paragraph applies to
490 any such offense except an offense the prosecution of which
491 would have been barred by subsection (2) on or before December
492 31, 1984.

493 (16)(a) In addition to the time periods prescribed in this
494 section, a prosecution for any of the following offenses may be
495 commenced at any time after the date on which the identity of
496 the accused is established, or should have been established by
497 the exercise of due diligence, through the analysis of
498 deoxyribonucleic acid (DNA) evidence, if a sufficient portion of
499 the evidence collected at the time of the original investigation

HB 605

2008

500 and tested for DNA is preserved and available for testing by the
 501 accused:

502 1. Aggravated battery or any felony battery offense under
 503 chapter 784.

504 2. Kidnapping under s. 787.01 or false imprisonment under
 505 s. 787.02.

506 3. An offense of sexual battery under chapter 794.

507 4. A lewd or lascivious offense under s. 800.04, ~~or~~ s.
 508 825.1025, or s. 847.01355.

509 5. A burglary offense under s. 810.02.

510 6. A robbery offense under s. 812.13, s. 812.131, or s.
 511 812.135.

512 7. Carjacking under s. 812.133.

513 8. Aggravated child abuse under s. 827.03.

514 Section 13. Paragraph (a) of subsection (4) and paragraph
 515 (b) of subsection (10) of section 775.21, Florida Statutes, are
 516 amended to read:

517 775.21 The Florida Sexual Predators Act.--

518 (4) SEXUAL PREDATOR CRITERIA.--

519 (a) For a current offense committed on or after October 1,
 520 1993, upon conviction, an offender shall be designated as a
 521 "sexual predator" under subsection (5), and subject to
 522 registration under subsection (6) and community and public
 523 notification under subsection (7) if:

524 1. The felony is:

525 a. A capital, life, or first-degree felony violation, or
 526 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 527 is a minor and the defendant is not the victim's parent or

528 guardian, or s. 794.011, s. 800.04, s. 847.01355, or s.
 529 847.0145, or a violation of a similar law of another
 530 jurisdiction; or

531 b. Any felony violation, or any attempt thereof, of s.
 532 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 533 minor and the defendant is not the victim's parent or guardian;
 534 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 535 796.035; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.01355;
 536 s. 847.0145; or s. 985.701(1); or a violation of a similar law
 537 of another jurisdiction, and the offender has previously been
 538 convicted of or found to have committed, or has pled nolo
 539 contendere or guilty to, regardless of adjudication, any
 540 violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 541 the victim is a minor and the defendant is not the victim's
 542 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
 543 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s.
 544 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(4); s.
 545 847.01355; s. 847.0145; or s. 985.701(1); or a violation of a
 546 similar law of another jurisdiction;

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

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

553 (10) PENALTIES.--

554 (b) A sexual predator who has been convicted of or found
 555 to have committed, or has pled nolo contendere or guilty to,

556 regardless of adjudication, any violation, or attempted
 557 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 558 the victim is a minor and the defendant is not the victim's
 559 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
 560 794.05; s. 796.03; s. 796.035; s. 800.04; s. 827.071; s.
 561 847.0133; s. 847.01355; s. 847.0145; or s. 985.701(1); or a
 562 violation of a similar law of another jurisdiction when the
 563 victim of the offense was a minor, and who works, whether for
 564 compensation or as a volunteer, at any business, school, day
 565 care center, park, playground, or other place where children
 566 regularly congregate, commits a felony of the third degree,
 567 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

568 Section 14. Subsections (7) and (8) of section 784.048,
 569 Florida Statutes, are amended to read:

570 784.048 Stalking; definitions; penalties.--

571 (7) Any person who, after having been sentenced for a
 572 violation of s. 794.011, ~~or~~ s. 800.04, or s. 847.01355 and
 573 prohibited from contacting the victim of the offense under s.
 574 921.244, willfully, maliciously, and repeatedly follows,
 575 harasses, or cyberstalks the victim commits the offense of
 576 aggravated stalking, a felony of the third degree, punishable as
 577 provided in s. 775.082, s. 775.083, or s. 775.084.

578 (8) The punishment imposed under this section shall run
 579 consecutive to any former sentence imposed for a conviction for
 580 any offense under s. 794.011, ~~or~~ s. 800.04, or s. 847.01355.

581 Section 15. Paragraph (a) of subsection (3) of section
 582 787.01, Florida Statutes, is amended to read:

583 787.01 Kidnapping; kidnapping of child under age 13,
584 aggravating circumstances.--

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

588 1. Aggravated child abuse, as defined in s. 827.03;
589 2. Sexual battery, as defined in chapter 794, against the
590 child;

591 3. Lewd or lascivious battery, lewd or lascivious
592 molestation, lewd or lascivious conduct, or lewd or lascivious
593 exhibition, in violation of s. 800.04 or s. 847.01355;

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

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

598
599 commits a life felony, punishable as provided in s. 775.082, s.
600 775.083, or s. 775.084.

601 Section 16. Paragraph (a) of subsection (3) of section
602 787.02, Florida Statutes, is amended to read:

603 787.02 False imprisonment; false imprisonment of child
604 under age 13, aggravating circumstances.--

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

- 611 1. Aggravated child abuse, as defined in s. 827.03;
- 612 2. Sexual battery, as defined in chapter 794, against the
- 613 child;
- 614 3. Lewd or lascivious battery, lewd or lascivious
- 615 molestation, lewd or lascivious conduct, or lewd or lascivious
- 616 exhibition, in violation of s. 800.04 or s. 847.01355;
- 617 4. A violation of s. 796.03 or s. 796.04, relating to
- 618 prostitution, upon the child; or
- 619 5. Exploitation of the child or allowing the child to be
- 620 exploited, in violation of s. 450.151.

621 Section 17. Paragraph (c) of subsection (2) of section
 622 787.025, Florida Statutes, is amended to read:

623 787.025 Luring or enticing a child.--

624 (2)

625 (c) A person 18 years of age or older who, having been
 626 previously convicted of a violation of chapter 794, ~~or~~ s.
 627 800.04, or s. 847.01355, or a violation of a similar law of
 628 another jurisdiction, intentionally lures or entices, or
 629 attempts to lure or entice, a child under the age of 12 into a
 630 structure, dwelling, or conveyance for other than a lawful
 631 purpose commits a felony of the third degree, punishable as
 632 provided in s. 775.082, s. 775.083, or s. 775.084.

633 Section 18. Section 794.065, Florida Statutes, is amended
 634 to read:

635 794.065 Unlawful place of residence for persons convicted
 636 of certain sex offenses.--

637 (1) It is unlawful for any person who has been convicted
 638 of a violation of s. 794.011, s. 800.04, s. 827.071, s.

639 847.01355, or s. 847.0145, regardless of whether adjudication
 640 has been withheld, in which the victim of the offense was less
 641 than 16 years of age, to reside within 1,000 feet of any school,
 642 day care center, park, or playground. A person who violates this
 643 section and whose conviction under s. 794.011, s. 800.04, s.
 644 827.071, s. 847.01355, or s. 847.0145 was classified as a felony
 645 of the first degree or higher commits a felony of the third
 646 degree, punishable as provided in s. 775.082 or s. 775.083. A
 647 person who violates this section and whose conviction under s.
 648 794.011, s. 800.04, s. 827.071, s. 847.01355, or s. 847.0145 was
 649 classified as a felony of the second or third degree commits a
 650 misdemeanor of the first degree, punishable as provided in s.
 651 775.082 or s. 775.083.

652 (2) This section applies to any person convicted of a
 653 violation of s. 794.011, s. 800.04, s. 827.071, s. 847.01355, or
 654 s. 847.0145 for offenses that occur on or after October 1, 2004.

655 Section 19. Section 914.16, Florida Statutes, is amended
 656 to read:

657 914.16 Child abuse and sexual abuse of victims under age
 658 16 or persons with mental retardation; limits on
 659 interviews.--The chief judge of each judicial circuit, after
 660 consultation with the state attorney and the public defender for
 661 the judicial circuit, the appropriate chief law enforcement
 662 officer, and any other person deemed appropriate by the chief
 663 judge, shall provide by order reasonable limits on the number of
 664 interviews that a victim of a violation of s. 794.011, s.
 665 800.04, ~~or~~ s. 827.03, or s. 847.01355 who is under 16 years of
 666 age or a victim of a violation of s. 794.011, s. 800.02, s.

HB 605

2008

667 800.03, or s. 825.102 who is a person with mental retardation as
 668 defined in s. 393.063 must submit to for law enforcement or
 669 discovery purposes. The order shall, to the extent possible,
 670 protect the victim from the psychological damage of repeated
 671 interrogations while preserving the rights of the public, the
 672 victim, and the person charged with the violation.

673 Section 20. Paragraphs (d) and (e) of subsection (3) of
 674 section 921.0022, Florida Statutes, are amended to read:

675 921.0022 Criminal Punishment Code; offense severity
 676 ranking chart.--

677 (3) OFFENSE SEVERITY RANKING CHART

678 (d) LEVEL 4

679

Florida	Felony	Description
Statute	Degree	

680

316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
----------------	-----	--

681

499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
-------------	-----	---

682

499.0051(2)	3rd	Failure to authenticate pedigree papers.
-------------	-----	--

683

HB 605

2008

684	499.0051(6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
685	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
686	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
687	784.075	3rd	Battery on detention or commitment facility staff.
688	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
689	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
690	784.081(3)	3rd	Battery on specified official or employee.
691	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
692	784.083(3)	3rd	Battery on code inspector.

HB 605

2008

693	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
694	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
695	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
696	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
697	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
698	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
699	790.115 (2) (c)	3rd	Possessing firearm on school property.
700	800.04 (7) <u>(c)</u> (d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.

HB 605

2008

701	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
702	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
703	810.06	3rd	Burglary; possession of tools.
704	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
705	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
706	812.014(2)(c)4. -10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
707	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
708	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.

HB 605

2008

709	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
710	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
711	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
712	837.02 (1)	3rd	Perjury in official proceedings.
713	837.021 (1)	3rd	Make contradictory statements in official proceedings.
714	838.022	3rd	Official misconduct.
715	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
716	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Family Services.
717	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
	843.025	3rd	Deprive law enforcement, correctional,

HB 605

2008

or correctional probation officer of means of protection or communication.

718

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

719

847.01355(3) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

720

874.05(1) 3rd Encouraging or recruiting another to join a criminal street gang.

721

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).

722

914.14(2) 3rd Witnesses accepting bribes.

723

914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

724

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

725

918.12 3rd Tampering with jurors.

726

HB 605

2008

934.215 3rd Use of two-way communications device to facilitate commission of a crime.

727

728 (e) LEVEL 5

729

Florida	Felony	Description
Statute	Degree	

730

316.027(1)(a) 3rd Accidents involving personal injuries, failure to stop; leaving scene.

731

316.1935(4)(a) 2nd Aggravated fleeing or eluding.

732

322.34(6) 3rd Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

733

327.30(5) 3rd Vessel accidents involving personal injury; leaving scene.

734

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

735

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

736

440.105(5) 2nd Unlawful solicitation for the purpose

HB 605

2008

of making workers' compensation claims.

737

440.381(2) 2nd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

738

624.401(4)(b)2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

739

626.902(1)(c) 2nd Representing an unauthorized insurer; repeat offender.

740

790.01(2) 3rd Carrying a concealed firearm.

741

790.162 2nd Threat to throw or discharge destructive device.

742

790.163(1) 2nd False report of deadly explosive or weapon of mass destruction.

743

790.221(1) 2nd Possession of short-barreled shotgun or machine gun.

744

790.23 2nd Felons in possession of firearms,

HB 605

2008

ammunition, or electronic weapons or devices.

745

800.04 (6) (c) 3rd Lewd or lascivious conduct; offender less than 18 years.

746

800.04 (7) (b) ~~(e)~~ 2nd Lewd or lascivious exhibition; offender 18 years or older.

747

806.111 (1) 3rd Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

748

812.0145 (2) (b) 2nd Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

749

812.015 (8) 3rd Retail theft; property stolen is valued at \$300 or more and one or more specified acts.

750

812.019 (1) 2nd Stolen property; dealing in or trafficking in.

751

812.131 (2) (b) 3rd Robbery by sudden snatching.

752

812.16 (2) 3rd Owning, operating, or conducting a chop

HB 605

2008

shop.

753

817.034 (4) (a) 2. 2nd Communications fraud, value \$20,000 to \$50,000.

754

817.234 (11) (b) 2nd Insurance fraud; property value \$20,000 or more but less than \$100,000.

755

817.2341 (1) , (2) 3rd Filing false financial statements, (a) & (3) (a) making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

756

817.568 (2) (b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.

757

817.625 (2) (b) 2nd Second or subsequent fraudulent use of scanning device or reencoder.

758

825.1025 (4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or

HB 605

2008

disabled adult.

759

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

760

827.071(5) 3rd Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.

761

839.13(2)(b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

762

843.01 3rd Resist officer with violence to person; resist arrest with violence.

763

847.01355(2) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

764

847.0137(2)&(3) 3rd Transmission of pornography by electronic device or equipment.

765

847.0138(2)&(3) 3rd Transmission of material harmful to minors to a minor by electronic device or equipment.

766

HB 605

2008

767	874.05 (2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
768	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
769	893.13 (1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
770	893.13 (1) (d) 1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of university.
	893.13 (1) (e) 2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1) (c), (2) (c) 1., (2) (c) 2.,

HB 605

2008

(2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7.,
 (2) (c)8., (2) (c)9., (3), or (4) within
 1,000 feet of property used for
 religious services or a specified
 business site.

771

893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine
 (or other s. 893.03(1)(a), (1)(b),
 (1)(d), or (2)(a), (2)(b), or (2)(c)4.
 drugs) within 1,000 feet of public
 housing facility.

772

893.13(4)(b) 2nd Deliver to minor cannabis (or other s.
 893.03(1)(c), (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or (4) drugs).

773

774 Section 21. Subsections (1) and (3) of section 921.244,
 775 Florida Statutes, are amended to read:

776 921.244 Order of no contact; penalties.--

777 (1) At the time of sentencing an offender convicted of a
 778 violation of s. 794.011, ~~or~~ s. 800.04, or s. 847.01355, the
 779 court shall order that the offender be prohibited from having
 780 any contact with the victim, directly or indirectly, including
 781 through a third person, for the duration of the sentence
 782 imposed. The court may reconsider the order upon the request of
 783 the victim if the request is made at any time after the victim
 784 has attained 18 years of age. In considering the request, the

785 court shall conduct an evidentiary hearing to determine whether
 786 a change of circumstances has occurred which warrants a change
 787 in the court order prohibiting contact and whether it is in the
 788 best interest of the victim that the court order be modified or
 789 rescinded.

790 (3) The punishment imposed under this section shall run
 791 consecutive to any former sentence imposed for a conviction for
 792 any offense under s. 794.011, ~~or~~ s. 800.04, or s. 847.01355.

793 Section 22. Subsection (1) of section 938.10, Florida
 794 Statutes, is amended to read:

795 938.10 Additional court cost imposed in cases of certain
 796 crimes against minors.--

797 (1) If a person pleads guilty or nolo contendere to, or is
 798 found guilty of, regardless of adjudication, any offense against
 799 a minor in violation of s. 784.085, chapter 787, chapter 794, s.
 800 796.03, s. 800.04, chapter 827, s. 847.01355, s. 847.0145, or s.
 801 985.701, the court shall impose a court cost of \$101 against the
 802 offender in addition to any other cost or penalty required by
 803 law.

804 Section 23. Paragraph (a) of subsection (1) of section
 805 943.0435, Florida Statutes, is amended to read:

806 943.0435 Sexual offenders required to register with the
 807 department; penalty.--

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

809 (a)1. "Sexual offender" means a person who meets the
 810 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 811 subparagraph c., or sub-subparagraph d., as follows:

812 a.(I) Has been convicted of committing, or attempting,
813 soliciting, or conspiring to commit, any of the criminal
814 offenses proscribed in the following statutes in this state or
815 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
816 or s. 787.025(2)(c), where the victim is a minor and the
817 defendant is not the victim's parent or guardian; s. 794.011,
818 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
819 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
820 excluding s. 847.0135(4); s. 847.01355; s. 847.0137; s.
821 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense
822 committed in this state which has been redesignated from a
823 former statute number to one of those listed in this sub-sub-
824 subparagraph; and

825 (II) Has been released on or after October 1, 1997, from
826 the sanction imposed for any conviction of an offense described
827 in sub-sub-subparagraph (I). For purposes of sub-sub-
828 subparagraph (I), a sanction imposed in this state or in any
829 other jurisdiction includes, but is not limited to, a fine,
830 probation, community control, parole, conditional release,
831 control release, or incarceration in a state prison, federal
832 prison, private correctional facility, or local detention
833 facility;

834 b. Establishes or maintains a residence in this state and
835 who has not been designated as a sexual predator by a court of
836 this state but who has been designated as a sexual predator, as
837 a sexually violent predator, or by another sexual offender
838 designation in another state or jurisdiction and was, as a
839 result of such designation, subjected to registration or

HB 605

2008

840 community or public notification, or both, or would be if the
841 person were a resident of that state or jurisdiction, without
842 regard to whether the person otherwise meets the criteria for
843 registration as a sexual offender;

844 c. Establishes or maintains a residence in this state who
845 is in the custody or control of, or under the supervision of,
846 any other state or jurisdiction as a result of a conviction for
847 committing, or attempting, soliciting, or conspiring to commit,
848 any of the criminal offenses proscribed in the following
849 statutes or similar offense in another jurisdiction: s. 787.01,
850 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
851 the defendant is not the victim's parent or guardian; s.
852 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
853 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
854 847.0135, excluding s. 847.0135(4); s. 847.01355; s. 847.0137;
855 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
856 offense committed in this state which has been redesignated from
857 a former statute number to one of those listed in this sub-
858 subparagraph; or

859 d. On or after July 1, 2007, has been adjudicated
860 delinquent for committing, or attempting, soliciting, or
861 conspiring to commit, any of the criminal offenses proscribed in
862 the following statutes in this state or similar offenses in
863 another jurisdiction when the juvenile was 14 years of age or
864 older at the time of the offense:

865 (I) Section 794.011, excluding s. 794.011(10);

866 (II) Section 800.04(4)(b) where the victim is under 12
 867 years of age or where the court finds sexual activity by the use
 868 of force or coercion;

869 (III) Section 800.04(5)(c)1. where the court finds
 870 molestation involving unclothed genitals; or

871 (IV) Section 800.04(5)(d) where the court finds the use of
 872 force or coercion and unclothed genitals.

873 2. For all qualifying offenses listed in sub-subparagraph
 874 (1)(a)1.d., the court shall make a written finding of the age of
 875 the offender at the time of the offense.

876
 877 For each violation of a qualifying offense listed in this
 878 subsection, the court shall make a written finding of the age of
 879 the victim at the time of the offense. For a violation of s.
 880 800.04(4), the court shall additionally make a written finding
 881 indicating that the offense did or did not involve sexual
 882 activity and indicating that the offense did or did not involve
 883 force or coercion. For a violation of s. 800.04(5), the court
 884 shall additionally make a written finding that the offense did
 885 or did not involve unclothed genitals or genital area and that
 886 the offense did or did not involve the use of force or coercion.

887 Section 24. Subsections (1), (2), and (4) of section
 888 943.04354, Florida Statutes, are amended to read:

889 943.04354 Removal of the requirement to register as a
 890 sexual offender or sexual predator in special circumstances.--

891 (1) For purposes of this section, a person shall be
 892 considered for removal of the requirement to register as a
 893 sexual offender or sexual predator only if the person:

894 (a) Was or will be convicted or adjudicated delinquent of
 895 a violation of s. 794.011, ~~or~~ s. 800.04, or s. 847.01355 or the
 896 person committed a violation of s. 794.011, ~~or~~ s. 800.04, or s.
 897 847.01355 for which adjudication of guilt was or will be
 898 withheld, and the person does not have any other conviction,
 899 adjudication of delinquency, or withhold of adjudication of
 900 guilt for a violation of s. 794.011, ~~or~~ s. 800.04, or s.
 901 847.01355;

902 (b) Is required to register as a sexual offender or sexual
 903 predator solely on the basis of this violation; and

904 (c) Is not more than 4 years older than the victim of this
 905 violation who was 14 years of age or older but not more than 17
 906 years of age at the time the person committed this violation.

907 (2) If a person meets the criteria in subsection (1) and
 908 the violation of s. 794.011, ~~or~~ s. 800.04, or s. 847.01355 was
 909 committed on or after July 1, 2007, the person may move the
 910 court that will sentence or dispose of this violation to remove
 911 the requirement that the person register as a sexual offender or
 912 sexual predator. The person must allege in the motion that he or
 913 she meets the criteria in subsection (1) and that removal of the
 914 registration requirement will not conflict with federal law. The
 915 state attorney must be given notice of the motion at least 21
 916 days before the date of sentencing or disposition of this
 917 violation and may present evidence in opposition to the
 918 requested relief or may otherwise demonstrate why the motion
 919 should be denied. At sentencing or disposition of this
 920 violation, the court shall rule on this motion and, if the court
 921 determines the person meets the criteria in subsection (1) and

HB 605

2008

922 the removal of the registration requirement will not conflict
 923 with federal law, it may grant the motion and order the removal
 924 of the registration requirement. If the court denies the motion,
 925 the person is not authorized under this section to petition for
 926 removal of the registration requirement.

927 (4) If a person provides to the Department of Law
 928 Enforcement a certified copy of the court's order removing the
 929 requirement that the person register as a sexual offender or
 930 sexual predator for the violation of s. 794.011, ~~or~~ s. 800.04,
 931 or s. 847.01355, the registration requirement will not apply to
 932 the person and the department shall remove all information about
 933 the person from the public registry of sexual offenders and
 934 sexual predators maintained by the department. However, the
 935 removal of this information from the public registry does not
 936 mean that the public is denied access to information about the
 937 person's criminal history or record that is otherwise available
 938 as a public record.

939 Section 25. Section 943.0585, Florida Statutes, is amended
 940 to read:

941 943.0585 Court-ordered expunction of criminal history
 942 records.--The courts of this state have jurisdiction over their
 943 own procedures, including the maintenance, expunction, and
 944 correction of judicial records containing criminal history
 945 information to the extent such procedures are not inconsistent
 946 with the conditions, responsibilities, and duties established by
 947 this section. Any court of competent jurisdiction may order a
 948 criminal justice agency to expunge the criminal history record
 949 of a minor or an adult who complies with the requirements of

950 this section. The court shall not order a criminal justice
951 agency to expunge a criminal history record until the person
952 seeking to expunge a criminal history record has applied for and
953 received a certificate of eligibility for expunction pursuant to
954 subsection (2). A criminal history record that relates to a
955 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
956 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
957 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.01355, s.
958 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
959 907.041, or any violation specified as a predicate offense for
960 registration as a sexual predator pursuant to s. 775.21, without
961 regard to whether that offense alone is sufficient to require
962 such registration, or for registration as a sexual offender
963 pursuant to s. 943.0435, may not be expunged, without regard to
964 whether adjudication was withheld, if the defendant was found
965 guilty of or pled guilty or nolo contendere to the offense, or
966 if the defendant, as a minor, was found to have committed, or
967 pled guilty or nolo contendere to committing, the offense as a
968 delinquent act. The court may only order expunction of a
969 criminal history record pertaining to one arrest or one incident
970 of alleged criminal activity, except as provided in this
971 section. The court may, at its sole discretion, order the
972 expunction of a criminal history record pertaining to more than
973 one arrest if the additional arrests directly relate to the
974 original arrest. If the court intends to order the expunction of
975 records pertaining to such additional arrests, such intent must
976 be specified in the order. A criminal justice agency may not
977 expunge any record pertaining to such additional arrests if the

978 order to expunge does not articulate the intention of the court
 979 to expunge a record pertaining to more than one arrest. This
 980 section does not prevent the court from ordering the expunction
 981 of only a portion of a criminal history record pertaining to one
 982 arrest or one incident of alleged criminal activity.

983 Notwithstanding any law to the contrary, a criminal justice
 984 agency may comply with laws, court orders, and official requests
 985 of other jurisdictions relating to expunction, correction, or
 986 confidential handling of criminal history records or information
 987 derived therefrom. This section does not confer any right to the
 988 expunction of any criminal history record, and any request for
 989 expunction of a criminal history record may be denied at the
 990 sole discretion of the court.

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

994 (a) A valid certificate of eligibility for expunction
 995 issued by the department pursuant to subsection (2).

996 (b) The petitioner's sworn statement attesting that the
 997 petitioner:

998 1. Has never, prior to the date on which the petition is
 999 filed, been adjudicated guilty of a criminal offense or
 1000 comparable ordinance violation, or been adjudicated delinquent
 1001 for committing any felony or a misdemeanor specified in s.
 1002 943.051(3)(b).

1003 2. Has not been adjudicated guilty of, or adjudicated
 1004 delinquent for committing, any of the acts stemming from the

1005 | arrest or alleged criminal activity to which the petition
 1006 | pertains.

1007 | 3. Has never secured a prior sealing or expunction of a
 1008 | criminal history record under this section, former s. 893.14,
 1009 | former s. 901.33, or former s. 943.058, or from any jurisdiction
 1010 | outside the state, unless expunction is sought of a criminal
 1011 | history record previously sealed for 10 years pursuant to
 1012 | paragraph (2)(h) and the record is otherwise eligible for
 1013 | expunction.

1014 | 4. Is eligible for such an expunction to the best of his
 1015 | or her knowledge or belief and does not have any other petition
 1016 | to expunge or any petition to seal pending before any court.

1017 |
 1018 | Any person who knowingly provides false information on such
 1019 | sworn statement to the court commits a felony of the third
 1020 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1021 | 775.084.

1022 | (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to
 1023 | petitioning the court to expunge a criminal history record, a
 1024 | person seeking to expunge a criminal history record shall apply
 1025 | to the department for a certificate of eligibility for
 1026 | expunction. The department shall, by rule adopted pursuant to
 1027 | chapter 120, establish procedures pertaining to the application
 1028 | for and issuance of certificates of eligibility for expunction.
 1029 | A certificate of eligibility for expunction is valid for 12
 1030 | months after the date stamped on the certificate when issued by
 1031 | the department. After that time, the petitioner must reapply to
 1032 | the department for a new certificate of eligibility. Eligibility

1033 for a renewed certification of eligibility must be based on the
 1034 status of the applicant and the law in effect at the time of the
 1035 renewal application. The department shall issue a certificate of
 1036 eligibility for expunction to a person who is the subject of a
 1037 criminal history record if that person:

1038 (a) Has obtained, and submitted to the department, a
 1039 written, certified statement from the appropriate state attorney
 1040 or statewide prosecutor which indicates:

1041 1. That an indictment, information, or other charging
 1042 document was not filed or issued in the case.

1043 2. That an indictment, information, or other charging
 1044 document, if filed or issued in the case, was dismissed or nolle
 1045 prosequi by the state attorney or statewide prosecutor, or was
 1046 dismissed by a court of competent jurisdiction, and that none of
 1047 the charges related to the arrest or alleged criminal activity
 1048 to which the petition to expunge pertains resulted in a trial,
 1049 without regard to whether the outcome of the trial was other
 1050 than an adjudication of guilt.

1051 3. That the criminal history record does not relate to a
 1052 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 1053 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 1054 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.01355, s.
 1055 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
 1056 907.041, or any violation specified as a predicate offense for
 1057 registration as a sexual predator pursuant to s. 775.21, without
 1058 regard to whether that offense alone is sufficient to require
 1059 such registration, or for registration as a sexual offender
 1060 pursuant to s. 943.0435, where the defendant was found guilty

HB 605

2008

1061 of, or pled guilty or nolo contendere to any such offense, or
1062 that the defendant, as a minor, was found to have committed, or
1063 pled guilty or nolo contendere to committing, such an offense as
1064 a delinquent act, without regard to whether adjudication was
1065 withheld.

1066 (b) Remits a \$75 processing fee to the department for
1067 placement in the Department of Law Enforcement Operating Trust
1068 Fund, unless such fee is waived by the executive director.

1069 (c) Has submitted to the department a certified copy of
1070 the disposition of the charge to which the petition to expunge
1071 pertains.

1072 (d) Has never, prior to the date on which the application
1073 for a certificate of eligibility is filed, been adjudicated
1074 guilty of a criminal offense or comparable ordinance violation,
1075 or been adjudicated delinquent for committing any felony or a
1076 misdemeanor specified in s. 943.051(3)(b).

1077 (e) Has not been adjudicated guilty of, or adjudicated
1078 delinquent for committing, any of the acts stemming from the
1079 arrest or alleged criminal activity to which the petition to
1080 expunge pertains.

1081 (f) Has never secured a prior sealing or expunction of a
1082 criminal history record under this section, former s. 893.14,
1083 former s. 901.33, or former s. 943.058, unless expunction is
1084 sought of a criminal history record previously sealed for 10
1085 years pursuant to paragraph (h) and the record is otherwise
1086 eligible for expunction.

1087 (g) Is no longer under court supervision applicable to the
 1088 disposition of the arrest or alleged criminal activity to which
 1089 the petition to expunge pertains.

1090 (h) Has previously obtained a court order sealing the
 1091 record under this section, former s. 893.14, former s. 901.33,
 1092 or former s. 943.058 for a minimum of 10 years because
 1093 adjudication was withheld or because all charges related to the
 1094 arrest or alleged criminal activity to which the petition to
 1095 expunge pertains were not dismissed prior to trial, without
 1096 regard to whether the outcome of the trial was other than an
 1097 adjudication of guilt. The requirement for the record to have
 1098 previously been sealed for a minimum of 10 years does not apply
 1099 when a plea was not entered or all charges related to the arrest
 1100 or alleged criminal activity to which the petition to expunge
 1101 pertains were dismissed prior to trial.

1102 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

1103 (a) In judicial proceedings under this section, a copy of
 1104 the completed petition to expunge shall be served upon the
 1105 appropriate state attorney or the statewide prosecutor and upon
 1106 the arresting agency; however, it is not necessary to make any
 1107 agency other than the state a party. The appropriate state
 1108 attorney or the statewide prosecutor and the arresting agency
 1109 may respond to the court regarding the completed petition to
 1110 expunge.

1111 (b) If relief is granted by the court, the clerk of the
 1112 court shall certify copies of the order to the appropriate state
 1113 attorney or the statewide prosecutor and the arresting agency.
 1114 The arresting agency is responsible for forwarding the order to

HB 605

2008

1115 any other agency to which the arresting agency disseminated the
1116 criminal history record information to which the order pertains.
1117 The department shall forward the order to expunge to the Federal
1118 Bureau of Investigation. The clerk of the court shall certify a
1119 copy of the order to any other agency which the records of the
1120 court reflect has received the criminal history record from the
1121 court.

1122 (c) For an order to expunge entered by a court prior to
1123 July 1, 1992, the department shall notify the appropriate state
1124 attorney or statewide prosecutor of an order to expunge which is
1125 contrary to law because the person who is the subject of the
1126 record has previously been convicted of a crime or comparable
1127 ordinance violation or has had a prior criminal history record
1128 sealed or expunged. Upon receipt of such notice, the appropriate
1129 state attorney or statewide prosecutor shall take action, within
1130 60 days, to correct the record and petition the court to void
1131 the order to expunge. The department shall seal the record until
1132 such time as the order is voided by the court.

1133 (d) On or after July 1, 1992, the department or any other
1134 criminal justice agency is not required to act on an order to
1135 expunge entered by a court when such order does not comply with
1136 the requirements of this section. Upon receipt of such an order,
1137 the department must notify the issuing court, the appropriate
1138 state attorney or statewide prosecutor, the petitioner or the
1139 petitioner's attorney, and the arresting agency of the reason
1140 for noncompliance. The appropriate state attorney or statewide
1141 prosecutor shall take action within 60 days to correct the
1142 record and petition the court to void the order. No cause of

1143 | action, including contempt of court, shall arise against any
 1144 | criminal justice agency for failure to comply with an order to
 1145 | expunge when the petitioner for such order failed to obtain the
 1146 | certificate of eligibility as required by this section or such
 1147 | order does not otherwise comply with the requirements of this
 1148 | section.

1149 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 1150 | criminal history record of a minor or an adult which is ordered
 1151 | expunged by a court of competent jurisdiction pursuant to this
 1152 | section must be physically destroyed or obliterated by any
 1153 | criminal justice agency having custody of such record; except
 1154 | that any criminal history record in the custody of the
 1155 | department must be retained in all cases. A criminal history
 1156 | record ordered expunged that is retained by the department is
 1157 | confidential and exempt from the provisions of s. 119.07(1) and
 1158 | s. 24(a), Art. I of the State Constitution and not available to
 1159 | any person or entity except upon order of a court of competent
 1160 | jurisdiction. A criminal justice agency may retain a notation
 1161 | indicating compliance with an order to expunge.

1162 | (a) The person who is the subject of a criminal history
 1163 | record that is expunged under this section or under other
 1164 | provisions of law, including former s. 893.14, former s. 901.33,
 1165 | and former s. 943.058, may lawfully deny or fail to acknowledge
 1166 | the arrests covered by the expunged record, except when the
 1167 | subject of the record:

- 1168 | 1. Is a candidate for employment with a criminal justice
- 1169 | agency;
- 1170 | 2. Is a defendant in a criminal prosecution;

1171 3. Concurrently or subsequently petitions for relief under
 1172 this section or s. 943.059;

1173 4. Is a candidate for admission to The Florida Bar;

1174 5. Is seeking to be employed or licensed by or to contract
 1175 with the Department of Children and Family Services or the
 1176 Department of Juvenile Justice or to be employed or used by such
 1177 contractor or licensee in a sensitive position having direct
 1178 contact with children, the developmentally disabled, the aged,
 1179 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 1180 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1181 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
 1182 400, or chapter 429;

1183 6. Is seeking to be employed or licensed by the Department
 1184 of Education, any district school board, any university
 1185 laboratory school, any charter school, any private or parochial
 1186 school, or any local governmental entity that licenses child
 1187 care facilities; or

1188 7. Is seeking authorization from a Florida seaport
 1189 identified in s. 311.09 for employment within or access to one
 1190 or more of such seaports pursuant to s. 311.12 or s. 311.125.

1191 (b) Subject to the exceptions in paragraph (a), a person
 1192 who has been granted an expunction under this section, former s.
 1193 893.14, former s. 901.33, or former s. 943.058 may not be held
 1194 under any provision of law of this state to commit perjury or to
 1195 be otherwise liable for giving a false statement by reason of
 1196 such person's failure to recite or acknowledge an expunged
 1197 criminal history record.

1198 (c) Information relating to the existence of an expunged
 1199 criminal history record which is provided in accordance with
 1200 paragraph (a) is confidential and exempt from the provisions of
 1201 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1202 except that the department shall disclose the existence of a
 1203 criminal history record ordered expunged to the entities set
 1204 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 1205 respective licensing, access authorization, and employment
 1206 purposes, and to criminal justice agencies for their respective
 1207 criminal justice purposes. It is unlawful for any employee of an
 1208 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 1209 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
 1210 disclose information relating to the existence of an expunged
 1211 criminal history record of a person seeking employment, access
 1212 authorization, or licensure with such entity or contractor,
 1213 except to the person to whom the criminal history record relates
 1214 or to persons having direct responsibility for employment,
 1215 access authorization, or licensure decisions. Any person who
 1216 violates this paragraph commits a misdemeanor of the first
 1217 degree, punishable as provided in s. 775.082 or s. 775.083.

1218 (5) STATUTORY REFERENCES.--Any reference to any other
 1219 chapter, section, or subdivision of the Florida Statutes in this
 1220 section constitutes a general reference under the doctrine of
 1221 incorporation by reference.

1222 Section 26. Section 943.059, Florida Statutes, is amended
 1223 to read:

1224 943.059 Court-ordered sealing of criminal history
 1225 records.--The courts of this state shall continue to have

1226 jurisdiction over their own procedures, including the
 1227 maintenance, sealing, and correction of judicial records
 1228 containing criminal history information to the extent such
 1229 procedures are not inconsistent with the conditions,
 1230 responsibilities, and duties established by this section. Any
 1231 court of competent jurisdiction may order a criminal justice
 1232 agency to seal the criminal history record of a minor or an
 1233 adult who complies with the requirements of this section. The
 1234 court shall not order a criminal justice agency to seal a
 1235 criminal history record until the person seeking to seal a
 1236 criminal history record has applied for and received a
 1237 certificate of eligibility for sealing pursuant to subsection
 1238 (2). A criminal history record that relates to a violation of s.
 1239 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 1240 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 1241 839, s. 847.0133, s. 847.0135, s. 847.01355, s. 847.0145, s.
 1242 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 1243 any violation specified as a predicate offense for registration
 1244 as a sexual predator pursuant to s. 775.21, without regard to
 1245 whether that offense alone is sufficient to require such
 1246 registration, or for registration as a sexual offender pursuant
 1247 to s. 943.0435, may not be sealed, without regard to whether
 1248 adjudication was withheld, if the defendant was found guilty of
 1249 or pled guilty or nolo contendere to the offense, or if the
 1250 defendant, as a minor, was found to have committed or pled
 1251 guilty or nolo contendere to committing the offense as a
 1252 delinquent act. The court may only order sealing of a criminal
 1253 history record pertaining to one arrest or one incident of

HB 605

2008

1254 alleged criminal activity, except as provided in this section.
1255 The court may, at its sole discretion, order the sealing of a
1256 criminal history record pertaining to more than one arrest if
1257 the additional arrests directly relate to the original arrest.
1258 If the court intends to order the sealing of records pertaining
1259 to such additional arrests, such intent must be specified in the
1260 order. A criminal justice agency may not seal any record
1261 pertaining to such additional arrests if the order to seal does
1262 not articulate the intention of the court to seal records
1263 pertaining to more than one arrest. This section does not
1264 prevent the court from ordering the sealing of only a portion of
1265 a criminal history record pertaining to one arrest or one
1266 incident of alleged criminal activity. Notwithstanding any law
1267 to the contrary, a criminal justice agency may comply with laws,
1268 court orders, and official requests of other jurisdictions
1269 relating to sealing, correction, or confidential handling of
1270 criminal history records or information derived therefrom. This
1271 section does not confer any right to the sealing of any criminal
1272 history record, and any request for sealing a criminal history
1273 record may be denied at the sole discretion of the court.

1274 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
1275 petition to a court to seal a criminal history record is
1276 complete only when accompanied by:

1277 (a) A valid certificate of eligibility for sealing issued
1278 by the department pursuant to subsection (2).

1279 (b) The petitioner's sworn statement attesting that the
1280 petitioner:

1281 1. Has never, prior to the date on which the petition is
 1282 filed, been adjudicated guilty of a criminal offense or
 1283 comparable ordinance violation, or been adjudicated delinquent
 1284 for committing any felony or a misdemeanor specified in s.
 1285 943.051(3)(b).

1286 2. Has not been adjudicated guilty of or adjudicated
 1287 delinquent for committing any of the acts stemming from the
 1288 arrest or alleged criminal activity to which the petition to
 1289 seal pertains.

1290 3. Has never secured a prior sealing or expunction of a
 1291 criminal history record under this section, former s. 893.14,
 1292 former s. 901.33, former s. 943.058, or from any jurisdiction
 1293 outside the state.

1294 4. Is eligible for such a sealing to the best of his or
 1295 her knowledge or belief and does not have any other petition to
 1296 seal or any petition to expunge pending before any court.

1297
 1298 Any person who knowingly provides false information on such
 1299 sworn statement to the court commits a felony of the third
 1300 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1301 775.084.

1302 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
 1303 petitioning the court to seal a criminal history record, a
 1304 person seeking to seal a criminal history record shall apply to
 1305 the department for a certificate of eligibility for sealing. The
 1306 department shall, by rule adopted pursuant to chapter 120,
 1307 establish procedures pertaining to the application for and
 1308 issuance of certificates of eligibility for sealing. A

HB 605

2008

1309 certificate of eligibility for sealing is valid for 12 months
1310 after the date stamped on the certificate when issued by the
1311 department. After that time, the petitioner must reapply to the
1312 department for a new certificate of eligibility. Eligibility for
1313 a renewed certification of eligibility must be based on the
1314 status of the applicant and the law in effect at the time of the
1315 renewal application. The department shall issue a certificate of
1316 eligibility for sealing to a person who is the subject of a
1317 criminal history record provided that such person:

1318 (a) Has submitted to the department a certified copy of
1319 the disposition of the charge to which the petition to seal
1320 pertains.

1321 (b) Remits a \$75 processing fee to the department for
1322 placement in the Department of Law Enforcement Operating Trust
1323 Fund, unless such fee is waived by the executive director.

1324 (c) Has never, prior to the date on which the application
1325 for a certificate of eligibility is filed, been adjudicated
1326 guilty of a criminal offense or comparable ordinance violation,
1327 or been adjudicated delinquent for committing any felony or a
1328 misdemeanor specified in s. 943.051(3)(b).

1329 (d) Has not been adjudicated guilty of or adjudicated
1330 delinquent for committing any of the acts stemming from the
1331 arrest or alleged criminal activity to which the petition to
1332 seal pertains.

1333 (e) Has never secured a prior sealing or expunction of a
1334 criminal history record under this section, former s. 893.14,
1335 former s. 901.33, or former s. 943.058.

1336 (f) Is no longer under court supervision applicable to the
 1337 disposition of the arrest or alleged criminal activity to which
 1338 the petition to seal pertains.

1339 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

1340 (a) In judicial proceedings under this section, a copy of
 1341 the completed petition to seal shall be served upon the
 1342 appropriate state attorney or the statewide prosecutor and upon
 1343 the arresting agency; however, it is not necessary to make any
 1344 agency other than the state a party. The appropriate state
 1345 attorney or the statewide prosecutor and the arresting agency
 1346 may respond to the court regarding the completed petition to
 1347 seal.

1348 (b) If relief is granted by the court, the clerk of the
 1349 court shall certify copies of the order to the appropriate state
 1350 attorney or the statewide prosecutor and to the arresting
 1351 agency. The arresting agency is responsible for forwarding the
 1352 order to any other agency to which the arresting agency
 1353 disseminated the criminal history record information to which
 1354 the order pertains. The department shall forward the order to
 1355 seal to the Federal Bureau of Investigation. The clerk of the
 1356 court shall certify a copy of the order to any other agency
 1357 which the records of the court reflect has received the criminal
 1358 history record from the court.

1359 (c) For an order to seal entered by a court prior to July
 1360 1, 1992, the department shall notify the appropriate state
 1361 attorney or statewide prosecutor of any order to seal which is
 1362 contrary to law because the person who is the subject of the
 1363 record has previously been convicted of a crime or comparable

HB 605

2008

1364 ordinance violation or has had a prior criminal history record
1365 sealed or expunged. Upon receipt of such notice, the appropriate
1366 state attorney or statewide prosecutor shall take action, within
1367 60 days, to correct the record and petition the court to void
1368 the order to seal. The department shall seal the record until
1369 such time as the order is voided by the court.

1370 (d) On or after July 1, 1992, the department or any other
1371 criminal justice agency is not required to act on an order to
1372 seal entered by a court when such order does not comply with the
1373 requirements of this section. Upon receipt of such an order, the
1374 department must notify the issuing court, the appropriate state
1375 attorney or statewide prosecutor, the petitioner or the
1376 petitioner's attorney, and the arresting agency of the reason
1377 for noncompliance. The appropriate state attorney or statewide
1378 prosecutor shall take action within 60 days to correct the
1379 record and petition the court to void the order. No cause of
1380 action, including contempt of court, shall arise against any
1381 criminal justice agency for failure to comply with an order to
1382 seal when the petitioner for such order failed to obtain the
1383 certificate of eligibility as required by this section or when
1384 such order does not comply with the requirements of this
1385 section.

1386 (e) An order sealing a criminal history record pursuant to
1387 this section does not require that such record be surrendered to
1388 the court, and such record shall continue to be maintained by
1389 the department and other criminal justice agencies.

1390 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1391 history record of a minor or an adult which is ordered sealed by

1392 a court of competent jurisdiction pursuant to this section is
 1393 confidential and exempt from the provisions of s. 119.07(1) and
 1394 s. 24(a), Art. I of the State Constitution and is available only
 1395 to the person who is the subject of the record, to the subject's
 1396 attorney, to criminal justice agencies for their respective
 1397 criminal justice purposes, which include conducting a criminal
 1398 history background check for approval of firearms purchases or
 1399 transfers as authorized by state or federal law, or to those
 1400 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8.
 1401 for their respective licensing, access authorization, and
 1402 employment purposes.

1403 (a) The subject of a criminal history record sealed under
 1404 this section or under other provisions of law, including former
 1405 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1406 deny or fail to acknowledge the arrests covered by the sealed
 1407 record, except when the subject of the record:

- 1408 1. Is a candidate for employment with a criminal justice
 1409 agency;
- 1410 2. Is a defendant in a criminal prosecution;
- 1411 3. Concurrently or subsequently petitions for relief under
 1412 this section or s. 943.0585;
- 1413 4. Is a candidate for admission to The Florida Bar;
- 1414 5. Is seeking to be employed or licensed by or to contract
 1415 with the Department of Children and Family Services or the
 1416 Department of Juvenile Justice or to be employed or used by such
 1417 contractor or licensee in a sensitive position having direct
 1418 contact with children, the developmentally disabled, the aged,
 1419 or the elderly as provided in s. 110.1127(3), s. 393.063, s.

1420 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1421 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
 1422 985.644, chapter 400, or chapter 429;

1423 6. Is seeking to be employed or licensed by the Department
 1424 of Education, any district school board, any university
 1425 laboratory school, any charter school, any private or parochial
 1426 school, or any local governmental entity that licenses child
 1427 care facilities;

1428 7. Is attempting to purchase a firearm from a licensed
 1429 importer, licensed manufacturer, or licensed dealer and is
 1430 subject to a criminal history background check under state or
 1431 federal law; or

1432 8. Is seeking authorization from a Florida seaport
 1433 identified in s. 311.09 for employment within or access to one
 1434 or more of such seaports pursuant to s. 311.12 or s. 311.125.

1435 (b) Subject to the exceptions in paragraph (a), a person
 1436 who has been granted a sealing under this section, former s.
 1437 893.14, former s. 901.33, or former s. 943.058 may not be held
 1438 under any provision of law of this state to commit perjury or to
 1439 be otherwise liable for giving a false statement by reason of
 1440 such person's failure to recite or acknowledge a sealed criminal
 1441 history record.

1442 (c) Information relating to the existence of a sealed
 1443 criminal record provided in accordance with the provisions of
 1444 paragraph (a) is confidential and exempt from the provisions of
 1445 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 1446 except that the department shall disclose the sealed criminal
 1447 history record to the entities set forth in subparagraphs (a)1.,

1448 4., 5., 6., and 8. for their respective licensing, access
 1449 authorization, and employment purposes. It is unlawful for any
 1450 employee of an entity set forth in subparagraph (a)1.,
 1451 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
 1452 subparagraph (a)8. to disclose information relating to the
 1453 existence of a sealed criminal history record of a person
 1454 seeking employment, access authorization, or licensure with such
 1455 entity or contractor, except to the person to whom the criminal
 1456 history record relates or to persons having direct
 1457 responsibility for employment, access authorization, or
 1458 licensure decisions. Any person who violates the provisions of
 1459 this paragraph commits a misdemeanor of the first degree,
 1460 punishable as provided in s. 775.082 or s. 775.083.

1461 (5) STATUTORY REFERENCES.--Any reference to any other
 1462 chapter, section, or subdivision of the Florida Statutes in this
 1463 section constitutes a general reference under the doctrine of
 1464 incorporation by reference.

1465 Section 27. Paragraph (b) of subsection (1) of section
 1466 944.606, Florida Statutes, is amended to read:

1467 944.606 Sexual offenders; notification upon release.--

1468 (1) As used in this section:

1469 (b) "Sexual offender" means a person who has been
 1470 convicted of committing, or attempting, soliciting, or
 1471 conspiring to commit, any of the criminal offenses proscribed in
 1472 the following statutes in this state or similar offenses in
 1473 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 1474 where the victim is a minor and the defendant is not the
 1475 victim's parent or guardian; s. 794.011, excluding s.

HB 605

2008

1476 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1477 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 1478 847.0135(4); s. 847.01355, s. 847.0137; s. 847.0138; s.
 1479 847.0145; or s. 985.701(1); or any similar offense committed in
 1480 this state which has been redesignated from a former statute
 1481 number to one of those listed in this subsection, when the
 1482 department has received verified information regarding such
 1483 conviction; an offender's computerized criminal history record
 1484 is not, in and of itself, verified information.

1485 Section 28. Paragraph (a) of subsection (1) of section
 1486 944.607, Florida Statutes, is amended to read:

1487 944.607 Notification to Department of Law Enforcement of
 1488 information on sexual offenders.--

1489 (1) As used in this section, the term:

1490 (a) "Sexual offender" means a person who is in the custody
 1491 or control of, or under the supervision of, the department or is
 1492 in the custody of a private correctional facility:

1493 1. On or after October 1, 1997, as a result of a
 1494 conviction for committing, or attempting, soliciting, or
 1495 conspiring to commit, any of the criminal offenses proscribed in
 1496 the following statutes in this state or similar offenses in
 1497 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 1498 where the victim is a minor and the defendant is not the
 1499 victim's parent or guardian; s. 794.011, excluding s.
 1500 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1501 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 1502 847.0135(4); s. 847.01355; s. 847.0137; s. 847.0138; s.
 1503 847.0145; or s. 985.701(1); or any similar offense committed in

1504 this state which has been redesignated from a former statute
 1505 number to one of those listed in this paragraph; or

1506 2. Who establishes or maintains a residence in this state
 1507 and who has not been designated as a sexual predator by a court
 1508 of this state but who has been designated as a sexual predator,
 1509 as a sexually violent predator, or by another sexual offender
 1510 designation in another state or jurisdiction and was, as a
 1511 result of such designation, subjected to registration or
 1512 community or public notification, or both, or would be if the
 1513 person were a resident of that state or jurisdiction, without
 1514 regard as to whether the person otherwise meets the criteria for
 1515 registration as a sexual offender.

1516 Section 29. Subsection (7) of section 947.1405, Florida
 1517 Statutes, is amended to read:

1518 947.1405 Conditional release program.--

1519 (7) (a) Any inmate who is convicted of a crime committed on
 1520 or after October 1, 1995, or who has been previously convicted
 1521 of a crime committed on or after October 1, 1995, in violation
 1522 of chapter 794, s. 800.04, s. 827.071, s. 847.01355, or s.
 1523 847.0145, and is subject to conditional release supervision,
 1524 shall have, in addition to any other conditions imposed, the
 1525 following special conditions imposed by the commission:

1526 1. A mandatory curfew from 10 p.m. to 6 a.m. The
 1527 commission may designate another 8-hour period if the offender's
 1528 employment precludes the above specified time, and such
 1529 alternative is recommended by the Department of Corrections. If
 1530 the commission determines that imposing a curfew would endanger
 1531 the victim, the commission may consider alternative sanctions.

HB 605

2008

1532 2. If the victim was under the age of 18, a prohibition on
1533 living within 1,000 feet of a school, day care center, park,
1534 playground, designated public school bus stop, or other place
1535 where children regularly congregate. A releasee who is subject
1536 to this subparagraph may not relocate to a residence that is
1537 within 1,000 feet of a public school bus stop. Beginning October
1538 1, 2004, the commission or the department may not approve a
1539 residence that is located within 1,000 feet of a school, day
1540 care center, park, playground, designated school bus stop, or
1541 other place where children regularly congregate for any releasee
1542 who is subject to this subparagraph. On October 1, 2004, the
1543 department shall notify each affected school district of the
1544 location of the residence of a releasee 30 days prior to release
1545 and thereafter, if the releasee relocates to a new residence,
1546 shall notify any affected school district of the residence of
1547 the releasee within 30 days after relocation. If, on October 1,
1548 2004, any public school bus stop is located within 1,000 feet of
1549 the existing residence of such releasee, the district school
1550 board shall relocate that school bus stop. Beginning October 1,
1551 2004, a district school board may not establish or relocate a
1552 public school bus stop within 1,000 feet of the residence of a
1553 releasee who is subject to this subparagraph. The failure of the
1554 district school board to comply with this subparagraph shall not
1555 result in a violation of conditional release supervision.

1556 3. Active participation in and successful completion of a
1557 sex offender treatment program with qualified practitioners
1558 specifically trained to treat sex offenders, at the releasee's
1559 own expense. If a qualified practitioner is not available within

HB 605

2008

1560 a 50-mile radius of the releasee's residence, the offender shall
1561 participate in other appropriate therapy.

1562 4. A prohibition on any contact with the victim, directly
1563 or indirectly, including through a third person, unless approved
1564 by the victim, the offender's therapist, and the sentencing
1565 court.

1566 5. If the victim was under the age of 18, a prohibition
1567 against contact with children under the age of 18 without review
1568 and approval by the commission. The commission may approve
1569 supervised contact with a child under the age of 18 if the
1570 approval is based upon a recommendation for contact issued by a
1571 qualified practitioner who is basing the recommendation on a
1572 risk assessment. Further, the sex offender must be currently
1573 enrolled in or have successfully completed a sex offender
1574 therapy program. The commission may not grant supervised contact
1575 with a child if the contact is not recommended by a qualified
1576 practitioner and may deny supervised contact with a child at any
1577 time. When considering whether to approve supervised contact
1578 with a child, the commission must review and consider the
1579 following:

1580 a. A risk assessment completed by a qualified
1581 practitioner. The qualified practitioner must prepare a written
1582 report that must include the findings of the assessment and
1583 address each of the following components:

1584 (I) The sex offender's current legal status;

1585 (II) The sex offender's history of adult charges with
1586 apparent sexual motivation;

1587 (III) The sex offender's history of adult charges without
 1588 apparent sexual motivation;

1589 (IV) The sex offender's history of juvenile charges,
 1590 whenever available;

1591 (V) The sex offender's offender treatment history,
 1592 including a consultation from the sex offender's treating, or
 1593 most recent treating, therapist;

1594 (VI) The sex offender's current mental status;

1595 (VII) The sex offender's mental health and substance abuse
 1596 history as provided by the Department of Corrections;

1597 (VIII) The sex offender's personal, social, educational,
 1598 and work history;

1599 (IX) The results of current psychological testing of the
 1600 sex offender if determined necessary by the qualified
 1601 practitioner;

1602 (X) A description of the proposed contact, including the
 1603 location, frequency, duration, and supervisory arrangement;

1604 (XI) The child's preference and relative comfort level
 1605 with the proposed contact, when age-appropriate;

1606 (XII) The parent's or legal guardian's preference
 1607 regarding the proposed contact; and

1608 (XIII) The qualified practitioner's opinion, along with
 1609 the basis for that opinion, as to whether the proposed contact
 1610 would likely pose significant risk of emotional or physical harm
 1611 to the child.

1612

1613 The written report of the assessment must be given to the
 1614 commission.

HB 605

2008

1615 b. A recommendation made as a part of the risk-assessment
1616 report as to whether supervised contact with the child should be
1617 approved;

1618 c. A written consent signed by the child's parent or legal
1619 guardian, if the parent or legal guardian is not the sex
1620 offender, agreeing to the sex offender having supervised contact
1621 with the child after receiving full disclosure of the sex
1622 offender's present legal status, past criminal history, and the
1623 results of the risk assessment. The commission may not approve
1624 contact with the child if the parent or legal guardian refuses
1625 to give written consent for supervised contact;

1626 d. A safety plan prepared by the qualified practitioner,
1627 who provides treatment to the offender, in collaboration with
1628 the sex offender, the child's parent or legal guardian, and the
1629 child, when age appropriate, which details the acceptable
1630 conditions of contact between the sex offender and the child.
1631 The safety plan must be reviewed and approved by the Department
1632 of Corrections before being submitted to the commission; and

1633 e. Evidence that the child's parent or legal guardian, if
1634 the parent or legal guardian is not the sex offender,
1635 understands the need for and agrees to the safety plan and has
1636 agreed to provide, or to designate another adult to provide,
1637 constant supervision any time the child is in contact with the
1638 offender.

1639
1640 The commission may not appoint a person to conduct a risk
1641 assessment and may not accept a risk assessment from a person
1642 who has not demonstrated to the commission that he or she has

1643 met the requirements of a qualified practitioner as defined in
1644 this section.

1645 6. If the victim was under age 18, a prohibition on
1646 working for pay or as a volunteer at any school, day care
1647 center, park, playground, or other place where children
1648 regularly congregate, as prescribed by the commission.

1649 7. Unless otherwise indicated in the treatment plan
1650 provided by the sexual offender treatment program, a prohibition
1651 on viewing, owning, or possessing any obscene, pornographic, or
1652 sexually stimulating visual or auditory material, including
1653 telephone, electronic media, computer programs, or computer
1654 services that are relevant to the offender's deviant behavior
1655 pattern.

1656 8. Effective for a releasee whose crime is committed on or
1657 after July 1, 2005, a prohibition on accessing the Internet or
1658 other computer services until the offender's sex offender
1659 treatment program, after a risk assessment is completed,
1660 approves and implements a safety plan for the offender's
1661 accessing or using the Internet or other computer services.

1662 9. A requirement that the releasee must submit two
1663 specimens of blood to the Florida Department of Law Enforcement
1664 to be registered with the DNA database.

1665 10. A requirement that the releasee make restitution to
1666 the victim, as determined by the sentencing court or the
1667 commission, for all necessary medical and related professional
1668 services relating to physical, psychiatric, and psychological
1669 care.

HB 605

2008

1670 11. Submission to a warrantless search by the community
1671 control or probation officer of the probationer's or community
1672 controllee's person, residence, or vehicle.

1673 (b) For a releasee whose crime was committed on or after
1674 October 1, 1997, in violation of chapter 794, s. 800.04, s.
1675 827.071, s. 847.01355, or s. 847.0145, and who is subject to
1676 conditional release supervision, in addition to any other
1677 provision of this subsection, the commission shall impose the
1678 following additional conditions of conditional release
1679 supervision:

1680 1. As part of a treatment program, participation in a
1681 minimum of one annual polygraph examination to obtain
1682 information necessary for risk management and treatment and to
1683 reduce the sex offender's denial mechanisms. The polygraph
1684 examination must be conducted by a polygrapher trained
1685 specifically in the use of the polygraph for the monitoring of
1686 sex offenders, where available, and at the expense of the sex
1687 offender. The results of the polygraph examination shall not be
1688 used as evidence in a hearing to prove that a violation of
1689 supervision has occurred.

1690 2. Maintenance of a driving log and a prohibition against
1691 driving a motor vehicle alone without the prior approval of the
1692 supervising officer.

1693 3. A prohibition against obtaining or using a post office
1694 box without the prior approval of the supervising officer.

1695 4. If there was sexual contact, a submission to, at the
1696 probationer's or community controllee's expense, an HIV test

HB 605

2008

1697 with the results to be released to the victim or the victim's
 1698 parent or guardian.

1699 5. Electronic monitoring of any form when ordered by the
 1700 commission.

1701 Section 30. Subsection (2) of section 948.013, Florida
 1702 Statutes, is amended to read:

1703 948.013 Administrative probation.--

1704 (2) Effective for an offense committed on or after July 1,
 1705 1998, a person is ineligible for placement on administrative
 1706 probation if the person is sentenced to or is serving a term of
 1707 probation or community control, regardless of the conviction or
 1708 adjudication, for committing, or attempting, conspiring, or
 1709 soliciting to commit, any of the felony offenses described in s.
 1710 787.01 or s. 787.02, where the victim is a minor and the
 1711 defendant is not the victim's parent; s. 787.025; chapter 794;
 1712 s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; s.
 1713 847.0133; s. 847.0135; s. 847.01355; or s. 847.0145.

1714 Section 31. Subsection (2) of section 948.03, Florida
 1715 Statutes, is amended to read:

1716 948.03 Terms and conditions of probation.--

1717 (2) The enumeration of specific kinds of terms and
 1718 conditions shall not prevent the court from adding thereto such
 1719 other or others as it considers proper. However, the sentencing
 1720 court may only impose a condition of supervision allowing an
 1721 offender convicted of s. 794.011, s. 800.04, s. 827.071, s.
 1722 847.01355, or s. 847.0145, to reside in another state, if the
 1723 order stipulates that it is contingent upon the approval of the
 1724 receiving state interstate compact authority. The court may

1725 rescind or modify at any time the terms and conditions
 1726 theretofore imposed by it upon the probationer. However, if the
 1727 court withholds adjudication of guilt or imposes a period of
 1728 incarceration as a condition of probation, the period shall not
 1729 exceed 364 days, and incarceration shall be restricted to either
 1730 a county facility, a probation and restitution center under the
 1731 jurisdiction of the Department of Corrections, a probation
 1732 program drug punishment phase I secure residential treatment
 1733 institution, or a community residential facility owned or
 1734 operated by any entity providing such services.

1735 Section 32. Paragraph (c) of subsection (8) of section
 1736 948.06, Florida Statutes, is amended to read:

1737 948.06 Violation of probation or community control;
 1738 revocation; modification; continuance; failure to pay
 1739 restitution or cost of supervision.--

1740 (8)

1741 (c) For purposes of this section, the term "qualifying
 1742 offense" means any of the following:

1743 1. Kidnapping or attempted kidnapping under s. 787.01,
 1744 false imprisonment of a child under the age of 13 under s.
 1745 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 1746 or (c).

1747 2. Murder or attempted murder under s. 782.04, attempted
 1748 felony murder under s. 782.051, or manslaughter under s. 782.07.

1749 3. Aggravated battery or attempted aggravated battery
 1750 under s. 784.045.

1751 4. Sexual battery or attempted sexual battery under s.
 1752 794.011(2), (3), (4), or (8)(b) or (c).

1753 5. Lewd or lascivious battery or attempted lewd or
 1754 lascivious battery under s. 800.04(4), lewd or lascivious
 1755 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
 1756 conduct under s. 800.04(6)(b), ~~or~~ lewd or lascivious exhibition
 1757 under s. 800.04(7)(b)~~(e)~~, or lewd or lascivious exhibition on
 1758 computer under s. 847.01355(2).

1759 6. Robbery or attempted robbery under s. 812.13,
 1760 carjacking or attempted carjacking under s. 812.133, or home
 1761 invasion robbery or attempted home invasion robbery under s.
 1762 812.135.

1763 7. Lewd or lascivious offense upon or in the presence of
 1764 an elderly or disabled person or attempted lewd or lascivious
 1765 offense upon or in the presence of an elderly or disabled person
 1766 under s. 825.1025.

1767 8. Sexual performance by a child or attempted sexual
 1768 performance by a child under s. 827.071.

1769 9. Computer pornography under s. 847.0135(2) or (3),
 1770 transmission of child pornography under s. 847.0137, or selling
 1771 or buying of minors under s. 847.0145.

1772 10. Poisoning food or water under s. 859.01.

1773 11. Abuse of a dead human body under s. 872.06.

1774 12. Any burglary offense or attempted burglary offense
 1775 that is either a first degree felony or second degree felony
 1776 under s. 810.02(2) or (3).

1777 13. Arson or attempted arson under s. 806.01(1).

1778 14. Aggravated assault under s. 784.021.

1779 15. Aggravated stalking under s. 784.048(3), (4), (5), or
 1780 (7).

- 1781 16. Aircraft piracy under s. 860.16.
- 1782 17. Unlawful throwing, placing, or discharging of a
- 1783 destructive device or bomb under s. 790.161(2), (3), or (4).
- 1784 18. Treason under s. 876.32.
- 1785 19. Any offense committed in another jurisdiction which
- 1786 would be an offense listed in this paragraph if that offense had
- 1787 been committed in this state.

1788 Section 33. Subsection (2) of section 948.101, Florida
 1789 Statutes, is amended to read:

1790 948.101 Terms and conditions of community control and
 1791 criminal quarantine community control.--

1792 (2) The enumeration of specific kinds of terms and
 1793 conditions does not prevent the court from adding thereto any
 1794 other terms or conditions that the court considers proper.
 1795 However, the sentencing court may only impose a condition of
 1796 supervision allowing an offender convicted of s. 794.011, s.
 1797 800.04, s. 827.071, s. 847.01355, or s. 847.0145 to reside in
 1798 another state if the order stipulates that it is contingent upon
 1799 the approval of the receiving state interstate compact
 1800 authority. The court may rescind or modify at any time the terms
 1801 and conditions theretofore imposed by it upon the offender in
 1802 community control. However, if the court withholds adjudication
 1803 of guilt or imposes a period of incarceration as a condition of
 1804 community control, the period may not exceed 364 days, and
 1805 incarceration shall be restricted to a county facility, a
 1806 probation and restitution center under the jurisdiction of the
 1807 Department of Corrections, a probation program drug punishment
 1808 phase I secure residential treatment institution, or a community

1809 residential facility owned or operated by any entity providing
 1810 such services.

1811 Section 34. Subsections (1) and (2) of section 948.30,
 1812 Florida Statutes, are amended to read:

1813 948.30 Additional terms and conditions of probation or
 1814 community control for certain sex offenses.--Conditions imposed
 1815 pursuant to this section do not require oral pronouncement at
 1816 the time of sentencing and shall be considered standard
 1817 conditions of probation or community control for offenders
 1818 specified in this section.

1819 (1) Effective for probationers or community controllees
 1820 whose crime was committed on or after October 1, 1995, and who
 1821 are placed under supervision for violation of chapter 794, s.
 1822 800.04, s. 827.071, s. 847.01355, or s. 847.0145, the court must
 1823 impose the following conditions in addition to all other
 1824 standard and special conditions imposed:

1825 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court
 1826 may designate another 8-hour period if the offender's employment
 1827 precludes the above specified time, and the alternative is
 1828 recommended by the Department of Corrections. If the court
 1829 determines that imposing a curfew would endanger the victim, the
 1830 court may consider alternative sanctions.

1831 (b) If the victim was under the age of 18, a prohibition
 1832 on living within 1,000 feet of a school, day care center, park,
 1833 playground, or other place where children regularly congregate,
 1834 as prescribed by the court. The 1,000-foot distance shall be
 1835 measured in a straight line from the offender's place of
 1836 residence to the nearest boundary line of the school, day care

HB 605

2008

1837 center, park, playground, or other place where children
1838 congregate. The distance may not be measured by a pedestrian
1839 route or automobile route.

1840 (c) Active participation in and successful completion of a
1841 sex offender treatment program with qualified practitioners
1842 specifically trained to treat sex offenders, at the
1843 probationer's or community controllee's own expense. If a
1844 qualified practitioner is not available within a 50-mile radius
1845 of the probationer's or community controllee's residence, the
1846 offender shall participate in other appropriate therapy.

1847 (d) A prohibition on any contact with the victim, directly
1848 or indirectly, including through a third person, unless approved
1849 by the victim, the offender's therapist, and the sentencing
1850 court.

1851 (e) If the victim was under the age of 18, a prohibition
1852 on contact with a child under the age of 18 except as provided
1853 in this paragraph. The court may approve supervised contact with
1854 a child under the age of 18 if the approval is based upon a
1855 recommendation for contact issued by a qualified practitioner
1856 who is basing the recommendation on a risk assessment. Further,
1857 the sex offender must be currently enrolled in or have
1858 successfully completed a sex offender therapy program. The court
1859 may not grant supervised contact with a child if the contact is
1860 not recommended by a qualified practitioner and may deny
1861 supervised contact with a child at any time. When considering
1862 whether to approve supervised contact with a child, the court
1863 must review and consider the following:

- 1864 1. A risk assessment completed by a qualified
 1865 practitioner. The qualified practitioner must prepare a written
 1866 report that must include the findings of the assessment and
 1867 address each of the following components:
- 1868 a. The sex offender's current legal status;
 - 1869 b. The sex offender's history of adult charges with
 1870 apparent sexual motivation;
 - 1871 c. The sex offender's history of adult charges without
 1872 apparent sexual motivation;
 - 1873 d. The sex offender's history of juvenile charges,
 1874 whenever available;
 - 1875 e. The sex offender's offender treatment history,
 1876 including consultations with the sex offender's treating, or
 1877 most recent treating, therapist;
 - 1878 f. The sex offender's current mental status;
 - 1879 g. The sex offender's mental health and substance abuse
 1880 treatment history as provided by the Department of Corrections;
 - 1881 h. The sex offender's personal, social, educational, and
 1882 work history;
 - 1883 i. The results of current psychological testing of the sex
 1884 offender if determined necessary by the qualified practitioner;
 - 1885 j. A description of the proposed contact, including the
 1886 location, frequency, duration, and supervisory arrangement;
 - 1887 k. The child's preference and relative comfort level with
 1888 the proposed contact, when age appropriate;
 - 1889 l. The parent's or legal guardian's preference regarding
 1890 the proposed contact; and

1891 m. The qualified practitioner's opinion, along with the
 1892 basis for that opinion, as to whether the proposed contact would
 1893 likely pose significant risk of emotional or physical harm to
 1894 the child.

1895
 1896 The written report of the assessment must be given to the court;

1897 2. A recommendation made as a part of the risk assessment
 1898 report as to whether supervised contact with the child should be
 1899 approved;

1900 3. A written consent signed by the child's parent or legal
 1901 guardian, if the parent or legal guardian is not the sex
 1902 offender, agreeing to the sex offender having supervised contact
 1903 with the child after receiving full disclosure of the sex
 1904 offender's present legal status, past criminal history, and the
 1905 results of the risk assessment. The court may not approve
 1906 contact with the child if the parent or legal guardian refuses
 1907 to give written consent for supervised contact;

1908 4. A safety plan prepared by the qualified practitioner,
 1909 who provides treatment to the offender, in collaboration with
 1910 the sex offender, the child's parent or legal guardian, if the
 1911 parent or legal guardian is not the sex offender, and the child,
 1912 when age appropriate, which details the acceptable conditions of
 1913 contact between the sex offender and the child. The safety plan
 1914 must be reviewed and approved by the court; and

1915 5. Evidence that the child's parent or legal guardian
 1916 understands the need for and agrees to the safety plan and has
 1917 agreed to provide, or to designate another adult to provide,

1918 constant supervision any time the child is in contact with the
 1919 offender.

1920
 1921 The court may not appoint a person to conduct a risk assessment
 1922 and may not accept a risk assessment from a person who has not
 1923 demonstrated to the court that he or she has met the
 1924 requirements of a qualified practitioner as defined in this
 1925 section.

1926 (f) If the victim was under age 18, a prohibition on
 1927 working for pay or as a volunteer at any place where children
 1928 regularly congregate, including, but not limited to, schools,
 1929 day care centers, parks, playgrounds, pet stores, libraries,
 1930 zoos, theme parks, and malls.

1931 (g) Unless otherwise indicated in the treatment plan
 1932 provided by the sexual offender treatment program, a prohibition
 1933 on viewing, accessing, owning, or possessing any obscene,
 1934 pornographic, or sexually stimulating visual or auditory
 1935 material, including telephone, electronic media, computer
 1936 programs, or computer services that are relevant to the
 1937 offender's deviant behavior pattern.

1938 (h) Effective for probationers and community controllees
 1939 whose crime is committed on or after July 1, 2005, a prohibition
 1940 on accessing the Internet or other computer services until the
 1941 offender's sex offender treatment program, after a risk
 1942 assessment is completed, approves and implements a safety plan
 1943 for the offender's accessing or using the Internet or other
 1944 computer services.

1945 (i) A requirement that the probationer or community
 1946 controllee must submit a specimen of blood or other approved
 1947 biological specimen to the Department of Law Enforcement to be
 1948 registered with the DNA data bank.

1949 (j) A requirement that the probationer or community
 1950 controllee make restitution to the victim, as ordered by the
 1951 court under s. 775.089, for all necessary medical and related
 1952 professional services relating to physical, psychiatric, and
 1953 psychological care.

1954 (k) Submission to a warrantless search by the community
 1955 control or probation officer of the probationer's or community
 1956 controllee's person, residence, or vehicle.

1957 (2) Effective for a probationer or community controllee
 1958 whose crime was committed on or after October 1, 1997, and who
 1959 is placed on community control or sex offender probation for a
 1960 violation of chapter 794, s. 800.04, s. 827.071, s. 847.01355,
 1961 or s. 847.0145, in addition to any other provision of this
 1962 section, the court must impose the following conditions of
 1963 probation or community control:

1964 (a) As part of a treatment program, participation at least
 1965 annually in polygraph examinations to obtain information
 1966 necessary for risk management and treatment and to reduce the
 1967 sex offender's denial mechanisms. A polygraph examination must
 1968 be conducted by a polygrapher trained specifically in the use of
 1969 the polygraph for the monitoring of sex offenders, where
 1970 available, and shall be paid for by the sex offender. The
 1971 results of the polygraph examination shall not be used as

1972 | evidence in court to prove that a violation of community
 1973 | supervision has occurred.

1974 | (b) Maintenance of a driving log and a prohibition against
 1975 | driving a motor vehicle alone without the prior approval of the
 1976 | supervising officer.

1977 | (c) A prohibition against obtaining or using a post office
 1978 | box without the prior approval of the supervising officer.

1979 | (d) If there was sexual contact, a submission to, at the
 1980 | probationer's or community controllee's expense, an HIV test
 1981 | with the results to be released to the victim or the victim's
 1982 | parent or guardian.

1983 | (e) Electronic monitoring when deemed necessary by the
 1984 | community control or probation officer and his or her
 1985 | supervisor, and ordered by the court at the recommendation of
 1986 | the Department of Corrections.

1987 | Section 35. Subsection (1) of section 948.31, Florida
 1988 | Statutes, is amended to read:

1989 | 948.31 Diagnosis, evaluation, and treatment of offenders
 1990 | placed on probation or community control for certain sex
 1991 | offenses or child exploitation.--The court shall require a
 1992 | diagnosis and evaluation to determine the need of a probationer
 1993 | or offender in community control for treatment. If the court
 1994 | determines that a need therefor is established by such diagnosis
 1995 | and evaluation process, the court shall require outpatient
 1996 | counseling as a term or condition of probation or community
 1997 | control for any person who was found guilty of any of the
 1998 | following, or whose plea of guilty or nolo contendere to any of
 1999 | the following was accepted by the court:

2000 (1) Lewd or lascivious battery, lewd or lascivious
 2001 molestation, lewd or lascivious conduct, or lewd or lascivious
 2002 exhibition, as defined in s. 800.04 or s. 847.01355.

2003
 2004 Such counseling shall be required to be obtained from a
 2005 community mental health center, a recognized social service
 2006 agency providing mental health services, or a private mental
 2007 health professional or through other professional counseling.
 2008 The plan for counseling for the individual shall be provided to
 2009 the court for review.

2010 Section 36. Subsection (1) of section 948.32, Florida
 2011 Statutes, is amended to read:

2012 948.32 Requirements of law enforcement agency upon arrest
 2013 of persons for certain sex offenses.--

2014 (1) When any state or local law enforcement agency
 2015 investigates or arrests a person for committing, or attempting,
 2016 soliciting, or conspiring to commit, a violation of s.
 2017 787.025(2)(c), chapter 794, s. 796.03, s. 800.04, s. 827.071, s.
 2018 847.0133, s. 847.0135, s. 847.01355, or s. 847.0145, the law
 2019 enforcement agency shall contact the Department of Corrections
 2020 to verify whether the person under investigation or under arrest
 2021 is on probation, community control, parole, conditional release,
 2022 or control release.

2023 Section 37. This act shall take effect July 1, 2008.