

Criminal Justice Subcommittee

Wednesday, December 6, 2017

8:00 AM – 10:00 AM

404 HOB

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, December 06, 2017 08:00 am
End Date and Time: Wednesday, December 06, 2017 10:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 471 Unmanned Aircraft by Yarborough
HB 473 Cruelty to Animals by Leek, Brodeur
HB 491 Theft by Roth
HB 523 Trespass on Airport Property by Cortes, B.

Consideration of the following proposed committee bill(s):

PCB CRJ 18-01 -- Child Exploitation
PCB CRJ 18-02 -- Public Records/Minor Victims of Sexual Offenses

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, December 5, 2017.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, December 5, 2017.

NOTICE FINALIZED on 11/29/2017 4:14PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 471 Unmanned Aircraft
SPONSOR(S): Yarborough
TIED BILLS: IDEN./SIM. BILLS: SB 624

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Bruno, Sumner.

SUMMARY ANALYSIS

Section 934.50, F.S., defines a drone as a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or nonlethal payload.

As drone use has increased in recent years, people have used drones to smuggle contraband – including cell phones, drugs, weapons, and escape tools – into correctional facilities across the country.

HB 471 prohibits drone operation over, in contact with, or near a “fixed-site facility,” defined as:

- A state correctional institution,
• A secure detention center or facility, a high-risk residential facility, or a maximum-risk residential facility, or
• A county detention facility.

Consistent with current law protecting critical infrastructure facilities such as electrical power generators and chemical manufacturing facilities from drone operation, a first time violation is a second degree misdemeanor, and a second or subsequent violation is a first degree misdemeanor.

The bill further amends s. 934.50, F.S., to expand one of the exceptions under which law enforcement officers may use a drone for surveillance to permit its use when law enforcement has reasonable suspicion that swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene.

The Criminal Justice Impact Conference (CJIC) has not yet considered the impact of this bill. Because the bill increases criminal liability at the misdemeanor and felony levels, it may have a fiscal impact on state and local governments.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under Florida law, a drone is a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or nonlethal payload.¹ The full system comprising of a drone and its associated elements – including communication links and components used to control the drone – is called an unmanned aircraft system (UAS).²

In recent years, drone use has increased substantially among hobbyists and commercial users. The Federal Aviation Administration (FAA) forecasts up to seven million annual drone sales by 2020.³ The increase in drone operation presents new public safety challenges. For example, drones have interfered with aerial efforts to extinguish wildfires,⁴ and people have crashed drones near crowds⁵ and on the White House lawn.⁶ People have also used drones to smuggle contraband – including cell phones, drugs, weapons, and escape tools – into correctional facilities across the country.⁷ As drones become increasingly prolific and their capabilities advance, this threat will likely continue and grow.

Drones have proven useful to law enforcement, however – particularly in the area of traffic accident reconstruction. Drones can capture images above a crash site and stitch them together to allow for highly accurate reconstructions.⁸

Federal Drone Regulation

The FAA regulates use of navigable airspace under federal law.⁹ The FAA has allowed drone use for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research since 1990.¹⁰ In 2012, the United States Congress directed the Secretary of the United States Department of Transportation to determine whether to allow other drone

¹ S. 934.50(2)(a), F.S.

² S. 330.41(2)(c), F.S.

³ Federal Aviation Administration, FAA Aerospace Forecast: Fiscal Years 2016-2036, available at:

https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf

⁴ Jennifer Medina, *Chasing Video with Drones, Hobbyists Imperil California Firefighting Efforts*, NY TIMES, (July 19, 2015), available at: <https://www.nytimes.com/2015/07/20/us/hobby-drones-hinder-california-firefighting-efforts.html>

⁵ Associated Press, *Drone hovers over court during match, crashes in Louis Armstrong Stadium*, ESPN, (Sept. 4, 2015), available at: http://www.espn.com/tennis/usopen15/story/_/id/13577411/drone-enters-louis-armstrong-stadium-crashes-empty-seats-match; Jeff Sanders, *A bird? A plane? No, a drone crash lands at Petco Park*, SAN DIEGO UNION-TRIBUNE, (May 22, 2017), available at:

<http://www.sandiegouniontribune.com/sports/padres/sd-sp-drone-crashes-at-petco-park-20170522-story.html>; Steve Miletich, *Man convicted in drone crash that injured woman during Seattle's Pride Parade*, SEATTLE TIMES, (Jan. 13, 2017), available at:

<https://www.seattletimes.com/seattle-news/crime/man-convicted-in-drone-crash-that-injured-woman-during-seattles-pride-parade/>

⁶ Bart Jansen, *Small drone crashes near White House despite ban against flights in D.C.*, USA TODAY, (Oct. 9, 2015), available at: <https://www.usatoday.com/story/news/2015/10/09/drone-crash-white-house-ellipse-us-park-police-federal-aviation-administration/73641812/>

⁷ Terell Wilkins, *Drone carrying drugs, phones crashes into prison yard*, USA TODAY, (Nov. 17, 2017), available at: <https://www.usatoday.com/story/news/nation-now/2017/11/17/drone-carrying-contraband-crashes-prison-yard/873557001/>; Michael Gerstein, *Drone sneaks package into Michigan Prison*, THE DETROIT NEWS, (Oct. 1, 2017), available at:

<http://www.detroitnews.com/story/news/local/michigan/2017/10/01/report-drone-sneaks-contraband-prison/106224348/>; Randy Ludlow, *Drone drops drugs, tobacco in Mansfield prison yard, spurs fight*, THE COLUMBUS DISPATCH, (Aug. 4, 2015), available at: <http://www.dispatch.com/content/stories/local/2015/08/04/drone-drops-drugs-in-Ohio-prison-yard.html>;

⁸ Bob Susnjara, *How drones help Lake County police investigate crashes, get roads open faster*, DAILY HERALD, (May 7, 2017), available at: <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster>

⁹ 49 U.S.C. § 40103.

¹⁰ Fact Sheet – Unmanned Aircraft Systems, Federal Aviation Administration (Feb. 15, 2015), available at:

https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297

operations in the national airspace system and, if so, to establish safety requirements.¹¹ Consequently, the FAA introduced regulations to facilitate civilian drone use in the navigable airspace.¹²

In 2016, Congress enacted the FAA Extension, Safety, and Security Act (FAAESSA),¹³ which directed the FAA to establish a process for applicants to petition the Administrator of the FAA for a designation to prohibit or restrict the operation of an unmanned aircraft in close proximity to a fixed site facility.

Eligible fixed site facilities are limited to:

- Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment,
- Oil refineries and chemical facilities,
- Amusement parks, or
- Other locations that warrant such restrictions.

The FAA has not established the process by which entities may apply for a designation prohibiting or restricting drone operations in close proximity to fixed site facilities.¹⁴

The FAA has expressed concerns about state and local government attempts to regulate the operation of flight or aircraft.¹⁵ According to the FAA, these efforts raise substantial safety issues by fractionalizing the national airspace and thereby limiting the flexibility of the FAA to control the airspace and flight patterns.¹⁶

Pending legislation and executive action, however, could allow for more state and local involvement in drone regulation. On October 25, 2017, the White House announced the Unmanned Aircraft Systems Integration Pilot Program.¹⁷ One objective of this pilot program is to test and evaluate various models of state, local, and tribal government involvement in the development and enforcement of federal regulations of drone operations. Additionally, the proposed Drone Federalism Act of 2017 would ensure that state, local, or tribal governments' authority to issue reasonable restrictions on the time, manner, and place of drone operation below 200 feet above ground level or within 200 feet of a structure is not preempted.¹⁸

State Drone Regulation

Florida law protects critical infrastructure facilities from dangers associated with drone operation by criminalizing knowingly and willfully:

- Operating a drone over a critical infrastructure facility,
- Allowing a drone to make contact with a critical infrastructure facility, or
- Allowing a drone to come close enough to a critical infrastructure facility as to interfere with the operations of or cause a disturbance to the facility.

A critical infrastructure facility is:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center,
- A chemical or rubber manufacturing or storage facility,
- A mining facility,

¹¹ Pub. L. 112-95.

¹² Federal Aviation Administration, *Press Release – DOT and FAA Propose New Rules for Small Unmanned Aircraft Systems*, (February 15, 2015), available at: https://www.faa.gov/news/press_releases/news_story.cfm?newsId=18295

¹³ Pub. L. 114-190, s. 2209.

¹⁴ Email from Ryan Landers, Office of Chief Counsel, Federal Aviation Administration, RE: UAS Questions (November 22, 2017) (copy on file with Criminal Justice Subcommittee staff).

¹⁵ State and Local Regulation of Unmanned Aircraft Systems Fact Sheet – Federal Aviation Administration, Office of Chief Counsel, December 17, 2015.

¹⁶ *Id.*

¹⁷ The White House, Office of the Press Secretary, *Presidential Memorandum for the Secretary of Transportation*, (Oct. 25, 2017), available at: <https://www.whitehouse.gov/the-press-office/2017/10/25/presidential-memorandum-secretary-transportation>

¹⁸ Drone Federalism Act of 2017, S. 1272, 115th Cong. (2017).

- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline,
- A liquid natural gas or propane gas terminal or storage facility with a capacity or 4,000 gallons or more,
- Any portion of an aboveground oil or gas pipeline, or
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.¹⁹

A first time violation of the prohibition is a second degree misdemeanor;²⁰ a second or subsequent violation is a first degree misdemeanor.²¹

Section 330.41, F.S., also requires anyone seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities to petition the FAA for the proper designation under the FAAESSA.²² It further provides that the criminalization of drone operation over or near critical infrastructure facilities as provided in s. 330.41(4), F.S., sunsets 60 days after the FAA establishes the designation process directed under the FAAESSA.²³

Section 934.50, F.S., regulates the use of drones to conduct surveillance. Law enforcement may not use a drone to gather evidence or other information, with certain exceptions.²⁴ When law enforcement has reasonable suspicion that swift action is needed for one of the following reasons, drone use is permitted:

- To prevent imminent danger to life or serious damage to property,
- To forestall the imminent escape of a suspect or the destruction of evidence, or
- To achieve purposes including facilitating the search for a missing person.²⁵

Other Relevant State Law

Florida law prohibits introduction of contraband into state correctional institutions,²⁶ county detention facilities,²⁷ and juvenile detention facilities or commitment programs.²⁸ Contraband includes written or recorded communication, money, food, clothing, tobacco, cigarettes and cigars, intoxicating beverages, controlled substances, firearms, weapons, explosive substances, instrumentalities of escape, cellular telephones, and other portable communication devices.²⁹ Introduction of contraband into a state correctional institution or juvenile detention facility can be either a third- or second-degree felony,³⁰ depending on the type of contraband introduced,³¹ whereas introduction of contraband into a county detention facility is a third degree felony.

Effects of Proposed Changes

HB 471 criminalizes:

- Operating a drone over a fixed-site facility,
- Allowing a drone to contact a fixed-site facility, or

¹⁹ S. 330.41(2)(a), F.S.

²⁰ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

²¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,500 fine. Sections 775.082 and 775.083.

²² S. 330.41(3)(d), F.S.

²³ S. 330.41(4)(e), F.S.

²⁴ S. 934.50(3)(a) & (4), F.S.

²⁵ S. 943.50(4)(c), F.S.

²⁶ S. 944.47, F.S.

²⁷ S. 951.22, F.S.

²⁸ S. 985.711, F.S.

²⁹ S. 944.47(1)(a), F.S.; s. 951.22(1), F.S.; s. 985.711(1)(a), F.S.

³⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083.

³¹ S. 944.47(2), F.S.; s. 985.711(2), F.S.

- Allowing a drone to come close enough to a fixed-site facility interfere with the operations of or cause a disturbance to the fixed-site facility.

The bill amends s. 330.41(2), F.S., to define the term “fixed-site facility” as:

- A state correctional institution,
- A secure detention center or facility, a high-risk residential facility, or a maximum-risk residential facility, or
- A county detention facility.

Consistent with the current law protecting critical infrastructure facilities from drone operations, a first time violation is a second degree misdemeanor, and a second or subsequent violation is a first degree misdemeanor. The bill also prohibits using a drone to introduce contraband into a fixed-site facility and classifies that offense as a second degree felony, punishable by up to fifteen years in state prison and a \$10,000 fine.

The bill leaves the sunset provision of s. 330.41, F.S., intact. Once the FAA establishes the designation process directed under the FAAESSA, the criminal provisions of this bill will be repealed after 60 days.

Finally, the bill amends s. 934.50 to expand one of the exceptions under which law enforcement officers may use a drone for surveillance. The bill permits such use when law enforcement has reasonable suspicion that swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 330.41, relating to Unmanned Aircraft Systems Act.

Section 2: Amends s. 934.50, F.S., relating to searches and seizure using a drone.

Section 3: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill increases criminal liability for persons who introduce contraband into fixed-site facilities using a drone in some circumstances. Current law provides that introducing contraband into state correctional institutions, county detention facilities, and juvenile detention facilities or commitment programs is a third degree felony in certain circumstances, with a maximum prison sentence of five years. The bill creates the crime of introducing contraband into a fixed-site facility by use of a drone and classifies it as a second degree felony, with a maximum prison sentence of fifteen years. The increased maximum prison sentence could increase the number of people in the Department of Corrections’ custody and supervision.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates new criminal liability at the misdemeanor level for operating a drone over, in contact with, or near a fixed-site facility. By creating new misdemeanors, the bill may impact the number of people in jail or supervised at the county level.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to unmanned aircraft; amending s.
 3 330.41, F.S.; defining the term "fixed-site facility";
 4 prohibiting a person from knowingly or willingly
 5 operating a drone over, allowing a drone to make
 6 contact with, allowing a drone to come within a
 7 certain distance of, or using a drone to introduce
 8 contraband into or within the secure perimeter of a
 9 fixed-site facility; providing criminal penalties;
 10 amending s. 934.50, F.S.; authorizing the use of a
 11 drone if a law enforcement agency possesses reasonable
 12 suspicion that, under particular circumstances, swift
 13 action is needed to facilitate the collection of
 14 evidence at a crime scene or traffic crash scene;
 15 providing an effective date.

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

18
 19 Section 1. Subsections (2) and (4) of section 330.41,
 20 Florida Statutes, are amended to read:

21 330.41 Unmanned Aircraft Systems Act.—

22 (2) DEFINITIONS.—As used in this act, the term:

23 (a) "Critical infrastructure facility" means any of the
 24 following, if completely enclosed by a fence or other physical
 25 barrier that is obviously designed to exclude intruders, or if

26 clearly marked with a sign or signs which indicate that entry is
 27 forbidden and which are posted on the property in a manner
 28 reasonably likely to come to the attention of intruders:

- 29 1. An electrical power generation or transmission
- 30 facility, substation, switching station, or electrical control
- 31 center.
- 32 2. A chemical or rubber manufacturing or storage facility.
- 33 3. A mining facility.
- 34 4. A natural gas or compressed gas compressor station,
- 35 storage facility, or natural gas or compressed gas pipeline.
- 36 5. A liquid natural gas or propane gas terminal or storage
- 37 facility with a capacity of 4,000 gallons or more.
- 38 6. Any portion of an aboveground oil or gas pipeline.
- 39 7. A wireless communications facility, including the
- 40 tower, antennae, support structures, and all associated ground-
- 41 based equipment.

42 (b) "Drone" has the same meaning as s. 934.50(2).

43 (c) "Fixed-site facility" means any of the following, if
 44 completely enclosed by a fence or other physical barrier that is
 45 obviously designed to exclude intruders, or if clearly marked
 46 with one or more signs that indicate that entry is forbidden and
 47 that are posted on the property in a manner reasonably likely to
 48 come to the attention of intruders:

- 49 1. A state correctional institution as defined in s.
- 50 944.02.

51 2. A secure detention center or facility, a high-risk
 52 residential facility, or a maximum-risk residential facility as
 53 defined in s. 985.03.

54 3. A county detention facility as defined in s. 951.23.

55 ~~(d)(e)~~ "Unmanned aircraft system" means a drone and its
 56 associated elements, including communication links and the
 57 components used to control the drone which are required for the
 58 pilot in command to operate the drone safely and efficiently.

59 (4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

60 (a) A person may not knowingly or willfully:

61 1. Operate a drone over a critical infrastructure facility
 62 or fixed-site facility;

63 2. Allow a drone to make contact with a critical
 64 infrastructure facility or fixed-site facility, including any
 65 person or object on the premises of or within the facility; ~~or~~

66 3. Allow a drone to come within a distance of a critical
 67 infrastructure facility or fixed-site facility which ~~that~~ is
 68 close enough to interfere with the operations of or cause a
 69 disturbance to the facility; ~~or~~

70 4. Use a drone to introduce contraband as defined in s.
 71 944.47, s. 985.711, or s. 951.22 into a fixed-site facility, or
 72 upon the grounds of or within the secured perimeter of the
 73 fixed-site facility.

74 (b) A person who violates subparagraph (a)1., subparagraph
 75 (a)2., or subparagraph (a)3. paragraph (a) commits a misdemeanor

76 of the second degree, punishable as provided in s. 775.082 or s.
 77 775.083. A person who commits a second or subsequent violation
 78 of subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.
 79 commits a misdemeanor of the first degree, punishable as
 80 provided in s. 775.082 or s. 775.083. A person who violates
 81 subparagraph (a)4. commits a felony of the second degree,
 82 punishable as provided in s. 775.082 or s. 775.083.

83 (c) This subsection does not apply to actions identified
 84 in paragraph (a) which are committed by:

85 1. A federal, state, or other governmental entity, or a
 86 person under contract or otherwise acting under the direction of
 87 a federal, state, or other governmental entity.

88 2. A law enforcement agency that is in compliance with s.
 89 934.50, or a person under contract with or otherwise acting
 90 under the direction of such law enforcement agency.

91 3. An owner, operator, or occupant of the critical
 92 infrastructure facility, or a person who has prior written
 93 consent of such owner, operator, or occupant.

94 (d) Subparagraph (a)1. does not apply to a drone operating
 95 in transit for commercial purposes in compliance with Federal
 96 Aviation Administration regulations, authorizations, or
 97 exemptions.

98 (e) This subsection shall sunset 60 days after the date
 99 that a process pursuant to s. 2209 of the FAA Extension, Safety
 100 and Security Act of 2016 becomes effective.

101 Section 2. Paragraph (c) of subsection (4) of section
 102 934.50, Florida Statutes, is amended to read:

103 934.50 Searches and seizure using a drone.—

104 (4) EXCEPTIONS.—This section does not prohibit the use of
 105 a drone:

106 (c) If the law enforcement agency possesses reasonable
 107 suspicion that, under particular circumstances, swift action is
 108 needed to prevent imminent danger to life or serious damage to
 109 property;~~;~~ to forestall the imminent escape of a suspect or the
 110 destruction of evidence; to facilitate the collection of
 111 evidence at a crime scene or traffic crash scene;~~;~~ or to achieve
 112 purposes including, but not limited to, facilitating the search
 113 for a missing person.

114 Section 3. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 473 Cruelty to Animals
SPONSOR(S): Leek and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno <i>EB</i>	Sumner <i>TS</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 828.12, F.S., defines the crimes of animal cruelty. Prohibited acts at the misdemeanor level include:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating any animal,
- Killing any animal,
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.

An act – or failure to act by an owner or person in custody or control of an animal – that results in the cruel death or excessive or repeated infliction of unnecessary pain or suffering constitutes aggravated animal cruelty, a third degree felony.

HB 473 allows the court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. The bill leaves the time frame for the prohibition within the court's discretion.

The bill increases the offense severity ranking for aggravated animal cruelty from a level three to a level five under the Criminal Punishment Code. The Criminal Punishment Code uses 10 offense levels to rank felonies from least severe to most severe. With aggravated animal cruelty at a level five, a person convicted of one count of aggravated animal cruelty with no other open offenses or prior convictions would not score a minimum prison sentence under the sentencing guidelines; however, the judge could, in his or her discretion, sentence such an individual to prison without having to make written findings that a nonstate prison sanction could present a danger to the public.

The bill may increase the number and length of prison sentences and thereby fiscally impact state government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under Florida law, the following acts are considered animal cruelty:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating any animal,
- Killing any animal, or
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.¹

Animal cruelty is a first degree misdemeanor, punishable by up to one year in the county jail and a \$1,000 fine.²

A person commits aggravated animal cruelty, a third degree felony,³ by intentionally committing an act to an animal – or failing to act if the person is the owner having custody and control of the animal – and such action or omission results in:

- The cruel death of the animal, or
- The excessive or repeated infliction of unnecessary pain or suffering on an animal.⁴

Aggravated animal cruelty carries minimum mandatory sanctions of a \$2,500 fine and psychological testing or anger management for a first conviction,⁵ and a \$5,000 fine and six months of incarceration for a second or subsequent conviction.⁶ A person convicted a second or subsequent time of aggravated animal cruelty is ineligible for any form of early release, including gain time.⁷

Felony offenses subject to the 1998 Criminal Punishment Code are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. Aggravated animal cruelty is a level three on the offense severity ranking chart.⁸

Effect of Proposed Changes

HB 473 creates s. 828.12(6), F.S., permitting a court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. The bill leaves the time frame for the prohibition within the court's discretion.

Under current law, a judge may prohibit a person on probation or community control from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal as a

¹ S. 828.12(1), F.S.

² Ss. 775.082 and 775.083, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

⁴ S. 828.12(2), F.S.

⁵ S. 828.12(2)(a), F.S.

⁶ S. 828.12(2)(b), F.S.

⁷ Id.

⁸ S. 921.0022, F.S.

special condition of his or her supervision.⁹ The bill broadens that authority to allow a judge to prohibit such action or activity independent of any supervision and for an unlimited amount of time. The court could enforce such a prohibition through indirect criminal contempt proceedings.¹⁰

The bill increases the severity ranking for aggravated animal cruelty from a level three to a level five under the Criminal Punishment Code.¹¹ As with a level three offense, a person with no other open offenses or prior convictions who is convicted of one count of aggravated animal cruelty at a level five would not score a minimum prison sentence under the sentencing guidelines. Unlike with a level three offense, however, the judge could exercise his or her discretion to sentence the individual to prison without having to make written findings that a nonstate prison sanction could present a danger to the public.¹² Additionally, since a level five offense scores more points under the sentencing guidelines, it is more likely that people with other open offenses or prior convictions would score a minimum prison sentencing under the sentencing guidelines.

Finally, the bill provides a short title for the act as “Ponce’s law,” in memory of a puppy who was beaten to death in Volusia county in April 2017.¹³

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Provides the short title of “Ponce’s law.”

Section 2: Amends s. 828.12, F.S., relating to cruelty to animals.

Section 3: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

By increasing the offense severity level for aggravated animal cruelty, the bill may increase the number and length of prison sentences and thereby increase the need for prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁹ S. 948.03(2), F.S.

¹⁰ S. 828.23, F.S.; FLA. R. CRIM. P. 3.840.

¹¹ S. 921.0022, F.S.

¹² S. 775.082(10), F.S.

¹³ Frank Fernandez, *Public Outrage Fuels Push for Animal Abuse Punishments*, DAYTONA BEACH NEWS JOURNAL (April 21, 2017), <http://www.news-journalonline.com/news/20170416/public-outrage-fuels-push-for-animal-abuse-punishments>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A bill to be entitled
 An act relating to cruelty to animals; providing a
 short title; amending s. 828.12, F.S.; authorizing a
 court to prohibit certain offenders from owning or
 having contact with animals; amending s. 921.0022,
 F.S.; revising the ranking of offenses on the offense
 severity ranking chart of the Criminal Punishment
 Code; providing an effective date.

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

Section 1. This act may be cited as "Ponce's law."

Section 2. Section 828.12, Florida Statutes, is amended to
 read:

828.12 Cruelty to animals.—

(1) A person who unnecessarily overloads, overdrives,
 torments, deprives of necessary sustenance or shelter, or
 unnecessarily mutilates, or kills any animal, or causes the same
 to be done, or carries in or upon any vehicle, or otherwise, any
 animal in a cruel or inhumane manner, commits animal cruelty, a
 misdemeanor of the first degree, punishable as provided in s.
 775.082 or by a fine of not more than \$5,000, or both.

(2) A person who intentionally commits an act to any
 animal, or a person who owns or has the custody or control of
 any animal and fails to act, which results in the cruel death,

26 or excessive or repeated infliction of unnecessary pain or
 27 suffering, or causes the same to be done, commits aggravated
 28 animal cruelty, a felony of the third degree, punishable as
 29 provided in s. 775.082 or by a fine of not more than \$10,000, or
 30 both.

31 (a) A person convicted of a violation of this subsection,
 32 where the finder of fact determines that the violation includes
 33 the knowing and intentional torture or torment of an animal that
 34 injures, mutilates, or kills the animal, shall be ordered to pay
 35 a minimum mandatory fine of \$2,500 and undergo psychological
 36 counseling or complete an anger management treatment program.

37 (b) A person convicted of a second or subsequent violation
 38 of this subsection shall be required to pay a minimum mandatory
 39 fine of \$5,000 and serve a minimum mandatory period of
 40 incarceration of 6 months. In addition, the person shall be
 41 released only upon expiration of sentence, is not eligible for
 42 parole, control release, or any form of early release, and must
 43 serve 100 percent of the court-imposed sentence. Any plea of
 44 nolo contendere shall be considered a conviction for purposes of
 45 this subsection.

46 (3) A person who commits multiple acts of animal cruelty
 47 or aggravated animal cruelty against an animal may be charged
 48 with a separate offense for each such act. A person who commits
 49 animal cruelty or aggravated animal cruelty against more than
 50 one animal may be charged with a separate offense for each

51 animal such cruelty was committed upon.

52 (4) A veterinarian licensed to practice in the state shall
 53 be held harmless from either criminal or civil liability for any
 54 decisions made or services rendered under the provisions of this
 55 section. Such a veterinarian is, therefore, under this
 56 subsection, immune from a lawsuit for his or her part in an
 57 investigation of cruelty to animals.

58 (5) A person who intentionally trips, fells, ropes, or
 59 lassos the legs of a horse by any means for the purpose of
 60 entertainment or sport commits a ~~shall be guilty of a third~~
 61 ~~degree~~ felony of the third degree, punishable as provided in s.
 62 775.082, s. 775.083, or s. 775.084. As used in this subsection,
 63 the term "trip" means any act that consists of the use of any
 64 wire, pole, stick, rope, or other apparatus to cause a horse to
 65 fall or lose its balance, and the term "horse" means any animal
 66 of any registered breed of the genus Equus, or any recognized
 67 hybrid thereof. ~~The provisions of~~ This subsection does ~~shall~~ not
 68 apply when tripping is used:

69 (a) To control a horse that is posing an immediate threat
 70 to other livestock or human beings;

71 (b) For the purpose of identifying ownership of the horse
 72 when its ownership is unknown; or

73 (c) For the purpose of administering veterinary care to
 74 the horse.

75 (6) In addition to other penalties prescribed by law, a

76 person who is convicted of a violation of this section may be
 77 prohibited by the court from owning, possessing, keeping,
 78 harboring, having contact with, or having custody or control
 79 over any animal for a period of time determined by the court.

80 Section 3. Paragraphs (c) and (e) of subsection (3) of
 81 section 921.0022, Florida Statutes, are amended to read:

82 921.0022 Criminal Punishment Code; offense severity
 83 ranking chart.—

84 (3) OFFENSE SEVERITY RANKING CHART

85 (c) LEVEL 3

86

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in

87

88

89

90

			patrol vehicle with siren and lights activated.
91	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
92	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
93	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
94	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
95	327.35(2)(b)	3rd	Felony BUI.
96	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.

HB 473

2018

97	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
98	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
99	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
100	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.

101	379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
102	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
103	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
104	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
105	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
106			

107	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
108	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
109	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
110	697.08	3rd	Equity skimming.
111	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
112	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
113	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.

HB 473

2018

114	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
115	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
116	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
117	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
118	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
119	817.233	3rd	Burning to defraud insurer.
	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.

HB 473

2018

120	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
121	817.236	3rd	Filing a false motor vehicle insurance application.
122	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
123	817.413(2)	3rd	Sale of used goods as new.
124	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
125	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
126	831.29	2nd	Possession of instruments for

			counterfeiting driver licenses or identification cards.
127	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
128	843.19	3rd	Injure, disable, or kill police dog or horse.
129	860.15(3)	3rd	Overcharging for repairs and parts.
130	870.01(2)	3rd	Riot; inciting or encouraging.
131	893.13(1)(a)2.	3rd	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).
132	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver 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.,

133	893.13(1)(f)2.	2nd	(2)(c)9., (3), or (4) drugs within 1,000 feet of university.
134	893.13(4)(c)	3rd	Sell, manufacture, or deliver 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 public housing facility.
135	893.13(6)(a)	3rd	Use or hire of minor; deliver to minor other controlled substances.
136	893.13(7)(a)8.	3rd	Possession of any controlled substance other than felony possession of cannabis.
137	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

138	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
139	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
140	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
141	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to

			assist a patient, other person, or owner of an animal in obtaining a controlled substance.
142	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
143	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
144	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
145	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
146	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional

147			institution.
	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
148			
149	(e)	LEVEL 5	
150			
	Florida	Felony	
	Statute	Degree	Description
151			
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
152			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
153			
	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
154			
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious

155	327.30(5)	3rd	<p>bodily injury.</p> <p>Vessel accidents involving personal injury; leaving scene.</p>
156	379.365(2)(c)1.	3rd	<p>Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.</p>
157	379.367(4)	3rd	<p>Willful molestation of a</p>

			commercial harvester's spiny lobster trap, line, or buoy.
158	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
159	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
160	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
161	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
162	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
163	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or

			more but less than \$100,000.
164	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
165	790.01(2)	3rd	Carrying a concealed firearm.
166	790.162	2nd	Threat to throw or discharge destructive device.
167	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
168	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
169	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
170	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
171			

172	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
173	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
174	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
175	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
176	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
177	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
	812.131(2)(b)	3rd	Robbery by sudden snatching.

178	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
179	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
180	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
181	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
182	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 persons.
183	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
184	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
185	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
186	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
187	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes

188			sexual conduct by a child.
	<u>828.12(2)</u>	<u>3rd</u>	<u>Tortures any animal with intent to inflict intense pain, serious physical injury, or death.</u>
189	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.
190	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
191	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
192	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
193	847.0138	3rd	Transmission of material

HB 473

2018

	(2) & (3)		harmful to minors to a minor by electronic device or equipment.
194	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
195	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
196	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).
197	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.
198	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.
199	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., (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.
200	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.

201

893.13(4)(b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

202

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

203

204 Section 4. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Theft
SPONSOR(S): Roth
TIED BILLS: IDEN./SIM. BILLS: SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		<i>JWP</i> Painter	Sumner <i>TS</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Theft of livestock and beehives in Florida has increased over the years. The use of beehives for commercial pollination has risen, resulting in greater theft. Additionally, beef prices have increased since around 2010, contributing to greater rates of cattle theft - also known as rustling.

Section 812.014(2)(c), F.S., makes it grand theft and a felony of the third degree if the property stolen is a commercially farmed animal, a bee colony of a registered beekeeper, or an aquaculture species raised at a certified aquaculture facility. A third degree felony is punishable by up to five years in prison and up to a \$5,000 fine. If the stolen property is an aquaculture species raised at a certified aquaculture facility, the crime carries a mandatory \$10,000 fine. The mandatory fine does not extend to theft of commercially farmed animals or bee colonies.

HB 491 extends the mandatory \$10,000 fine to theft of commercially farmed animals and bee colonies.

The bill does not appear to have a fiscal impact on local governments. The bill has an insignificant positive fiscal impact on state government.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In recent years, Florida has seen a dramatic increase in theft of beehives, partly due to the increasing use of bees for commercial pollination.¹ An established hive can be worth up to \$300.² During the summer of 2016, Florida lost an estimated 1,200 beehives to theft.³ Wonderful Bees operates in Lee and Charlotte counties and is one of the larger bee providers in the nation. In June of 2016, the company reported over 700 stolen hives, resulting in losses of more than \$150,000.⁴ Wonderful Bees even offered a \$10,000 reward for anyone with knowledge of the thefts.⁵ The increase in theft has resulted in many small beehive businesses struggling to remain open or to consider leaving the industry altogether.⁶ Larger companies, who may have the means to protect themselves, have started using embed chips with tracking devices to track the beehives.⁷

Since 2010, the nation has seen an increase in cattle theft, also referred to as rustling, as a result of the rise in beef prices.⁸ Stolen cows are commonly sold in private sales or at local livestock auctions.⁹ Yearling cows weighing 600 to 700 pounds that once sold for around \$600 are now worth \$1,000 to \$1,200.¹⁰

There are several recent instances of cattle theft in Florida. In 2013, Martin County sheriff's deputies arrested an Okeechobee man on grand theft charges in the county's largest cattle rustling scheme in history.¹¹ The man stole over 175 cows and sold them for a total of \$102,000.¹² The farmer from whom the cows were stolen was forced to discontinue his business as a result of the theft.¹³ In 2015, a former Osceola County Deputy was charged and convicted of stealing cows in Osceola and Volusia counties.¹⁴ This summer, six men were arrested and charged with stealing four cows and four calves from a Lakeland pasture in Polk county in April of 2017.¹⁵

Several states have sought tougher penalties for theft of commercially farmed animals. In Texas, stealing cattle or horses is a third-degree felony, punishable by two to ten years in prison and a \$10,000 maximum fine.¹⁶ The Iowa Farm Bureau Federation has lobbied, unsuccessfully, for mandatory

¹ Brett Murphy, *Sticky Fingers: the rise of the bee thieves*, The Guardian (May 17, 2016), available at: <https://www.theguardian.com/environment/2016/may/17/sticky-fingers-rise-of-the-bee-thieves>.

² Michael Braun, *Theft of hives hits southwest Florida bee farmers*, Orlando Sentinel (August 28, 2016), available at: <http://www.orlandosentinel.com/business/os-ap-theft-bee-hive-florida-20160828-story.html>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Associated Press, *Beehive theft cases on the rise in SWFL*, NBC2 (August 17, 2016), available at: <http://www.nbc-2.com/story/32779137/10000-reward-offered-for-convictions-in-bee-theft-cases>.

⁸ Henry Pierson Curtis, *Former Osceola deputy in jail after being charged with stealing cattle*, Orlando Sentinel (November 11, 2015), available at: <http://www.orlandosentinel.com/news/breaking-news/os-keith-collins-cattle-rustling-osceola-20151106-story.html>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Terri Parker, *Sheriff calls cattle theft largest in Martin County's history*, WPBF News (October 29, 2013), available at: <http://www.wpbf.com/article/sheriff-calls-cattle-theft-largest-in-martin-county-s-history/1319401>.

¹² *Id.*

¹³ *Id.*

¹⁴ Henry Pierson Curtis, *Former Osceola deputy in jail after being charged with stealing cattle*, Orlando Sentinel (November 11, 2015), available at: <http://www.orlandosentinel.com/news/breaking-news/os-keith-collins-cattle-rustling-osceola-20151106-story.html>.

¹⁵ Associated Press, *6 Arrested in Separate Florida Cattle Thefts; 8 Cows Missing*, US News (June 18, 2017), available at: <https://www.usnews.com/news/best-states/florida/articles/2017-06-18/6-arrested-in-separate-florida-cattle-thefts-8-cows-missing>.

¹⁶ Tex. Code Ann. § 31.03; see also Donnelle Eller, *Stiffer penalties to be sought for livestock theft*, Des Moines Register (September 14, 2014), available at: <https://www.desmoinesregister.com/story/money/agriculture/2014/09/15/livestock-theft-stiffer-penalties/15652857/>.

minimum prison sentences for cattle theft.¹⁷ In 2016, Oklahoma passed a law assessing fines at three times the value of the animal or equipment stolen and set a prison sentence of three to fifteen years.¹⁸ The law also provides that prosecutors in Oklahoma can charge a felony count per each animal stolen.¹⁹

Currently in Florida, it is grand theft and a third-degree felony to steal any commercially farmed animal²⁰, bee colony of a registered beekeeper²¹, or aquaculture species²² raised at a certified aquaculture facility.²³ The crime is punishable as provided in s. 775.082, F.S.,²⁴ and s. 775.083, F.S.²⁵ In addition, if the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.²⁶ This same provision does not apply if the property stolen is commercially farmed animals or a bee colony.

Effect of Proposed Changes

HB 491 amends s. 812.014(2)(c), F.S., to extend a mandatory \$10,000 fine to theft of commercially farmed animals and bee colonies of registered beekeepers. The crime remains punishable by up to five years in prison.

The bill also reenacts s. 932.701, F.S., concerning the Florida Contraband Forfeiture Act, to incorporate amendments made by the bill to s. 812.014, F.S.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends 812.014, F.S., relating to fines imposed for theft of commercially farmed animals or beehives.

Section 2: Reenacts 932.701 F.S., relating to the Florida Contraband Forfeiture Act.

Section 3: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in an insignificant positive fiscal impact on state government through collecting increased fines for the theft of a commercially farmed animal or bee colony of a registered beekeeper.

¹⁷ Donnelle Eller, *Stiffer penalties to be sought for livestock theft*, Des Moines Register (September 14, 2014), available at: <https://www.desmoinesregister.com/story/money/agriculture/2014/09/15/livestock-theft-stiffer-penalties/15652857/>.

¹⁸ OKLA. STAT. tit. 21, § 1716 (2016).

¹⁹ M. Scott Carter, *Under Bill, Tougher Penalties for Cattle Rustling than Assault*, Oklahoma Watch (February 25, 2015) available at: <http://oklahomawatch.org/2015/02/25/house-committee-mulls-new-fine-sentence-for-cattle-rustling/>; see also Associated Press, *Cattle rustling penalties to increase in US*, Reuters News Agency (April 14, 2016), available at: <https://www.producer.com/daily/cattle-rustling-penalties-to-increase-in-us/>.

²⁰ Pursuant to S. 814.014(2)(c), F.S., this includes any animal of the equine, bovine, or swine class or other grazing animal.

²¹ S. 586.045, F.S., requires beekeepers to register with the Department of Agriculture and Consumer Services (DACs), and renew such registration annually.

²² S. 597.0015(1), F.S., defines "aquaculture" to mean the cultivation of aquatic organisms; see also S. 597.004, F.S., requiring any person engaging in aquaculture to be certified by DACs.

²³ S. 812.014(2)(c), F.S.

²⁴ S. 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding 5 years.

²⁵ S. 775.083, F.S., provides that fines for a felony of the third degree may not exceed \$5,000.

²⁶ S. 812.014(2)(c), F.S.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to theft; amending s. 812.014, F.S.;
 3 increasing the fine for the theft of a commercially
 4 farmed animal or a bee colony of a registered
 5 beekeeper; reenacting s. 932.701(1)(a), F.S., relating
 6 to the definition of the term "contraband article," to
 7 incorporate the amendment made to s. 812.014, F.S., in
 8 a reference thereto; providing an effective date.

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

11
 12 Section 1. Paragraph (c) of subsection (2) of section
 13 812.014, Florida Statutes, is amended to read:

14 812.014 Theft.—

15 (2)

16 (c) It is grand theft of the third degree and a felony of
 17 the third degree, punishable as provided in s. 775.082, s.
 18 775.083, or s. 775.084, if the property stolen is:

- 19 1. Valued at \$300 or more, but less than \$5,000.
- 20 2. Valued at \$5,000 or more, but less than \$10,000.
- 21 3. Valued at \$10,000 or more, but less than \$20,000.
- 22 4. A will, codicil, or other testamentary instrument.
- 23 5. A firearm.
- 24 6. A motor vehicle, except as provided in paragraph (a).
- 25 7. Any commercially farmed animal, including any animal of

26 the equine, bovine, or swine class or other grazing animal; a
 27 bee colony of a registered beekeeper; and aquaculture species
 28 raised at a certified aquaculture facility. If the property
 29 stolen is a commercially farmed animal, including an animal of
 30 the equine, bovine, or swine class or other grazing animal; a
 31 bee colony of a registered beekeeper; or an aquaculture species
 32 raised at a certified aquaculture facility, ~~then~~ a \$10,000 fine
 33 shall be imposed.

34 8. Any fire extinguisher.

35 9. Any amount of citrus fruit consisting of 2,000 or more
 36 individual pieces of fruit.

37 10. Taken from a designated construction site identified
 38 by the posting of a sign as provided for in s. 810.09(2)(d).

39 11. Any stop sign.

40 12. Anhydrous ammonia.

41 13. Any amount of a controlled substance as defined in s.
 42 893.02. Notwithstanding any other law, separate judgments and
 43 sentences for theft of a controlled substance under this
 44 subparagraph and for any applicable possession of controlled
 45 substance offense under s. 893.13 or trafficking in controlled
 46 substance offense under s. 893.135 may be imposed when all such
 47 offenses involve the same amount or amounts of a controlled
 48 substance.

49
 50 However, if the property is stolen within a county that is

51 subject to a state of emergency declared by the Governor under
 52 chapter 252, the property is stolen after the declaration of
 53 emergency is made, and the perpetration of the theft is
 54 facilitated by conditions arising from the emergency, the
 55 offender commits a felony of the second degree, punishable as
 56 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 57 property is valued at \$5,000 or more, but less than \$10,000, as
 58 provided under subparagraph 2., or if the property is valued at
 59 \$10,000 or more, but less than \$20,000, as provided under
 60 subparagraph 3. As used in this paragraph, the term "conditions
 61 arising from the emergency" means civil unrest, power outages,
 62 curfews, voluntary or mandatory evacuations, or a reduction in
 63 the presence of or the response time for first responders or
 64 homeland security personnel. For purposes of sentencing under
 65 chapter 921, a felony offense that is reclassified under this
 66 paragraph is ranked one level above the ranking under s.
 67 921.0022 or s. 921.0023 of the offense committed.

68 Section 2. For the purpose of incorporating the amendment
 69 made by this act to section 812.014, Florida Statutes, in a
 70 reference thereto, paragraph (a) of subsection (2) of section
 71 932.701, Florida Statutes, is reenacted to read:

- 72 932.701 Short title; definitions.—
- 73 (2) As used in the Florida Contraband Forfeiture Act:
- 74 (a) "Contraband article" means:
- 75 1. Any controlled substance as defined in chapter 893 or

76 any substance, device, paraphernalia, or currency or other means
 77 of exchange that was used, was attempted to be used, or was
 78 intended to be used in violation of any provision of chapter
 79 893, if the totality of the facts presented by the state is
 80 clearly sufficient to meet the state's burden of establishing
 81 probable cause to believe that a nexus exists between the
 82 article seized and the narcotics activity, whether or not the
 83 use of the contraband article can be traced to a specific
 84 narcotics transaction.

85 2. Any gambling paraphernalia, lottery tickets, money,
 86 currency, or other means of exchange which was used, was
 87 attempted, or intended to be used in violation of the gambling
 88 laws of the state.

89 3. Any equipment, liquid or solid, which was being used,
 90 is being used, was attempted to be used, or intended to be used
 91 in violation of the beverage or tobacco laws of the state.

92 4. Any motor fuel upon which the motor fuel tax has not
 93 been paid as required by law.

94 5. Any personal property, including, but not limited to,
 95 any vessel, aircraft, item, object, tool, substance, device,
 96 weapon, machine, vehicle of any kind, money, securities, books,
 97 records, research, negotiable instruments, or currency, which
 98 was used or was attempted to be used as an instrumentality in
 99 the commission of, or in aiding or abetting in the commission
 100 of, any felony, whether or not comprising an element of the

101 felony, or which is acquired by proceeds obtained as a result of
 102 a violation of the Florida Contraband Forfeiture Act.

103 6. Any real property, including any right, title,
 104 leasehold, or other interest in the whole of any lot or tract of
 105 land, which was used, is being used, or was attempted to be used
 106 as an instrumentality in the commission of, or in aiding or
 107 abetting in the commission of, any felony, or which is acquired
 108 by proceeds obtained as a result of a violation of the Florida
 109 Contraband Forfeiture Act.

110 7. Any personal property, including, but not limited to,
 111 equipment, money, securities, books, records, research,
 112 negotiable instruments, currency, or any vessel, aircraft, item,
 113 object, tool, substance, device, weapon, machine, or vehicle of
 114 any kind in the possession of or belonging to any person who
 115 takes aquaculture products in violation of s. 812.014(2)(c).

116 8. Any motor vehicle offered for sale in violation of s.
 117 320.28.

118 9. Any motor vehicle used during the course of committing
 119 an offense in violation of s. 322.34(9)(a).

120 10. Any photograph, film, or other recorded image,
 121 including an image recorded on videotape, a compact disc,
 122 digital tape, or fixed disk, that is recorded in violation of s.
 123 810.145 and is possessed for the purpose of amusement,
 124 entertainment, sexual arousal, gratification, or profit, or for
 125 the purpose of degrading or abusing another person.

126 11. Any real property, including any right, title,
 127 leasehold, or other interest in the whole of any lot or tract of
 128 land, which is acquired by proceeds obtained as a result of
 129 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 130 property, including, but not limited to, equipment, money,
 131 securities, books, records, research, negotiable instruments, or
 132 currency; or any vessel, aircraft, item, object, tool,
 133 substance, device, weapon, machine, or vehicle of any kind in
 134 the possession of or belonging to any person which is acquired
 135 by proceeds obtained as a result of Medicaid fraud under s.
 136 409.920 or s. 409.9201.

137 12. Any personal property, including, but not limited to,
 138 any vehicle, item, object, tool, device, weapon, machine, money,
 139 security, book, or record, that is used or attempted to be used
 140 as an instrumentality in the commission of, or in aiding and
 141 abetting in the commission of, a person's third or subsequent
 142 violation of s. 509.144, whether or not comprising an element of
 143 the offense.

144 Section 3. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523 Trespass on Airport Property

SPONSOR(S): Cortes

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Tuszynski <i>TT</i>	Sumner <i>SY</i>
2) Transportation & Infrastructure Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 523 increases criminal penalties from a first degree misdemeanor to a third degree felony where an offender trespasses on the operational area of an airport with the intent to:

- Injure another person;
- Damage property; or
- Impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill requires that a sign with language similar to the following be posted in order for a trespasser to be prosecuted: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

The Criminal Justice Impact Conference met on March 11, 2015, and determined that an identical bill would have had an insignificant impact on state prison beds through Fiscal Year 2019-20. This means CJIC estimates that this bill may increase the Department of Corrections prison bed population by less than 10 inmates annually. The bill may also have an insignificant county jail bed impact.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trespass

Florida law currently prohibits a variety of acts relating to trespassing in or on the property of others. For example:

- Section 810.08, F.S., makes it a second degree misdemeanor¹ to willfully enter or remain in any structure² or conveyance,³ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁴
- Section 810.09, F.S., makes it a first degree misdemeanor⁵ to willfully enter or remain in any property other than a structure or conveyance, without being authorized, licensed, or invited:
 - Where notice against entering or remaining is given either by actual communication or by posting, fencing, or cultivation;⁶ or
 - If the property is the unenclosed curtilage⁷ of a dwelling⁸ and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Generally, trespass offenses are misdemeanors. However, the penalties relating to trespass offenses are often increased when the offense involves specified types of property. For example, it is a third degree felony⁹ to trespass on designated construction sites, commercial horticulture properties, and agricultural chemical manufacturing facilities.¹⁰ Such properties must have posted warnings that contain specific language identifying it as a protected type of property.¹¹

Airport Security

Air travel security first gained national attention in the 1960s because of a rash of airplane hijackings.¹² In response, Congress made aircraft piracy and carrying a "concealed deadly or dangerous weapon" on an aircraft without authorization a federal crime.¹³ The law did not slow the rate of hijacking attempts, and in 1970 the first federal airport screening and security program was implemented at airports

¹ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. SS. 775.082 and 775.083, F.S.

² S. 810.011(1), F.S., defines "structure" as a building of any kind.

³ S. 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

⁴ This section increases the penalties to a first degree misdemeanor or a third degree felony in specified circumstances.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁶ S. 810.011(6), F.S., defines "cultivated land" as that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.

⁷ S. 810.09(1)(b), defines "curtilage" as the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

⁸ S. 810.011(2), F.S., defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine; ss. 775.082 and 775.083, F.S.

¹⁰ S. 810.09(2)(d)1., (e), and (i), F.S.

¹¹ S. 810.09(2), F.S.

¹² Daniel S. Harawa, *The Post-TSA Airport: A Constitution Free Zone?*, 41 Pepp. L. Rev. 1, 4 (2013).

¹³ Act of Jan. 3, 1961, Pub. L. No. 87-197, 75 Stat. 466-68.

nationwide to fight increasing security hazards.¹⁴ These measures included specially trained armed personnel on flights, electronic surveillance, and metal detectors and x-rays.¹⁵

In the 16 years since September 11, 2001, airport security has been enhanced to account for new technology and threats. The federal Office of Homeland Security is tasked with developing and coordinating the implementation of a comprehensive national strategy to secure the United States from terrorist threats and attacks. As a result, federal oversight and coordination of airport security has greatly increased.¹⁶ This has evolved into a multi-layered approach to air transportation security including a multi-agency coordinated information system to vet passengers, enhanced detection technology to uncover a wide array of emerging threats, such as explosives, carry-on baggage screening, hardened and locked cockpits, and increased in-flight security.¹⁷

In recent years, there have been multiple reports of individuals trespassing into security screening areas, taxiways, and other restricted areas at airports.¹⁸ Small breaches of airport security can cause major delays and security risks. One incident at Newark Liberty International Airport involved a young man who slipped under a security rope into a secured passenger area to give his girlfriend a goodbye kiss.¹⁹ This brief security breach caused a six-hour terminal shutdown, stranded thousands of passengers, and delayed flights continuing into the next day.²⁰

Federal law currently prohibits any person from knowingly and willfully entering any aircraft or airport area in violation of specified security requirements²¹ with a penalty of fines and imprisonment not more than one year.²² An offender who acts with the intent to evade security procedures or with the intent to commit a felony in the aircraft or airport area may face up to twenty years in federal prison.²³

Current Florida law does not specifically prohibit trespassing in any portion of an airport. However, s. 901.15(14), F.S., allows law enforcement to arrest a person for misdemeanor trespass without a warrant when there is probable cause to believe that person has trespassed in a secure area of an airport with conspicuously posted signs notifying that unauthorized entry into such areas constitutes a trespass and the methods for gaining authorized access to such areas.

Effect of Proposed Changes

HB 523 makes it a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a person to trespass on the operational area of an airport with the intent to injure another person;

¹⁴ Statement Announcing a Program to Deal with Airport Hijacking, 1 Pub. Papers 742 (Sept. 11, 1970), available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=2659> (last accessed November 29, 2017); see also Harawa, supra FN 12, at 4.

¹⁵ Id.

¹⁶ Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 10, 2001).

¹⁷ Department of Homeland Security, Transportation Security Administration, *Addressing CSIS: Evolution of Aviation Security Since 9/11*, available at: <https://www.tsa.gov/news/speeches/addressing-csis-evolution-aviation-security-911> (last accessed November 29, 2017).

¹⁸ Peter D'Oench, *Police: Woman Arrested for Scaling Miami Airport Fence*, CBS Miami (March 2, 2015), available at: <http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (last accessed November 20, 2017); Ray Sanchez, *Man Walks onto Newark Airport Runways; Authorities Reviewing Security Video*, Fox 13 (Dec. 26, 2013), available at: <http://fox13now.com/2013/12/26/new-jersey-airports-multimillion-dollar-detection-system-fails/> (last accessed November 20, 2017); Sarah Wheaton, *Man is Held in Security Breach at Newark*, The New York Times (Jan. 8, 2010), available at: <http://www.nytimes.com/2010/01/09/nyregion/09newark.html> (last accessed November 20, 2017); *Police: Airport Trespasser Spit On Cop, Said He Has HIV*, CBS Miami (Nov. 18, 2017), available at: <http://miami.cbslocal.com/2017/11/18/airport-trespasser-spit-cop-said-he-has-hiv/> (last accessed November 21, 2017).

¹⁹ Sarah Wheaton, *Man is Held in Security Breach at Newark*, The New York Times (Jan. 8, 2010), available at: <http://www.nytimes.com/2010/01/09/nyregion/09newark.html> (last accessed November 20, 2017); Al Baker & Liz Robbins, *A 'Romantic' Now in Trouble over an Airport Kiss*, The New York Times (Jan. 9, 2010), available at: <http://www.nytimes.com/2010/01/10/nyregion/10newark.html> (last accessed November 20, 2017).

²⁰ Id.

²¹ 49 U.S.C. § 46314(a) (2015).

²² 49 U.S.C. § 46314(b)(1) (2015).

²³ 49 U.S.C. § 46314(b)(2) (2015).

damage property; or impede the operation or use of an aircraft, runway,²⁴ taxiway,²⁵ ramp or apron area.²⁶

The bill defines “operational area of an airport” as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

For a trespasser to be prosecuted, the bill requires that an airport post a sign with language similar to the following:

“THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that an identical bill would have had an insignificant impact on state prison beds through Fiscal Year 2019-20, meaning the bill may increase the Department of Corrections prison bed population by less than 10 inmates annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent persons who trespass on the operational area of an airport are charged with a felony rather than a misdemeanor, based on the CJIC estimate, the bill may have an insignificant impact on the number of jail beds.

²⁴ A runway is a defined rectangular area of an airport or airfield prepared for the landing and take-off of aircraft. International Civil Aviation Organization, *Runway Safety Handbook: Second Edition*, runway, (2015) (on file with Criminal Justice Subcommittee staff).

²⁵ A taxiway is commonly defined as the paved area in which an aircraft taxis between the runway and the apron of the airport.

²⁶ An apron, or ramp, is a defined are on an airport intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, or maintenance. Federal Aviation Administration, Advisory Circular, No: 120-57A, pg. 2, available at: https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-57A.pdf (last accessed November 29, 2017).

The bill will have an indeterminate negative fiscal impact on publicly operated airports that create signage in compliance with the bill's sign posting requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate negative fiscal impact on privately owned airports that create signage in compliance with the bill's sign posting requirement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A bill to be entitled

An act relating to trespass on airport property;
amending s. 810.09, F.S.; providing enhanced criminal
penalties for a trespass upon the operational area of
an airport with specified intent if specified signage
is posted; providing a definition; providing an
effective date.

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

Section 1. Paragraph (j) is added to subsection (2) of
section 810.09, Florida Statutes, and paragraph (a) of
subsection (1) of that section is republished, to read:

810.09 Trespass on property other than structure or
conveyance.—

(1)(a) A person who, without being authorized, licensed,
or invited, willfully enters upon or remains in any property
other than a structure or conveyance:

1. As to which notice against entering or remaining is
given, either by actual communication to the offender or by
posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a
dwelling and the offender enters or remains with the intent to
commit an offense thereon, other than the offense of trespass,

26 commits the offense of trespass on property other than a
 27 structure or conveyance.

28 (2)



29 (j)1. The offender commits a felony of the third degree,
 30 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 31 if the offender trespasses with the intent to injure another
 32 person, damage property, or impede the operation or use of an
 33 aircraft, runway, taxiway, ramp, or apron area, and the property
 34 trespassed upon is the operational area of an airport that is
 35 legally posted and identified in substantially the following
 36 manner: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN
 37 AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A
 38 FELONY."

39 2. For purposes of this paragraph, the term "operational
 40 area of an airport" means any portion of an airport to which
 41 access by the public is prohibited by fences or appropriate
 42 signs and includes runways, taxiways, ramps, apron areas,
 43 aircraft parking and storage areas, fuel storage areas,
 44 maintenance areas, and any other area of an airport used or
 45 intended to be used for landing, takeoff, or surface maneuvering
 46 of aircraft.

47 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJ 18-01 Child Exploitation
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: PCB CRJ 18-02 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Bruno 	Sumner 

SUMMARY ANALYSIS

PCB CRJ 18-01 amends ch. 847, F.S., which currently addresses obscenity, child pornography, and other child exploitation offenses, to address the following issues:

- Morphed Child Pornography: The PCB criminally prohibits persons in Florida from possessing, promoting, or transmitting morphed child pornography. “Morphing” refers to a process in which a computer user distorts or transforms one picture into another. Individuals use this technique to create “morphed” child pornography, involving sexually explicit images in which a child’s head has been superimposed onto an adult’s body. While federal law currently prohibits morphed child pornography, Florida law does not.
- Computer Pornography and Transmission of Child Pornography: The PCB allows offenses relating to the possession and transmission of child pornography to be charged as separate offenses based upon each image of child pornography and other proscribed items. Currently, because the statutory language establishing the offenses uses the modifier “any,” rather than “a” or “an” before the term “image” and other terms, Florida courts have held that separate offenses may not be charged. The PCB also establishes that sharing child pornography via file servers is criminally prohibited, consistent with a recent Florida Supreme Court decision.
- Reorganization of Child Exploitation Laws: Currently, ch. 847, F.S., entitled “Obscenity,” contains numerous sections of law which criminalize possession of child pornography, transmission of child pornography through a computer, transmission of depictions to minors that are harmful, luring a child over the Internet for sexual conduct, and other related matters. One section of law, which prohibits the direction or promotion of sexual performances by children and the possession of child pornography, is included in s. 827.071, F.S., in the chapter entitled “Child Abuse.” The PCB moves the provisions of s. 827.071, F.S., to ch. 847, F.S. The PCB also renames ch. 847, F.S., as “Obscenity; Child Exploitation” so that the chapter title more accurately reflects its contents.
- Investigative Subpoenas: The PCB creates s. 794.10, F.S., to authorize criminal justice agencies to issue subpoenas for investigations involving sexual offenses against children that require the recipient of the subpoena to keep the existence and contents of the subpoena confidential.

The Criminal Justice Impact Conference (CJIC) has not yet considered this PCB; however, after considering a similar version of this PCB filed during the 2017 Regular Session, the CJIC determined that the prior version of the PCB would have a positive significant impact on the need for prison beds.

This PCB provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Morphed Child Pornography

“Morphing,” which refers to a process in which a computer user distorts or transforms one picture into another, is a relatively simple technique using inexpensive and readily available software. Individuals use this technique to create “morphed” child pornography, involving images depicting sexually explicit conduct in which a child’s head has been superimposed onto an adult’s body.

Federal Law

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,¹ the United States Supreme Court (Supreme Court) recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Supreme Court noted that it was “unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work.”² Under these principles, states have criminalized possessing, distributing, and other acts involving child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

Child Pornography Prevention Action of 1996

Prior to 1996, federal law criminalized a variety of acts relating to child pornography.³ At that time, the statutes described images of a minor actually engaging in sexually explicit conduct.⁴ In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),⁵ creating a definition of “child pornography” that for the first time criminalized acts relating to morphed child pornography. Under the CPPA, “child pornography” was defined as:

- (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,⁶ where:
 - (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., virtual child pornography – created without using an actual child);
 - (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor⁷ is engaging in sexually explicit conduct (i.e., morphed child pornography); or

¹ 458 U.S. 747 (1982).

² Id. at 762-63.

³ See, e.g., 18 USC §2252 (1994 ed.).

⁴ *U.S. v. Hotaling*, 599 F.Supp.2d 306, 309 (N.D.N.Y. 2008); see also 18 USC §§ 2252 and 2256 (1994 ed.).

⁵ Pub. L. No. 104-208.

⁶ 18 USC §2256(2) (1996 ed.) defined the term “sexually explicit conduct” as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person.

⁷ 18 USC §2556(9) (1996 ed.) defined the term “identifiable minor” as a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or
- Whose image as a minor was used in creating, adapting, or modifying the visual depiction.

The term was not be construed to require proof of the actual identity of the identifiable minor.

(D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.⁸

Case Law Following the Passage of the CPPA

In 2002, the Supreme Court decided *Ashcroft v. Free Speech Coalition*,⁹ a case in which a California trade association for the adult entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. Section 2256(8)(B) made it a crime to possess or distribute images depicting sexually explicit conduct which could be created by using advanced computer imaging techniques to “create realistic images of children who do not exist” (i.e., virtual child pornography).¹⁰ The Supreme Court held that the speech criminalized in the challenged provision of the CPPA violated the First Amendment since it extended the federal prohibition against child pornography to sexually explicit images that “appeared to” depict minors but were “produced without using any real children.”¹¹ The Supreme Court decided that “by prohibiting child pornography that did not depict an actual child,” section 2256(8)(B) of the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.¹²

While the *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children...”¹³ This suggests that morphed child pornography is not protected by the First Amendment.¹⁴

Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act” (Protect Act) in 2003.¹⁵ The Protect Act, in part, narrowed the definition of virtual child pornography in section (8)(B) of the CPPA to include only virtual or computer-generated images that are “indistinguishable from” images of actual minors engaging in sexually explicit conduct.¹⁶

The definition of morphed child pornography contained in section 2256(8)(C) remained unchanged by the Protect Act.

Federal Case Law since the Passage of the Protect Act

To date, the federal statutes relating to morphed child pornography have been upheld.¹⁷ In *United States v. Bach*,¹⁸ the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.¹⁹ The photograph of a well-known child entertainer’s head had been “skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of the child entertainer sitting in the tree.”²⁰ The defendant appealed, arguing that his

⁸ 18 USC §2556(8) (1996 ed.).

⁹ 535 U.S. 234 (2002).

¹⁰ *Supra*, FN 9.

¹¹ *Supra*, FN 8 at 256.

¹² *Id.*

¹³ *Id.* at 242.

¹⁴ *McFadden v. Alabama*, 67 So. 3d 169, 181-82 (Ala. Crim. App. 2010).

¹⁵ Pub. L. No. 108-21.

¹⁶ 18 USC §2256(8)(B).

¹⁷ *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); *see also Doe v. Boland*, 630 F.3d 491, 497 (6th Cir. 2011).

¹⁸ 400 F.3d 622 (8th Cir. 2005).

¹⁹ *Id.* at 625.

²⁰ *Id.*

conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography “implicate[s] the interests of real children” and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.²¹ However, the court noted that:

Although there may well be instances in which the application of §2256(8)(C) violates the First Amendment, this is not such a case. The interests of real children are implicated in the image received by Bach showing a boy with the identifiable face of AC in a lascivious pose. This image involves the type of harm which can constitutionally be prosecuted under *Free Speech Coalition* and *Ferber*.^{22, 23}

More recently, the United States Court of Appeals for the Eighth Circuit decided *United States v. Anderson*.²⁴ In *Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.²⁵ The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.²⁶ The court noted that the image at issue was different than the one in *Bach* in that “no minor was sexually abused.”²⁷ However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the compelling governmental interest in protecting minors.²⁸ Using this reasoning, the court applied a strict scrutiny balancing test and held that the definition of morphed child pornography was constitutional as applied to the facts of *Anderson*.

Florida Law

Florida law contains a variety of statutes that prohibit acts relating to child pornography. Currently, these statutes are found in ch. 827, entitled “Abuse of Children,” and ch. 847, entitled “Obscenity.” A summary of these laws follows.

Section 827.071, F.S. – Sexual Performance by a Child

Section 827.071(4), F.S., makes it a second degree felony²⁹ for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.³⁰

Section 827.071(5), F.S., makes it a third degree felony³¹ for any person to knowingly possess, control, or intentionally view³² a photograph, motion picture, or other presentation listed in subsection (4) that, in whole or in part, he or she knows to include any sexual conduct by a child.³³

²¹ Id. at 632.

²² Id.

²³ *United States v. Hotaling*, 634 F.3d 725 (2d Cir. 2008), cert. denied, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment.”)

²⁴ 759 F.3d 891 (8th Cir. 2014).

²⁵ Id.

²⁶ Id.

²⁷ Id. at 895.

²⁸ Id. at 896.

²⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082 and 775.083, F.S.

³⁰ Possession of three or more copies of such photographs, etc., is prima facie evidence of intent to promote.

³¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. SS. 775.082 and 775.083, F.S.

³² Section 827.071(1)(b), F.S., defines “intentionally view” as to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation was viewed over any period of time.

³³ The statute also specifies that the possession, control, or intentional viewing of each such photograph, or presentation listed in subsection (4), is a separate offense. If such photograph or presentation listed in subsection (4) includes sexual conduct by more than one child, then each child in each photograph or presentation that is knowingly possessed, controlled, or intentionally was viewed is a separate offense.

The following definitions apply to the above-described offenses:

- “Child” means any person under the age of 18 years.
- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³⁴

Section 847.0137, F.S. – Transmitting Child Pornography

Section 847.0137, F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography to another person commits a third degree felony.

The following definitions apply to the above-described offense:

- “Child pornography” means any image depicting a minor engaged in sexual conduct.
- “Minor” means any person under the age of 18 years.
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.³⁵

The terms used in the above-described statutes do not specifically include morphed pornography.

Florida Case Law

In 2010, Florida’s Second District Court of Appeal (DCA) decided *Stelmack v. State*,³⁶ a case in which the defendant was charged with possession of child pornography.³⁷ The images at issue showed the faces and heads of two girls, ages 11 and 12, cut and pasted onto images of a 19-year old woman lewdly exhibiting her genitals.³⁸ After closely examining the definition of sexual conduct, the court determined that it requires images to include actual lewd exhibition of the genitals *by a child*.³⁹ Because the only sexual conduct in the images at issue was performed by an adult, the court held that the images were not prohibited by s. 827.071(5), F.S.⁴⁰

The court also noted that the images depicted *simulated* lewd exhibition of the genitals by a child. The state, citing the *Bach* decision, argued that s. 827.071(5), F.S., proscribed such images because they were photographs or representations “which ... *in part* ... include ... sexual conduct by a child.”⁴¹ The

³⁴ SS. 827.01(2) and 827.071(1), F.S.

³⁵ S. 847.001, F.S.

³⁶ 58 So. 3d 874 (Fla. 2d DCA 2010).

³⁷ S. 827.071(5), F.S.

³⁸ Id. at 875.

³⁹ Id. at 877

⁴⁰ Id.

⁴¹ Id.

court disagreed and noted that the legislature specifically excluded *simulated* lewd exhibition from the definition of sexual conduct. In discussing this point, the court stated:

We do not mean to suggest that the possession of composite images of real children that simulate lewd and lascivious exhibition of the children's genitals should not be criminalized. However, there is no indication in either the plain language of section 827.071(5) or its legislative history that the legislature intended to do so. If the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so.⁴² In fact, child pornography has been defined in the federal statutes to specifically include composite images...⁴³

Shortly after the *Stelmack* decision, the Second DCA reviewed another case in which the defendant was convicted of possessing child pornography.⁴⁴ In this case, the images at issue were morphed images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of sexual conduct and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."⁴⁵

In reversing the trial court's decision, the Second DCA also reviewed the legislative history of the relevant federal statutes. The court noted that Congress had enacted child pornography legislation three times (in 1994, 1996, and 2003), each time broadening the definition of child pornography.⁴⁶ The latest iteration, the Protect Act, defines child pornography to include not only images of actual children engaged in sexually explicit conduct, but also images created by computer that are indistinguishable from images of actual minors engaging in such conduct and images that are created or modified to appear as though an identifiable minor was involved in the production of the depiction.⁴⁷ After noting that Congress specifically removed the defense that no actual minor was involved in the production of the depiction, the court stated that "if our legislature wants to follow Congress's example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute."⁴⁸

Effect of Proposed Changes

Section 827.071, F.S., contains provisions relating to sexual performance by a child and child pornography. The PCB repeals this section of statute and moves its criminal provisions to statutes in ch. 847, F.S., which the PCB renames "Obscenity; Child Exploitation."

The PCB moves the provisions of s. 827.071(2) and (3), F.S., relating to sexual performance by a child, to s. 847.003, F.S. The PCB does not change the elements of these offenses.

The PCB moves the provisions of s. 827.071(4) and (5), F.S., which criminalize the possession and promotion of child pornography, to s. 847.0137, F.S., and defines several terms in accordance with federal law to include morphed images. For example:

- "Child pornography" is defined as a visual depiction of sexual conduct, where:
 - The production of such visual depiction involves the use of a minor engaging in sexual conduct; or

⁴² In a footnote, the court noted that they would "leave for another day a discussion of the constitutionality of such a provision." *Id.* at 876.

⁴³ *Id.*

⁴⁴ *Parker v. State*, 81 So. 3d 451 (Fla. 2d DCA 2011).

⁴⁵ *Id.* at 453.

⁴⁶ *Id.* at 455-57.

⁴⁷ *Id.*

⁴⁸ *Id.* at 457.

- Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.
- "Identifiable minor" is defined as a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature and:
 - Who was a minor at the time the visual depiction was created, adapted, or modified; or
 - Whose image as a minor was used in creating, adapting, or modifying the visual depiction.
 - The PCB further notes that proof of the actual identity of the identifiable minor is not required.
- "Visual depiction" is defined to include any photograph, picture, image, motion picture, film, video, representation, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means. The term also includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format.

The PCB expands the definition of "sexual conduct" applicable to all of ch. 847, F.S., to include "simulated" lewd exhibition of the genitals.

The PCB establishes possession of three or more visual depictions of child pornography as prima facie evidence of an intent to promote. This significantly broadens the current statutory presumption, which provides that the possession of three or more *copies* of any photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote.

Cumulatively, the above-described changes make it a crime to possess, promote, or transmit morphed child pornography in Florida.

The PCB also makes numerous conforming changes that reflect the repeal of s. 827.071, F.S., the creation of s. 847.003, F.S., and the expansion of s. 847.0137, F.S.

Computer Pornography and Transmission of Child Pornography

Computer Pornography

Section 847.0135, F.S., entitled the "Computer Pornography and Child Exploitation Prevention Act," provides, in relevant part, that a person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates,

any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor,⁴⁹ or the visual depiction of such conduct, commits a felony of the third degree....^{50, 51}

⁴⁹ "Minor" is defined to mean "**any** person under the age of 18 years." S. 847.001(8), F.S. (emphasis added).

⁵⁰ S. 847.0135(2), F.S. (emphasis added).

⁵¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

Transmission of Child Pornography

Section 847.0137, F.S., provides that any person in:

- This state who knew or reasonably should have known that he or she was transmitting child pornography⁵² to another person in this state or in another jurisdiction commits a felony of the third degree.⁵³
- Any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography to any person in this state commits a felony of the third degree.⁵⁴

For purposes of these offenses, the term “transmit” is defined as “the act of sending and causing to be delivered **any** image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device.”^{55, 56}

Computer Pornography and Transmission of Child Pornography: Number of Counts

In 2015, the Fourth DCA in *State v. Losada*, considered the number of counts that may be charged for the offenses of computer pornography under s. 847.0135(2), F.S., and transmission of child pornography under s. 847.0137(2), F.S., where more than one image of child pornography is at issue.⁵⁷

In this case, the defendant sent an undercover police officer a single image containing child pornography through an online chat. On a subsequent day, the officer requested and received from the defendant access to files stored on the defendant’s computer, which contained 32 images of child pornography. Defendant was charged with and convicted of 33 counts of computer pornography in violation of s. 847.0135(2), F.S., and 33 counts of transmission of child pornography in violation of s. 847.0137(2), F.S. On motion of the defendant, the trial court later vacated all but four counts: one count of computer pornography and one count of transmission of child pornography for each of the two separate interactions with the officer.⁵⁸

The DCA affirmed the trial court’s dismissal of 31 counts of computer pornography and 31 counts of transmission of child pornography. According to the court, such dismissal was warranted based on the Florida Supreme Court’s (FSC) “a/any” test which holds that use of the word “a” before an item described in a statute evidences legislative intent to make each item subject to a separate prosecution; whereas, use of the word “any” before the item, is ambiguous and may evidence legislative intent that only one prosecution is intended for multiple items.⁵⁹

With respect to the statutes at issue in the case, the computer pornography offense applies to “**any** notice, statement, or advertisement” of specified information relating to a minor’s name and the transmission of child pornography offense applies to the transmission, meaning, “the act of sending and causing to be delivered **any** image, information, or data ...,” of child pornography, meaning “**any** image depicting a minor engaged in sexual conduct.” Due to the use of “any” in these provisions, the court

⁵² “Child pornography” is defined to mean “**any** image depicting a minor engaged in sexual conduct.” S. 847.001(3), F.S. (emphasis added).

⁵³ S. 847.0137(2), F.S.

⁵⁴ S. 847.0137(3), F.S.

⁵⁵ S. 847.0137(1)(b), F.S. (emphasis added).

⁵⁶ The section further specifies that it may not be construed to prohibit prosecution of the transmission of child pornography under any other law, including a law providing for greater penalties; that a person is subject to prosecution in Florida if he or she lives outside of Florida if he or she violates the prohibition against transmitting child pornography to any person in this state; and that the section does not apply to subscription-based transmissions such as list servers. S. 847.0137, F.S.

⁵⁷ 175 So.3d 911 (Fla. 4th DCA 2015).

⁵⁸ *Id.* at 912.

⁵⁹ *Id.* at 913-914.

concluded that the Legislature did not intend to make each individual image subject to separate prosecution.⁶⁰

Transmission of Child Pornography via File-Sharing Programs

Recently, the FSC resolved a conflict between two DCAs that considered whether the definition of “transmit” as used in s. 847.0137, F.S., to prohibit the transmission of child pornography includes transmission via a file-sharing program. According to the Fifth DCA in *Biller v. State*, the definition did not,⁶¹ whereas the Fourth DCA in *Smith v. State*,⁶² found that a file-sharing program could be used to transmit child pornography in violation of s. 847.0137, F.S.

In *Biller*, the defendant used a peer-to-peer sharing network known as Limewire to download pornographic images of children to his home computer. The files were obtained from other Limewire subscribers who permitted access to their files. Using Limewire, sheriff’s agents retrieved the images from an accessible folder in the defendant’s computer. Based on the retrieval of these images, the defendant was, in relevant part, charged with and convicted of one count of transmitting child pornography using an electronic device in violation of s. 847.0137(2), F.S.⁶³

The Fifth DCA reversed the defendant’s conviction, determining that the child pornography had not been transmitted in violation of the statute because the definition of “transmit” requires a violator to “send” the files to another person. According to the court, “send” could mean that the defendant purposefully acted to deliver the files or that the defendant effectively sent them by maintaining a shared folder and knowingly allowing other Limewire users to access them. As the statute was susceptible to more than one construction, the court held that it was required under s. 775.021, F.S.,⁶⁴ to construe the statute most favorable to the defendant.⁶⁵

Conversely, the Fourth DCA in *Smith v. State*,⁶⁶ found that a file-sharing program could be used to transmit child pornography in violation of s. 847.0137, F.S. In this case, the defendant used a file-sharing program that was designed to allow one-on-one access to stored data. The defendant loaded pornographic images into a specific computer file. Authorization was required to gain access to it. The defendant then sent a “friend request” to a Palm Beach County undercover detective which authorized the detective to access certain of Smith’s files that he had chosen to share with other users. The detective downloaded various images of child pornography from these files. Apart from the “friend request,” the defendant did not know that the files were actually downloaded. Ultimately, the defendant was convicted of 20 counts of transmitting child pornography.⁶⁷

After the defendant’s conviction, the Fifth District decided *Biller*. Based on *Biller*, the defendant filed a motion for postconviction relief, claiming in part that he had been convicted of a non-existent crime because he had not “sent” the images to the undercover detective. The Fourth DCA rejected this argument and affirmed the trial court’s order denying defendant’s motion. According to the court, “when the originator creates the shared file folder and specifically authorizes others to download the contents of that folder, he is ‘sending’ information in the form of the ‘friend’ request and is ‘causing’ the pornographic images to be delivered to another.”⁶⁸ Further, the court certified conflict with *Biller*.⁶⁹

⁶⁰ Id. at 914-915

⁶¹ 109 So. 3d 1240 (Fla. 5th DCA 2013).

⁶² 190 So.3d 94 (Fla. 4th DCA 2015).

⁶³ Id. at 1241.

⁶⁴ Section 775.021(1), F.S., states, “The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.”

⁶⁵ Id.

⁶⁶ 190 So.3d 94 (Fla. 4th DCA 2015).

⁶⁷ Id. at 95-96.

⁶⁸ Id. at 96-97.

⁶⁹ Id.

The FSC resolved the conflict in *Smith*, rejecting the Fifth DCA's decision in *Biller* and affirming the Fourth DCA's decision in *Smith*. The FSC held "that the use of a file-sharing program, where the originator affirmatively grants the receiver access to child pornography placed by the originator in files accessible through the file-sharing program, constitutes the transmission of child pornography under the plain meaning of s. 847.0137, F.S."⁷⁰ The court reasoned that by sending the "friend request" to the third party, the defendant purposefully "caused the delivery of the images to the third party to take place."⁷¹

Effect of Proposed Changes

The PCB amends s. 847.001, F.S., to change the definition of the term:

- "Child pornography" from "**any** image depicting a minor ..." to a cross-reference to the definition of "child pornography" created by the bill in s. 847.0137, F.S., which refers to "a visual depiction of sexual conduct" involving the use of "a minor"
- "Minor" or "child" from "**any** person under the age of 18..." to "a person under the age of 18...."

Likewise, the PCB also amends ss. 847.0135 and 847.0137, F.S., to change the term "any" to "an" where used in the provisions creating the computer pornography and transmission of child pornography offenses. Cumulatively, these amendments result in the ability to charge computer pornography offenses separately based upon each notice, statement, or advertisement and each minor affected, and transmission of child pornography offenses separately based upon each image, data, or information and each recipient.

With respect to the definition of "transmit" set forth in s. 847.0137(1), F.S., the PCB:

- Adds language specifying that "transmit" includes "the act of providing access for receiving and causing to be delivered" visual depictions of child pornography, thereby clarifying, in conformity with the FSC's 2016 decision in *Smith*, that the sharing of child pornography through file-sharing programs constitutes a prohibited transmission under the section.
- Deletes "from one or more persons or places to one or more other persons or places" as such verbiage is unneeded given that s. 847.0137(3), F.S., refers to the fact that the transmission must be sent to "another person" and "a person," respectively.
- Adds "interconnected network" as an example of a medium over or through which child pornography may not be transmitted.

Subpoenas in Investigations involving Sexual Offenses against Children

Subpoenas

A subpoena is an order directed to a person which requires his or her attendance at a particular time and place to testify as a witness. A subpoena may also require the witness to bring documents or other tangible evidence that may be introduced as evidence in a case.⁷² The Sixth Amendment to the United States Constitution guarantees the defendant in a criminal case the right to have compulsory process for obtaining witnesses in his or her favor.⁷³ Subpoenas may be issued in a criminal investigation⁷⁴ or in

⁷⁰ 204 So. 3d 18, 19 (Fla. 2016).

⁷¹ Id. at 22.

⁷² BLACK'S LAW DICTIONARY, *What is Subpoena?*, <http://thelawdictionary.org/subpoena/> (last visited Nov. 29, 2017).

⁷³ U.S. Const. am. 6

⁷⁴ Florida law authorizes certain entities to use subpoenas for the purpose of conducting criminal investigations, including, but not limited to, S. 409.920, F.S. (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); S. 415.107, F.S. (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and S. 414.411, F.S. (authorizing Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

a criminal prosecution during discovery⁷⁵ or for trial⁷⁶ by the defendant, his or her counsel, or the state attorney. Generally, a subpoena must state the name of the court and the title of action and the time and the place at which the witness is commanded to give testimony or produce evidence.⁷⁷ Once a witness is subpoenaed by either party, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court hearing the case.⁷⁸ A witness's failure to do so could result in being held in contempt of court.⁷⁹

In some cases, a subpoena may require the recipient of the subpoena to not disclose the existence or contents of the subpoena. For example, Florida statute authorizes an agency that is investigating⁸⁰ a violation of Florida's Racketeer Influenced and Corrupt Organizations (RICO) Act⁸¹ to issue a civil investigative subpoena for testimony or documents.⁸² This subpoena is confidential for 120 days, meaning the recipient of the subpoena may not disclose its contents or existence to any person or entity other than his or her attorney during that period.⁸³ The 120-day period may be extended by a circuit court upon showing of good cause by the investigative agency.⁸⁴ For good cause to exist, there must be a showing:

- Of sufficient factual grounds to reasonably indicate a violation of ss. 895.01 – 895.06, F.S.;
- That the documents or testimony requested appear reasonably calculated to lead to the discovery of admissible evidence; and
- Of facts that reasonably indicate that disclosure of the subpoena would hamper or impede the investigation, or would result in a flight from prosecution.⁸⁵

Upon failure of the person or enterprise to comply with the subpoena, the investigative agency may apply to the circuit court to enforce the subpoena.⁸⁶

Similarly, federal law authorizes the Federal Bureau of Investigation (FBI) to issue a National Security Letter (NSL), which is an administrative subpoena that allows the FBI to obtain records from wire or electronic communication service providers if the records are relevant to investigations related to terrorism or clandestine intelligence activities.⁸⁷ For such subpoenas, the FBI may require nondisclosure if it certifies that disclosure may result in danger to the national security of the United States; interference with a criminal counterterrorism, or counterintelligence investigation; interference with diplomatic relations; or danger to the life or physical safety of any person.⁸⁸

To avoid potential First Amendment concerns with such a restraint on speech, Congress passed the USA FREEDOM Act of 2015, which in relevant part authorizes a recipient of a NSL/subpoena to notify the federal government or file a petition for judicial review if the recipient wishes to have a court review a nondisclosure requirement in such subpoena.⁸⁹ Courts have upheld the FBI's authority to issue the

⁷⁵ Fla. R. Crim. P. 3.220 (h), allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged. The rule provides that the issuance of the subpoena for deposition is the same as provided for in the Florida Rules of Civil Procedure.

⁷⁶ Fla. R. Crim. P. 3.361(a), provides that subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court or by any attorney of record in the case.

⁷⁷ Id.

⁷⁸ S. 914.03, F.S.

⁷⁹ Id.

⁸⁰ In order to issue a subpoena, the level of proof required is that there must be "something more than a fishing expedition, and something less than probable cause." *Check 'n Go of Florida, Inc. v. State* 790 So.2d 454, 458 (Fla. 5th DCA 2001).

⁸¹ The Racketeer Influenced and Corrupt Organizations Act was passed by Congress in 1970 as part of the Organized Crime Control Act of 1970. Florida passed its own RICO Act in 1977.

⁸² S. 895.06, F.S.

⁸³ S. 895.06(2), F.S.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ S. 895.06(4), F.S.

⁸⁷ 18 USC § 2709(b)(1).

⁸⁸ Id. at § 2709(c)(1)(B).

⁸⁹ 18 USC § 3511(b)(1)(A).

subpoenas and the accompanying nondisclosure requirements because of the government interest in protecting national security and the provisions for judicial review included in the Act.⁹⁰

Effect of Proposed Changes

The PCB authorizes a criminal justice agency to issue a subpoena for any investigation of an offense involving:

- The sexual exploitation or abuse of a child;
- A sexual offense alleged to have been committed by a sexual offender who has not properly registered; or
- An offense under ch. 847, F.S., involving a child who doesn't qualify under the first two prongs.

The subpoena may require the production of any relevant record, object, or other information relevant to the investigation and may also require the custodian of the record to testify as to its authenticity. The subpoena must identify and describe any record, object, or other information that is required to be produced or testified to and provide a reasonable return date by which the record, object, or information must be submitted.

The PCB defines:

- "Child" as a person who is less than 18 years of age.
- "Criminal justice agency" as a law enforcement agency, court, or prosecutor in this state.
- "Sexual exploitation or abuse of a child" as a criminal offense based on any conduct described in s. 39.01(70), F.S. This definition includes sexual abuse of a child, engaging in sexual acts in front of or with a child, and engaging in human trafficking of a child.
- "Sexual offender" as a person who has been convicted of a sexual offense⁹¹ against a child.

Nondisclosure Requirement

The PCB allows a criminal justice agency to require that the recipient of the subpoena not disclose the existence or contents of the subpoena. In order for the subpoena to be subject to a nondisclosure requirement, it must be accompanied by a written certification that disclosure of the subpoena may result in one of the following circumstances:

- Endangering a person's life or physical safety;
- Encouraging a person's flight from prosecution;
- Destruction of or tampering with evidence;
- Intimidation of potential witnesses; or
- Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Upon such written certification, the recipient is prohibited from disclosing the contents or existence of the subpoena for 180 days, except that a recipient may disclose the subpoena and its contents to:

- A person to whom disclosure is necessary in order to comply with the subpoena;
- An attorney to obtain legal advice or assistance regarding the subpoena; or

⁹⁰ *In re Nat'l Sec. Letters*, 2016 WL 7017215 (D.D.C. July 25, 2016); *In re Nat'l Sec. Letter*, 165 F.Supp.3d 352 (D. Md. 2015).

⁹¹ The specified sexual offenses are the offenses for which a person must register as a sexual offender under S. 943.0435(1)(h)1.a.(l), F.S. These offenses include: S. 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability); S. 394.4593(2), F.S. (sexual misconduct with a patient); SS. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor; S. 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking); S. 794.011, F.S. (sexual battery) excluding S. 794.011(10), F.S.; S. 794.05, F.S. (unlawful activity with certain minors); former S. 796.03, F.S. (procuring a person under the age of 18 for prostitution); former S. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); S. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); S. 810.145(8), F.S. (relating to video voyeurism); S. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person); S. 827.071, F.S. (sexual performance by a child); S. 847.0133, F.S. (prohibition of certain acts in connection with obscenity); S. 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding S. 847.0135(6), F.S.; S. 847.0137, F.S. (transmission of pornography by electronic device or equipment); S. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment); S. 847.0145, F.S. (selling or buying of minors); S. 916.1075(2), F.S. (sexual misconduct with a forensic client); or S. 985.701(1), F.S. (sexual misconduct with a juvenile offender).

- Any other person authorized by the state official issuing the subpoena.

A person to whom such disclosure is made is bound by the same nondisclosure requirements as the original recipient. A criminal justice agency may require the person disclosing the subpoena to provide the identity of the person to whom he or she is disclosing. If a person refuses to comply with the subpoena, the criminal justice agency may request that the circuit court issue an order to comply. The circuit court may then issue an order, a violation of which may be punishable as contempt of court.

Petition Process and Judicial Review

The PCB allows the subpoena recipient to challenge its requirements at any time before the return date by petitioning the circuit court of the county in which he or she lives. The PCB also allows the subpoena recipient to challenge a nondisclosure requirement by filing a petition for judicial review in the circuit court or notifying the criminal justice agency that issued the subpoena. The petition may be for an order to modify or set aside the subpoena, or to modify or set aside the prohibition of disclosure of information.

Other Effects

Witnesses subpoenaed to testify are reimbursed for fees and mileage at the same rate at which witnesses appearing before Florida courts are reimbursed.⁹² A subpoena issued under the PCB must not require the production of anything that is protected from production with a subpoena duces tecum issued by a Florida court.⁹³

The PCB allows criminal justice agencies to require the production of documents as soon as possible, but the recipient of the subpoena must be given at least 24 hours after he or she is served to comply. The criminal justice agency must return any original documents or objects upon request, within a reasonable time, if prosecution does not occur.

The PCB provides that the service of a subpoena under this section may be served as provided in ch. 48, F.S.

The PCB provides immunity from civil liability for persons disclosing information requested in the subpoena. This allows persons with information needed by the criminal justice agency to disclose it without fear that the person being investigated may sue them for disclosing the information.

The PCB provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 16.56, F.S., relating to Office of Statewide Prosecution.

Section 2: Amends s. 39.01, F.S., relating to definitions.

Section 3: Amends s. 39.0132, F.S., relating to oaths, records, and confidential information.

Section 4: Amends s. 39.0139, F.S., relating to visitation or other contact; restrictions.

Section 5: Amends s. 39.301, F.S., relating to initiation of protective investigations.

Section 6: Amends s. 39.509, F.S., relating to grandparents rights.

Section 7: Amends s. 90.404, F.S., relating to character evidence; when admissible.

Section 8: Amends s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

⁹² Section 92.142, F.S. establishes the amount that witnesses in a court in Florida will be reimbursed for their time. Consideration is given to the length of testimony, the distance traveled, and the reason testifying.

⁹³ A subpoena may request evidence that is relevant and admissible or is reasonably calculated to lead to admissible evidence. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). Certain documents, such as materials prepared for trial or work products, are not discoverable under the Florida Rules of Civil Procedure. Fla. R. Civ. P. 1.280.

- Section 9:** Amends s. 92.561, F.S., relating to prohibition on reproduction of child pornography.
- Section 10:** Amends s. 92.565, relating to admissibility of confession in sexual abuse cases.
- Section 11:** Amends s. 435.04, relating to Level 2 screening standards.
- Section 12:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 13:** Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.
- Section 14:** Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.
- Section 15:** Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection.
- Section 16:** Amends s. 743.067, F.S., relating to certified unaccompanied homeless youths.
- Section 17:** Amends s. 772.102, F.S., relating to definitions.
- Section 18:** Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.
- Section 19:** Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.
- Section 20:** Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.
- Section 21:** Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.
- Section 22:** Amends s. 775.215, F.S., relating to residency restriction for persons convicted of certain sex offenses.
- Section 23:** Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.
- Section 24:** Amends s. 794.0115, F.S., relating to dangerous sexual felony offender; mandatory sentencing.
- Section 25:** Amends s. 794.024, F.S., relating to unlawful to disclose identifying information.
- Section 26:** Amends s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.
- Section 27:** Creates s. 794.10, F.S., relating to investigative subpoenas in certain cases involving child victims.
- Section 28:** Amends s. 796.001, F.S., relating to offenses by adults involving minors; intent.
- Section 29:** Repeals s. 827.071, F.S., relating to sexual performance by a child; penalties.
- Section 30:** Amends s. 847.001, F.S., relating to definitions.
- Section 31:** Creates s. 847.003, F.S., relating to sexual performance by a child; penalties.
- Section 32:** Amends s. 847.0135, F.S., relating to prohibited computer usage, traveling to meet minor, penalties.
- Section 33:** Amends s. 847.01357, F.S., relating to exploited children's civil remedy.
- Section 34:** Amends s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment prohibited; penalties.
- Section 35:** Amends s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children; penalty.
- Section 36:** Amends s. 895.02, F.S., relating to definitions.
- Section 37:** Amends s. 905.34, F.S., relating to powers and duties; law applicable.
- Section 38:** Amends s. 934.07, F.S., relating to authorization for interception of wire, oral, or electronic communications.
- Section 39:** Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.
- Section 40:** Amends s. 938.10, F.S., relating to additional court cost imposed in cases of certain crimes.
- Section 41:** Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.
- Section 42:** Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.
- Section 43:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 44:** Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 45:** Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

- Section 46:** Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.
- Section 47:** Amends s. 947.1405, F.S., relating to conditional release program.
- Section 48:** Amends s. 948.03, F.S., relating to terms and conditions of probation.
- Section 49:** Amends s. 948.04, F.S., relating to period of probation; duty of probationer; early termination.
- Section 50:** Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.
- Section 51:** Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.
- Section 52:** Amends s. 948.101, F.S., relating to terms and conditions of community control.
- Section 53:** Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.
- Section 54:** Amends s. 948.32, F.S., relating to requirements of law enforcement agency upon arrest of persons for certain sex offenses.
- Section 55:** Amends s. 960.03, F.S., relating to definitions; ss 960.01-960.28.
- Section 56:** Amends s. 960.197, F.S., relating to assistance to victims of online sexual exploitation and child pornography.
- Section 57:** Amends s. 985.04, F.S., relating to oaths; records; confidential information.
- Section 58:** Amends s. 985.475, F.S., relating to juvenile sexual offenders.
- Section 59:** Amends s. 1012.315, F.S., relating to disqualification from employment.
- Section 60:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 61:** Directs the Division of Law Revision and Information to rename chapter 847, F.S., as "Obscenity; Child Exploitation."
- Sections 62-133:** Reenact sections of law to incorporate the PCB's amendments to statutes that are cross-referenced in the reenacted sections.
- Section 134:** Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not yet considered this PCB; however, the CJIC met on March 29, 2017, and considered a similar version of this PCB filed last year during the 2017 Regular Session, which the CJIC determined would have a positive significant impact on the need for prison beds.⁹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁹⁴ A positive significant impact means a need for more than 25 prison beds.

2. Expenditures:

The PCB may increase the number of defendants sentenced to local jails because the PCB expands the definition of "sexual conduct," which expands the elements of certain misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCB appears to be exempt from the requirements of Article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

Although numerous First Amendment challenges have been made to government regulation of pornography, the Supreme Court has definitively ruled that the First Amendment does not attach to the dissemination of child pornography. "[T]he use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment."⁹⁵

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁹⁵ *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (upholding as a compelling state interest the protection of the physical and psychological well-being of children).

1 A bill to be entitled
 2 An act relating to child exploitation; amending s.
 3 16.56, F.S.; revising the offenses that may be
 4 investigated and prosecuted by the Office of Statewide
 5 Prosecution; amending s. 39.01, F.S.; conforming
 6 provisions to changes made by the act; amending s.
 7 39.0132, F.S.; revising the types of offenses
 8 committed by a child in the custody of the Department
 9 of Children and Families which require the department
 10 to provide notice to the school superintendent;
 11 conforming provisions to changes made by the act;
 12 amending s. 39.0139, F.S.; revising the type of
 13 offenses that create a rebuttable presumption of
 14 detriment for judicial determinations related to
 15 contact between a parent or caregiver and certain
 16 child victims; conforming provisions to changes made
 17 by the act; amending s. 39.301, F.S.; conforming
 18 provisions to changes made by the act; amending s.
 19 39.509, F.S.; revising the offenses that may be
 20 considered in determining whether grandparental
 21 visitation is in the child's best interest; conforming
 22 provisions to changes made by the act; amending s.
 23 90.404, F.S.; conforming provisions to changes made by
 24 the act; amending s. 92.56, F.S.; revising the
 25 offenses for which a criminal defendant may seek an

26 | order of disclosure for certain confidential and
27 | exempt court records, for which the state may use a
28 | pseudonym instead of the victim's name, and for which
29 | a publication or broadcast of trial testimony may not
30 | include certain victim identifying information;
31 | conforming provisions to changes made by the act;
32 | amending ss. 92.561, 92.565, and 435.04, F.S.;
33 | conforming provisions to changes made by the act;
34 | amending s. 435.07, F.S.; revising the offenses that
35 | disqualify certain child care personnel from specified
36 | employment; conforming provisions to changes made by
37 | the act; amending s. 456.074, F.S.; revising the
38 | offenses for which the licenses of massage therapists
39 | and massage establishments must be suspended;
40 | conforming provisions to changes made by the act;
41 | amending ss. 480.041 and 480.043, F.S.; revising the
42 | offenses for which applications for licensure as a
43 | massage therapist or massage establishment must be
44 | denied; conforming provisions to changes made by the
45 | act; amending s. 743.067, F.S.; revising the offenses
46 | for which an unaccompanied homeless youth may consent
47 | to specified treatment, care, and examination;
48 | conforming provisions to changes made by the act;
49 | amending ss. 772.102 and 775.082, F.S.; conforming
50 | provisions to changes made by the act; amending s.

51 775.0847, F.S.; revising definitions; conforming
52 provisions to changes made by the act; amending ss.
53 775.0877, 775.21, 775.215, 784.046, and 794.0115,
54 F.S.; conforming provisions to changes made by the
55 act; amending s. 794.024, F.S.; revising the offenses
56 for which certain victim information may not be
57 disclosed by public employees or officers; providing
58 penalties; conforming provisions to changes made by
59 the act; amending s. 794.056, F.S.; conforming
60 provisions to changes made by the act; creating s.
61 794.10, F.S.; providing definitions; authorizing
62 subpoenas in certain investigations of sexual offenses
63 involving child victims and specifying requirements
64 therefor; providing for specified reimbursement of
65 witnesses; authorizing certain motions; requiring
66 nondisclosure of the existence or contents of the
67 subpoenas in certain circumstances; providing
68 exceptions to such nondisclosure requirement;
69 requiring certain notice to be provided in a subpoena
70 that contains a nondisclosure requirement; exempting
71 certain records, objects, and other information from
72 production; providing for the return of records,
73 objects, and other information produced; specifying
74 time periods within which records, objects, and other
75 information must be returned; providing for service

76 and enforcement of the subpoenas; providing penalties
 77 for a violation of the subpoena or nondisclosure
 78 requirement; providing immunity for certain persons
 79 complying with the subpoenas in certain circumstances;
 80 providing for judicial review and extension of such
 81 nondisclosure requirement and specifying requirements
 82 therefor; amending s. 796.001, F.S.; conforming
 83 provisions to changes made by the act; repealing s.
 84 827.071, F.S., relating to sexual performance by a
 85 child; amending s. 847.001, F.S.; revising
 86 definitions; creating s. 847.003, F.S.; providing
 87 definitions; prohibiting a person from using a child
 88 in a sexual performance or promoting a sexual
 89 performance by a child; providing penalties; amending
 90 s. 847.0135, F.S.; providing for separate offenses of
 91 computer pornography and child exploitation under
 92 certain circumstances; conforming provisions to
 93 changes made by the act; amending s. 847.01357, F.S.;
 94 conforming provisions to changes made by the act;
 95 amending s. 847.0137, F.S.; revising and providing
 96 definitions; prohibiting a person from possessing,
 97 with the intent to promote, child pornography;
 98 prohibiting a person from knowingly possessing,
 99 controlling, or intentionally viewing child
 100 pornography; providing penalties; providing

101 application and construction; providing for separate
 102 offenses of transmission of child pornography under
 103 certain circumstances; amending ss. 856.022, 895.02,
 104 905.34, and 934.07, F.S.; conforming provisions to
 105 changes made by the act; amending s. 938.085, F.S.;
 106 revising the offenses for which a surcharge to be
 107 deposited into the Rape Crisis Program Trust Fund
 108 shall be imposed; conforming provisions to changes
 109 made by the act; amending s. 938.10, F.S.; revising
 110 the offenses for which an additional court cost shall
 111 be imposed; conforming provisions to changes made by
 112 the act; amending ss. 943.0435, 943.04354, 943.0585,
 113 943.059, 944.606, 944.607, and 947.1405, F.S.;
 114 conforming provisions to changes made by the act;
 115 amending ss. 948.03, and 948.04, F.S.; conforming
 116 provisions to changes made by the act; amending s.
 117 948.06, F.S.; revising the offenses that constitute a
 118 qualifying offense for purposes relating to a
 119 violation of probation or community control;
 120 conforming provisions to changes made by the act;
 121 amending ss. 948.062, 948.101, 948.30, 948.32, 960.03,
 122 and 960.197, F.S.; conforming provisions to changes
 123 made by the act; amending s. 985.04, F.S.; revising
 124 the types of offenses committed by a child in certain
 125 custody or supervision of the Department of Juvenile

126 Justice which require the department to provide notice
 127 to the school superintendent; conforming provisions to
 128 changes made by the act; amending ss. 985.475 and
 129 1012.315, F.S.; conforming provisions to changes made
 130 by the act; amending s. 921.0022, F.S.; ranking the
 131 offense of solicitation of a child via a computer
 132 service while misrepresenting one's age on the offense
 133 severity ranking chart; conforming provisions to
 134 changes made by the act; providing a directive to the
 135 Division of Law Revision and Information; reenacting
 136 ss. 39.402(9)(a), 39.506(6), 39.509(6)(b),
 137 39.521(3)(d), 39.806(1)(d) and (n), 63.089(4)(b),
 138 63.092(3), 68.07(3)(i) and (6), 92.55(1)(b),
 139 92.605(1)(b), 322.141(3), 381.004(2)(h), 384.29(1)(c)
 140 and (3), 390.01114(2)(b) and (e), 393.067(4)(h), (7),
 141 and (9), 394.495(4)(p), 394.9125(2)(a), 397.4872(2)(a)
 142 and (c), 435.07(4)(b), 507.07(9), 655.50(3)(g),
 143 741.313(1)(e), 775.084(4)(j), 775.0862(2),
 144 775.13(4)(e) and (f), 775.21(3)(b), (5)(d), (6)(f),
 145 and (10)(c), 775.24(2), 775.25, 775.261(3)(b),
 146 784.049(2)(d), 794.011(2)(a), (3), (4), and (5),
 147 794.03, 794.075(1), 847.002(1)(b), (2), and (3),
 148 847.012(3)(b), 847.01357(3), 847.0138(2) and (3),
 149 896.101(2)(g) and (10), 903.0351(1)(b) and (c),
 150 903.046(2)(m), 905.34(3), 921.0022(3)(g),

151 921.141(6)(o), 943.0435(3), (4)(a), and (5),
 152 943.0436(2), 943.325(2)(g), 944.11(2), 944.607(4)(a)
 153 and (9), 944.608(7), 944.609(4), 944.70(1),
 154 947.13(1)(f), 947.1405(2)(c) and (12), 947.141(1),
 155 (2), and (7), 948.013(2)(b), 948.06(8)(b) and (d),
 156 948.063, 948.064(4), 948.08(7)(a), 948.12(3),
 157 948.30(3)(b) and (4), 948.31, 951.27, 960.003(2)(a)
 158 and (b) and (3)(a), 960.065(5), 984.03(2),
 159 985.0301(5)(c), 985.04(6)(b), 985.441(1)(c),
 160 985.4815(9), and 1012.467(2)(g), F.S., relating to
 161 placement in a shelter, arraignment hearings,
 162 grandparents rights, disposition hearings, grounds for
 163 termination of parental rights, proceedings to
 164 terminate parental rights pending adoption, report to
 165 the court of intended placement by an adoption entity,
 166 change of name, proceedings involving certain victims
 167 or witnesses, production of certain records, color or
 168 markings of certain licenses or identification cards,
 169 HIV testing, confidentiality, the Parental Notice of
 170 Abortion Act, facility licensure, the child and
 171 adolescent mental health system of care, authority of
 172 a State Attorney to refer a person for civil
 173 commitment, exemption from disqualification,
 174 exemptions from disqualification, violations by movers
 175 or moving brokers, Florida Control of Money Laundering

176 and Terrorist Financing in Financial Institutions Act,
 177 unlawful action against employees seeking protection,
 178 violent career criminals, habitual felony offenders,
 179 and habitual violent felony offenders, sexual offenses
 180 against students by authority figures, registration of
 181 convicted felons, the Florida Sexual Predators Act,
 182 duty of the court to uphold laws governing sexual
 183 predators and sexual offenders, prosecutions for acts
 184 or omissions, career offender registration, sexual
 185 cyberharassment, sexual battery, publishing or
 186 broadcasting information identifying sexual offense
 187 victims, sexual predators and erectile dysfunction
 188 drugs, child pornography prosecutions, sale or
 189 distribution of harmful materials to minors or using
 190 minors in production, civil remedies for exploited
 191 children, transmission of material harmful to minors
 192 to a minor by electronic devices, the Florida Money
 193 Laundering Act, restrictions on pretrial release
 194 pending probation-violation hearings or community-
 195 control-violation hearings, purposes of and criteria
 196 for bail determination, the powers and duties of a
 197 statewide grand jury, the offense severity ranking
 198 chart of the Criminal Punishment Code, sentence of
 199 death or life imprisonment for capital felonies,
 200 sexual offenders required to register with the

201 Department of Law Enforcement, duty of the court to
 202 uphold laws governing sexual predators and sexual
 203 offenders, DNA database, regulation by the Department
 204 of Corrections of the admission of books, notification
 205 to the Department of Law Enforcement of information on
 206 sexual offenders, notification to the Department of
 207 Law Enforcement concerning career offenders, career
 208 offenders and notification upon release, conditions
 209 for release from incarceration, powers and duties of
 210 the Florida Commission on Offender Review, conditional
 211 release program, violations of conditional release,
 212 control release, or conditional medical release or
 213 addiction-recovery supervision, administrative
 214 probation, violation of probation or community
 215 control, violations of probation or community control
 216 by designated sexual offenders and predators,
 217 notification of status as a violent felony offender of
 218 special concern, pretrial intervention program,
 219 intensive supervision for postprison release of
 220 violent offenders, additional terms and conditions of
 221 probation or community control for certain sex
 222 offenses, evaluation and treatment of sexual predators
 223 and offenders on probation or community control, blood
 224 tests of inmates, hepatitis and HIV testing for
 225 persons charged with or alleged by petition for

226 delinquency to have committed certain offenses,
 227 eligibility for victim assistance awards, definitions
 228 relating to children and families in need of services,
 229 jurisdiction, oaths, records, and confidential
 230 information, commitment, notification to Department of
 231 Law Enforcement of information on juvenile sexual
 232 offenders, and contractors permitted access to school
 233 grounds, respectively, to incorporate the amendments
 234 made by the act in cross-references to amended
 235 provisions; providing an effective date.
 236

237 Be It Enacted by the Legislature of the State of Florida:
 238

239 Section 1. Paragraph (a) of subsection (1) of section
 240 16.56, Florida Statutes, is amended, and paragraph (b) of that
 241 subsection is republished, to read:

242 16.56 Office of Statewide Prosecution.—

243 (1) There is created in the Department of Legal Affairs an
 244 Office of Statewide Prosecution. The office shall be a separate
 245 "budget entity" as that term is defined in chapter 216. The
 246 office may:

247 (a) Investigate and prosecute the offenses of:

248 1. Bribery, burglary, criminal usury, extortion, gambling,
 249 kidnapping, larceny, murder, prostitution, perjury, robbery,
 250 carjacking, home-invasion robbery, and patient brokering;

- 251 2. Any crime involving narcotic or other dangerous drugs;
- 252 3. Any violation of the Florida RICO (Racketeer Influenced
- 253 and Corrupt Organization) Act, including any offense listed in
- 254 the definition of racketeering activity in s. 895.02(8)(a),
- 255 providing such listed offense is investigated in connection with
- 256 a violation of s. 895.03 and is charged in a separate count of
- 257 an information or indictment containing a count charging a
- 258 violation of s. 895.03, the prosecution of which listed offense
- 259 may continue independently if the prosecution of the violation
- 260 of s. 895.03 is terminated for any reason;
- 261 4. Any violation of the Florida Anti-Fencing Act;
- 262 5. Any violation of the Florida Antitrust Act of 1980, as
- 263 amended;
- 264 6. Any crime involving, or resulting in, fraud or deceit
- 265 upon any person;
- 266 7. Any violation of s. 847.0135, relating to computer
- 267 pornography and child exploitation ~~prevention~~, or any offense
- 268 related to a violation of former s. 827.071, s. 847.003, s.
- 269 847.0135, or s. 847.0137 ~~any violation of chapter 827~~ where the
- 270 crime is facilitated by or connected to the use of the Internet
- 271 or any device capable of electronic data storage or
- 272 transmission;
- 273 8. Any violation of chapter 815;
- 274 9. Any criminal violation of part I of chapter 499;
- 275 10. Any violation of the Florida Motor Fuel Tax Relief Act

276 of 2004;

277 11. Any criminal violation of s. 409.920 or s. 409.9201;

278 12. Any crime involving voter registration, voting, or

279 candidate or issue petition activities;

280 13. Any criminal violation of the Florida Money Laundering

281 Act;

282 14. Any criminal violation of the Florida Securities and

283 Investor Protection Act; or

284 15. Any violation of chapter 787, as well as any and all

285 offenses related to a violation of chapter 787;

286

287 or any attempt, solicitation, or conspiracy to commit any of the

288 crimes specifically enumerated above. The office shall have such

289 power only when any such offense is occurring, or has occurred,

290 in two or more judicial circuits as part of a related

291 transaction, or when any such offense is connected with an

292 organized criminal conspiracy affecting two or more judicial

293 circuits. Informations or indictments charging such offenses

294 shall contain general allegations stating the judicial circuits

295 and counties in which crimes are alleged to have occurred or the

296 judicial circuits and counties in which crimes affecting such

297 circuits or counties are alleged to have been connected with an

298 organized criminal conspiracy.

299 (b) Investigate and prosecute any crime enumerated in

300 paragraph (a) facilitated by or connected to the use of the

301 Internet. Any such crime is a crime occurring in every judicial
 302 circuit within the state.

303 Section 2. Paragraph (c) of subsection (30) and paragraph
 304 (g) of subsection (71) of section 39.01, Florida Statutes, are
 305 amended to read:

306 39.01 Definitions.—When used in this chapter, unless the
 307 context otherwise requires:

308 (30) "Harm" to a child's health or welfare can occur when
 309 any person:

310 (c) Allows, encourages, or forces the sexual exploitation
 311 of a child, which includes allowing, encouraging, or forcing a
 312 child to:

- 313 1. Solicit for or engage in prostitution; or
- 314 2. Engage in a sexual performance, as defined by former s.
 315 827.071 or s. 847.003 ~~chapter 827~~.

316 (71) "Sexual abuse of a child" for purposes of finding a
 317 child to be dependent means one or more of the following acts:

318 (g) The sexual exploitation of a child, which includes the
 319 act of a child offering to engage in or engaging in
 320 prostitution, or the act of allowing, encouraging, or forcing a
 321 child to:

- 322 1. Solicit for or engage in prostitution;
- 323 2. Engage in a sexual performance, as defined by former s.
 324 827.071 or s. 847.003 ~~chapter 827~~; or
- 325 3. Participate in the trade of human trafficking as

326 provided in s. 787.06(3)(g).

327 Section 3. Paragraph (b) of subsection (4) of section
328 39.0132, Florida Statutes, is amended to read:

329 39.0132 Oaths, records, and confidential information.—

330 (4)

331 (b) The department shall disclose to the school
332 superintendent the presence of a ~~any~~ child in the care and
333 custody or under the jurisdiction or supervision of the
334 department who has a known history of criminal sexual behavior
335 with other juveniles; is an alleged juvenile sex offender, as
336 defined in s. 39.01; or has pled guilty or nolo contendere to,
337 or has been found to have committed, a violation of chapter 794,
338 chapter 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s.
339 847.0133, s. 847.0135(5), or s. 847.0137, regardless of
340 adjudication. An ~~Any~~ employee of a district school board who
341 knowingly and willfully discloses such information to an
342 unauthorized person commits a misdemeanor of the second degree,
343 punishable as provided in s. 775.082 or s. 775.083.

344 Section 4. Paragraph (a) of subsection (3) of section
345 39.0139, Florida Statutes, is amended to read:

346 39.0139 Visitation or other contact; restrictions.—

347 (3) PRESUMPTION OF DETRIMENT.—

348 (a) A rebuttable presumption of detriment to a child is
349 created when:

350 1. A court of competent jurisdiction has found probable

351 | cause exists that a parent or caregiver has sexually abused a
352 | child as defined in s. 39.01;

353 | 2. A parent or caregiver has been found guilty of,
354 | regardless of adjudication, or has entered a plea of guilty or
355 | nolo contendere to, charges under the following statutes or
356 | substantially similar statutes of other jurisdictions:

357 | a. Section 787.04, relating to removing minors from the
358 | state or concealing minors contrary to court order;

359 | b. Section 794.011, relating to sexual battery;

360 | c. Section 798.02, relating to lewd and lascivious
361 | behavior;

362 | d. Chapter 800, relating to lewdness and indecent
363 | exposure;

364 | e. Section 826.04, relating to incest; ~~or~~

365 | f. Chapter 827, relating to the abuse of children; ~~or~~

366 | g. Section 847.003, relating to sexual performance by a
367 | child;

368 | h. Section 847.0135, excluding s. 847.0135(6), relating to
369 | computer pornography and child exploitation; or

370 | i. Section 847.0137, relating to child pornography; or

371 | 3. A court of competent jurisdiction has determined a
372 | parent or caregiver to be a sexual predator as defined in s.
373 | 775.21 or a parent or caregiver has received a substantially
374 | similar designation under laws of another jurisdiction.

375 | Section 5. Paragraph (b) of subsection (2) of section

376 | 39.301, Florida Statutes, is amended to read:

377 | 39.301 Initiation of protective investigations.—

378 | (2)

379 | (b) As used in this subsection, the term "criminal
380 | conduct" means:

381 | 1. A child is known or suspected to be the victim of child
382 | abuse, as defined in s. 827.03, or of neglect of a child, as
383 | defined in s. 827.03.

384 | 2. A child is known or suspected to have died as a result
385 | of abuse or neglect.

386 | 3. A child is known or suspected to be the victim of
387 | aggravated child abuse, as defined in s. 827.03.

388 | 4. A child is known or suspected to be the victim of
389 | sexual battery, as defined in s. 847.001 ~~827.071~~, or of sexual
390 | abuse, as defined in s. 39.01.

391 | 5. A child is known or suspected to be the victim of
392 | institutional child abuse or neglect, as defined in s. 39.01,
393 | and as provided for in s. 39.302(1).

394 | 6. A child is known or suspected to be a victim of human
395 | trafficking, as provided in s. 787.06.

396 | Section 6. Paragraph (a) of subsection (6) of section
397 | 39.509, Florida Statutes, is amended to read:

398 | 39.509 Grandparents rights.—Notwithstanding any other
399 | provision of law, a maternal or paternal grandparent as well as
400 | a stepgrandparent is entitled to reasonable visitation with his

401 or her grandchild who has been adjudicated a dependent child and
 402 taken from the physical custody of the parent unless the court
 403 finds that such visitation is not in the best interest of the
 404 child or that such visitation would interfere with the goals of
 405 the case plan. Reasonable visitation may be unsupervised and,
 406 where appropriate and feasible, may be frequent and continuing.
 407 Any order for visitation or other contact must conform to the
 408 provisions of s. 39.0139.

409 (6) In determining whether grandparental visitation is not
 410 in the child's best interest, consideration may be given to the
 411 following:

412 (a) The finding of guilt, regardless of adjudication, or
 413 entry or plea of guilty or nolo contendere to charges under the
 414 following statutes, or similar statutes of other jurisdictions:
 415 s. 787.04, relating to removing minors from the state or
 416 concealing minors contrary to court order; s. 794.011, relating
 417 to sexual battery; s. 798.02, relating to lewd and lascivious
 418 behavior; chapter 800, relating to lewdness and indecent
 419 exposure; s. 826.04, relating to incest; ~~or~~ chapter 827,
 420 relating to the abuse of children; s. 847.003, relating to
 421 sexual performance by a child; s. 847.0135, excluding s.
 422 847.0135(6), relating to computer pornography and child
 423 exploitation; or s. 847.0137, relating to child pornography.

424 Section 7. Paragraphs (b) and (c) of subsection (2) of
 425 section 90.404, Florida Statutes, are amended to read:

426 90.404 Character evidence; when admissible.—

427 (2) OTHER CRIMES, WRONGS, OR ACTS.—

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

433 2. For the purposes of this paragraph, the term "child
 434 molestation" means conduct proscribed by s. 787.025(2)(c), s.
 435 787.06(3)(g), former s. 787.06(3)(h), s. 794.011, excluding s.
 436 794.011(10), s. 794.05, former s. 796.03, former s. 796.035, s.
 437 800.04, former s. 827.071, s. 847.003, s. 847.0135(5), s.
 438 847.0137(2), s. 847.0145, or s. 985.701(1) when committed
 439 against a person 16 years of age or younger.

440 (c)1. In a criminal case in which the defendant is charged
 441 with a sexual offense, evidence of the defendant's commission of
 442 other crimes, wrongs, or acts involving a sexual offense is
 443 admissible and may be considered for its bearing on any matter
 444 to which it is relevant.

445 2. For the purposes of this paragraph, the term "sexual
 446 offense" means conduct proscribed by s. 787.025(2)(c), s.
 447 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s.
 448 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,
 449 former s. 796.035, s. 825.1025(2)(b), former s. 827.071, s.
 450 847.003, s. 847.0135(5), s. 847.0137(2), s. 847.0145, or s.

451 985.701(1).

452 Section 8. Subsections (2), (3), and (5) of section 92.56,
453 Florida Statutes, are amended to read:

454 92.56 Judicial proceedings and court records involving
455 sexual offenses and human trafficking.—

456 (2) A defendant charged with a crime described in s.
457 787.06(3)(a)1., (c)1., or (e)1.; s. 787.06(3)(b), (d), (f), or
458 (g); chapter 794; or chapter 800; ~~or~~ with child abuse or
459 aggravated child abuse, ~~or sexual performance by a child~~ as
460 described in chapter 827; with sexual performance by a child as
461 described in former s. 827.071; or with a sexual offense
462 described in chapter 847; may apply to the trial court for an
463 order of disclosure of information in court records held
464 confidential and exempt pursuant to s. 119.0714(1)(h) or
465 maintained as confidential and exempt pursuant to court order
466 under this section. Such identifying information concerning the
467 victim may be released to the defendant or his or her attorney
468 in order to prepare the defense. The confidential and exempt
469 status of this information may not be construed to prevent the
470 disclosure of the victim's identity to the defendant; however,
471 the defendant may not disclose the victim's identity to any
472 person other than the defendant's attorney or any other person
473 directly involved in the preparation of the defense. A willful
474 and knowing disclosure of the identity of the victim to any
475 other person by the defendant constitutes contempt.

476 (3) The state may use a pseudonym instead of the victim's
 477 name to designate the victim of a crime described in s.
 478 787.06(3)(a)1., (c)1., or (e)1.; in s. 787.06(3)(b), (d), (f),
 479 or (g); ~~or in chapter 794;~~ or chapter 800; ~~or~~ of child abuse
 480 or aggravated child abuse, ~~or sexual performance by a child~~ as
 481 described in chapter 827; of sexual performance by a child as
 482 described in former s. 827.071; ~~or of a sexual offense any~~
 483 ~~crime involving the production, possession, or promotion of~~
 484 ~~child pornography~~ as described in chapter 847, in all court
 485 records and records of court proceedings, both civil and
 486 criminal.

487 (5) This section does not prohibit the publication or
 488 broadcast of the substance of trial testimony in a prosecution
 489 for an offense described in s. 787.06(3)(a)1., (c)1., or (e)1.; in
 490 s. 787.06(3)(b), (d), (f), or (g); ~~chapter 794;~~ or chapter
 491 800; ~~for~~ ~~or~~ a crime of child abuse or aggravated child abuse,
 492 ~~or sexual performance by a child,~~ as described in chapter 827;
 493 for sexual performance by a child as described in former s.
 494 827.071; or for a sexual offense described in chapter 847, but
 495 the publication or broadcast may not include an identifying
 496 photograph, an identifiable voice, or the name or address of the
 497 victim, unless the victim has consented in writing to the
 498 publication and filed such consent with the court or unless the
 499 court has declared such records not confidential and exempt as
 500 provided for in subsection (1).

501 Section 9. Subsection (1) of section 92.561, Florida
 502 Statutes, is amended to read:
 503 92.561 Prohibition on reproduction of child pornography.-
 504 (1) In a criminal proceeding, any property or material
 505 that portrays sexual performance by a child as defined in former
 506 s. 827.071 or s. 847.003, or constitutes child pornography as
 507 defined in s. 847.0137 ~~847.001~~, must remain secured or locked in
 508 the care, custody, and control of a law enforcement agency, the
 509 state attorney, or the court.

510 Section 10. Subsection (2) of section 92.565, Florida
 511 Statutes, is amended to read:
 512 92.565 Admissibility of confession in sexual abuse cases.-
 513 (2) In any criminal action in which the defendant is
 514 charged with a crime against a victim under s. 787.06(3),
 515 involving commercial sexual activity; s. 794.011; s. 794.05; s.
 516 800.04; s. 826.04; s. 827.03, involving sexual abuse; s. 827.04,
 517 involving sexual abuse; former s. 827.071; s. 847.003; ~~or~~ s.
 518 847.0135(5); ~~or~~ s. 847.0137(2), or any other crime involving
 519 sexual abuse of another, or with any attempt, solicitation, or
 520 conspiracy to commit any of these crimes, the defendant's
 521 memorialized confession or admission is admissible during trial
 522 without the state having to prove a corpus delicti of the crime
 523 if the court finds in a hearing conducted outside the presence
 524 of the jury that the state is unable to show the existence of
 525 each element of the crime, and having so found, further finds

526 that the defendant's confession or admission is trustworthy.
 527 Factors which may be relevant in determining whether the state
 528 is unable to show the existence of each element of the crime
 529 include, but are not limited to, the fact that, at the time the
 530 crime was committed, the victim was:

- 531 (a) Physically helpless, mentally incapacitated, or
- 532 mentally defective, as those terms are defined in s. 794.011;
- 533 (b) Physically incapacitated due to age, infirmity, or any
- 534 other cause; or
- 535 (c) Less than 12 years of age.

536 Section 11. Paragraphs (ll) and (qq) of subsection (2) of
 537 section 435.04, Florida Statutes, are amended to read:

538 435.04 Level 2 screening standards.-

539 (2) The security background investigations under this
 540 section must ensure that no persons subject to the provisions of
 541 this section have been arrested for and are awaiting final
 542 disposition of, have been found guilty of, regardless of
 543 adjudication, or entered a plea of nolo contendere or guilty to,
 544 or have been adjudicated delinquent and the record has not been
 545 sealed or expunged for, any offense prohibited under any of the
 546 following provisions of state law or similar law of another
 547 jurisdiction:

548 (ll) Former s. Section 827.071, relating to sexual
 549 performance by a child.

550 (qq) Chapter 847, relating to obscenity and child

551 exploitation ~~obscene literature~~.

552 Section 12. Paragraph (c) of subsection (4) of section
553 435.07, Florida Statutes, is amended to read:

554 435.07 Exemptions from disqualification.—Unless otherwise
555 provided by law, the provisions of this section apply to
556 exemptions from disqualification for disqualifying offenses
557 revealed pursuant to background screenings required under this
558 chapter, regardless of whether those disqualifying offenses are
559 listed in this chapter or other laws.

560 (4)

561 (c) Disqualification from employment under this chapter
562 may not be removed from, and an exemption may not be granted to,
563 any current or prospective child care personnel, as defined in
564 s. 402.302(3), and such a person is disqualified from employment
565 as child care personnel, regardless of any previous exemptions
566 from disqualification, if the person has been registered as a
567 sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has
568 been arrested for and is awaiting final disposition of, has been
569 convicted or found guilty of, or entered a plea of guilty or
570 nolo contendere to, regardless of adjudication, or has been
571 adjudicated delinquent and the record has not been sealed or
572 expunged for, any offense prohibited under any of the following
573 provisions of state law or a similar law of another
574 jurisdiction:

575 1. A felony offense prohibited under any of the following

- 576 statutes:
- 577 a. Chapter 741, relating to domestic violence.
- 578 b. Section 782.04, relating to murder.
- 579 c. Section 782.07, relating to manslaughter, aggravated
- 580 manslaughter of an elderly person or disabled adult, aggravated
- 581 manslaughter of a child, or aggravated manslaughter of an
- 582 officer, a firefighter, an emergency medical technician, or a
- 583 paramedic.
- 584 d. Section 784.021, relating to aggravated assault.
- 585 e. Section 784.045, relating to aggravated battery.
- 586 f. Section 787.01, relating to kidnapping.
- 587 g. Section 787.025, relating to luring or enticing a
- 588 child.
- 589 h. Section 787.04(2), relating to leading, taking,
- 590 enticing, or removing a minor beyond the state limits, or
- 591 concealing the location of a minor, with criminal intent pending
- 592 custody proceedings.
- 593 i. Section 787.04(3), relating to leading, taking,
- 594 enticing, or removing a minor beyond the state limits, or
- 595 concealing the location of a minor, with criminal intent pending
- 596 dependency proceedings or proceedings concerning alleged abuse
- 597 or neglect of a minor.
- 598 j. Section 794.011, relating to sexual battery.
- 599 k. Former s. 794.041, relating to sexual activity with or
- 600 solicitation of a child by a person in familial or custodial

601 authority.

602 1. Section 794.05, relating to unlawful sexual activity

603 with certain minors.

604 m. Section 794.08, relating to female genital mutilation.

605 n. Section 806.01, relating to arson.

606 o. Section 826.04, relating to incest.

607 p. Section 827.03, relating to child abuse, aggravated

608 child abuse, or neglect of a child.

609 q. Section 827.04, relating to contributing to the

610 delinquency or dependency of a child.

611 r. Former s. Section 827.071 or s. 847.003, relating to

612 sexual performance by a child.

613 s. Chapter 847, relating to obscenity and child

614 exploitation pornography.

615 t. Section 985.701, relating to sexual misconduct in

616 juvenile justice programs.

617 2. A misdemeanor offense prohibited under any of the

618 following statutes:

619 a. Section 784.03, relating to battery, if the victim of

620 the offense was a minor.

621 b. Section 787.025, relating to luring or enticing a

622 child.

623 c. Chapter 847, relating to obscenity and child

624 exploitation pornography.

625 3. A criminal act committed in another state or under

626 federal law which, if committed in this state, constitutes an
 627 offense prohibited under any statute listed in subparagraph 1.
 628 or subparagraph 2.

629 Section 13. Paragraphs (o) and (q) of subsection (5) of
 630 section 456.074, Florida Statutes, are amended, paragraphs (r)
 631 and (s) of that subsection are redesignated as paragraphs (s)
 632 and (t), respectively, and a new paragraph (r) is added to that
 633 subsection, to read:

634 456.074 Certain health care practitioners; immediate
 635 suspension of license.—

636 (5) The department shall issue an emergency order
 637 suspending the license of a massage therapist or establishment
 638 as defined in chapter 480 upon receipt of information that the
 639 massage therapist, a person with an ownership interest in the
 640 establishment, or, for a corporation that has more than \$250,000
 641 of business assets in this state, the owner, officer, or
 642 individual directly involved in the management of the
 643 establishment has been convicted or found guilty of, or has
 644 entered a plea of guilty or nolo contendere to, regardless of
 645 adjudication, a violation of s. 796.07(2)(a) which is
 646 reclassified under s. 796.07(7) or a felony offense under any of
 647 the following provisions of state law or a similar provision in
 648 another jurisdiction:

649 (o) Former s. Section 827.071 or s. 847.003, relating to
 650 sexual performance by a child.

651 (q) Section 847.0135, relating to computer pornography and
 652 child exploitation.

653 (r) Section 847.0137, relating to child pornography.

654 Section 14. Paragraphs (o) and (q) of subsection (7) of
 655 section 480.041, Florida Statutes, are amended, paragraphs (r)
 656 and (s) of that subsection are redesignated as paragraphs (s)
 657 and (t), respectively, and a new paragraph (r) is added to that
 658 subsection, to read:

659 480.041 Massage therapists; qualifications; licensure;
 660 endorsement.—

661 (7) The board shall deny an application for a new or
 662 renewal license if an applicant has been convicted or found
 663 guilty of, or enters a plea of guilty or nolo contendere to,
 664 regardless of adjudication, a violation of s. 796.07(2)(a) which
 665 is reclassified under s. 796.07(7) or a felony offense under any
 666 of the following provisions of state law or a similar provision
 667 in another jurisdiction:

668 (o) Former s. Section 827.071 or s. 847.003, relating to
 669 sexual performance by a child.

670 (q) Section 847.0135, relating to computer pornography and
 671 child exploitation.

672 (r) Section 847.0137, relating to child pornography.

673 Section 15. Paragraphs (o) and (q) of subsection (8) of
 674 section 480.043, Florida Statutes, are amended, paragraphs (r)
 675 and (s) of that subsection are redesignated as paragraphs (s)

676 and (t), respectively, and a new paragraph (r) is added to that
 677 subsection, to read:

678 480.043 Massage establishments; requisites; licensure;
 679 inspection.—

680 (8) The department shall deny an application for a new or
 681 renewal license if a person with an ownership interest in the
 682 establishment or, for a corporation that has more than \$250,000
 683 of business assets in this state, the owner, officer, or
 684 individual directly involved in the management of the
 685 establishment has been convicted or found guilty of, or entered
 686 a plea of guilty or nolo contendere to, regardless of
 687 adjudication, a violation of s. 796.07(2)(a) which is
 688 reclassified under s. 796.07(7) or a felony offense under any of
 689 the following provisions of state law or a similar provision in
 690 another jurisdiction:

691 (o) Former s. ~~Section~~ 827.071 or s. 847.003, relating to
 692 sexual performance by a child.

693 (q) Section 847.0135, relating to computer pornography and
 694 child exploitation.

695 (r) Section 847.0137, relating to child pornography.

696 Section 16. Paragraph (b) of subsection (3) of section
 697 743.067, Florida Statutes, is amended to read:

698 743.067 Certified unaccompanied homeless youths.—

699 (3) A certified unaccompanied homeless youth may:

700 (b) Notwithstanding s. 394.4625(1), consent to medical,

701 dental, psychological, substance abuse, and surgical diagnosis
 702 and treatment, including preventative care and care by a
 703 facility licensed under chapter 394, chapter 395, or chapter 397
 704 and any forensic medical examination for the purpose of
 705 investigating any felony offense under chapter 784, chapter 787,
 706 chapter 794, chapter 800, ~~or~~ chapter 827, s. 847.003, or s.
 707 847.0137, for:

- 708 1. Himself or herself; or
- 709 2. His or her child, if the certified unaccompanied
 710 homeless youth is unmarried, is the parent of the child, and has
 711 actual custody of the child.

712 Section 17. Paragraph (a) of subsection (1) of section
 713 772.102, Florida Statutes, is amended to read:

714 772.102 Definitions.—As used in this chapter, the term:

715 (1) "Criminal activity" means to commit, to attempt to
 716 commit, to conspire to commit, or to solicit, coerce, or
 717 intimidate another person to commit:

718 (a) Any crime that is chargeable by indictment or
 719 information under the following provisions:

- 720 1. Section 210.18, relating to evasion of payment of
 721 cigarette taxes.
- 722 2. Section 414.39, relating to public assistance fraud.
- 723 3. Section 440.105 or s. 440.106, relating to workers'
 724 compensation.
- 725 4. Part IV of chapter 501, relating to telemarketing.

- 726 5. Chapter 517, relating to securities transactions.
- 727 6. Section 550.235 or s. 550.3551, relating to dogracing
- 728 and horseracing.
- 729 7. Chapter 550, relating to jai alai frontons.
- 730 8. Chapter 552, relating to the manufacture, distribution,
- 731 and use of explosives.
- 732 9. Chapter 562, relating to beverage law enforcement.
- 733 10. Section 624.401, relating to transacting insurance
- 734 without a certificate of authority, s. 624.437(4)(c)1., relating
- 735 to operating an unauthorized multiple-employer welfare
- 736 arrangement, or s. 626.902(1)(b), relating to representing or
- 737 aiding an unauthorized insurer.
- 738 11. Chapter 687, relating to interest and usurious
- 739 practices.
- 740 12. Section 721.08, s. 721.09, or s. 721.13, relating to
- 741 real estate timeshare plans.
- 742 13. Chapter 782, relating to homicide.
- 743 14. Chapter 784, relating to assault and battery.
- 744 15. Chapter 787, relating to kidnapping or human
- 745 trafficking.
- 746 16. Chapter 790, relating to weapons and firearms.
- 747 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
- 748 relating to prostitution.
- 749 18. Chapter 806, relating to arson.
- 750 19. Section 810.02(2)(c), relating to specified burglary

- 751 of a dwelling or structure.
- 752 20. Chapter 812, relating to theft, robbery, and related
- 753 crimes.
- 754 21. Chapter 815, relating to computer-related crimes.
- 755 22. Chapter 817, relating to fraudulent practices, false
- 756 pretenses, fraud generally, and credit card crimes.
- 757 23. Former s. Section 827.071, relating to commercial
- 758 sexual exploitation of children.
- 759 24. Chapter 831, relating to forgery and counterfeiting.
- 760 25. Chapter 832, relating to issuance of worthless checks
- 761 and drafts.
- 762 26. Section 836.05, relating to extortion.
- 763 27. Chapter 837, relating to perjury.
- 764 28. Chapter 838, relating to bribery and misuse of public
- 765 office.
- 766 29. Chapter 843, relating to obstruction of justice.
- 767 30. Section 847.003, relating to sexual performance by a
- 768 child.
- 769 ~~31.30.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
- 770 or s. 847.07, relating to obscene literature and profanity.
- 771 ~~32.31.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
- 772 s. 849.25, relating to gambling.
- 773 ~~33.32.~~ Chapter 893, relating to drug abuse prevention and
- 774 control.
- 775 ~~34.33.~~ Section 914.22 or s. 914.23, relating to witnesses,

776 victims, or informants.

777 ~~35.34.~~ Section 918.12 or s. 918.13, relating to tampering
778 with jurors and evidence.

779 Section 18. Paragraph (a) of subsection (9) of section
780 775.082, Florida Statutes, is amended to read:

781 775.082 Penalties; applicability of sentencing structures;
782 mandatory minimum sentences for certain reoffenders previously
783 released from prison.—

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

- 786 a. Treason;
- 787 b. Murder;
- 788 c. Manslaughter;
- 789 d. Sexual battery;
- 790 e. Carjacking;
- 791 f. Home-invasion robbery;
- 792 g. Robbery;
- 793 h. Arson;
- 794 i. Kidnapping;
- 795 j. Aggravated assault with a deadly weapon;
- 796 k. Aggravated battery;
- 797 l. Aggravated stalking;
- 798 m. Aircraft piracy;
- 799 n. Unlawful throwing, placing, or discharging of a
800 destructive device or bomb;

801 o. Any felony that involves the use or threat of physical
802 force or violence against an individual;

803 p. Armed burglary;

804 q. Burglary of a dwelling or burglary of an occupied
805 structure; or

806 r. Any felony violation of s. 790.07, s. 800.04, s.
807 827.03, former s. 827.071, s. 847.003, ~~s. 847.0135(5)~~, or s.
808 847.0137(2);

809
810 within 3 years after being released from a state correctional
811 facility operated by the Department of Corrections or a private
812 vendor or within 3 years after being released from a
813 correctional institution of another state, the District of
814 Columbia, the United States, any possession or territory of the
815 United States, or any foreign jurisdiction, following
816 incarceration for an offense for which the sentence is
817 punishable by more than 1 year in this state.

818 2. "Prison releasee reoffender" also means any defendant
819 who commits or attempts to commit any offense listed in sub-
820 subparagraphs (a)1.a.-r. while the defendant was serving a
821 prison sentence or on escape status from a state correctional
822 facility operated by the Department of Corrections or a private
823 vendor or while the defendant was on escape status from a
824 correctional institution of another state, the District of
825 Columbia, the United States, any possession or territory of the

826 United States, or any foreign jurisdiction, following
 827 incarceration for an offense for which the sentence is
 828 punishable by more than 1 year in this state.

829 3. If the state attorney determines that a defendant is a
 830 prison releasee reoffender as defined in subparagraph 1., the
 831 state attorney may seek to have the court sentence the defendant
 832 as a prison releasee reoffender. Upon proof from the state
 833 attorney that establishes by a preponderance of the evidence
 834 that a defendant is a prison releasee reoffender as defined in
 835 this section, such defendant is not eligible for sentencing
 836 under the sentencing guidelines and must be sentenced as
 837 follows:

838 a. For a felony punishable by life, by a term of
 839 imprisonment for life;

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

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

844 d. For a felony of the third degree, by a term of
 845 imprisonment of 5 years.

846 Section 19. Paragraphs (b) and (f) of subsection (1) and
 847 subsection (2) of section 775.0847, Florida Statutes, are
 848 amended, and paragraph (g) is added to that subsection, to read:

849 775.0847 Possession or promotion of certain visual
 850 depictions ~~images~~ of child pornography; reclassification.-

851 (1) For purposes of this section:

852 (b) "Child pornography" has the same meaning as provided
 853 in s. 847.0137 ~~means any image depicting a minor engaged in~~
 854 ~~sexual conduct.~~

855 (f) "Sexual conduct" means actual or simulated sexual
 856 intercourse, deviate sexual intercourse, sexual bestiality,
 857 masturbation, or sadomasochistic abuse; actual or simulated lewd
 858 exhibition of the genitals; actual physical contact with a
 859 person's clothed or unclothed genitals, pubic area, buttocks,
 860 or, if such person is a female, breast with the intent to arouse
 861 or gratify the sexual desire of either party; or any act or
 862 conduct which constitutes sexual battery or simulates that
 863 sexual battery is being or will be committed. A mother's
 864 breastfeeding of her baby does not under any circumstance
 865 constitute "sexual conduct."

866 (g) "Visual depiction" has the same meaning provided in s.
 867 847.0137.

868 (2) A violation of former s. 827.071, s. 847.003, s.
 869 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to
 870 the next higher degree as provided in subsection (3) if:

871 (a) The offender possesses 10 or more visual depictions
 872 ~~images~~ of any form of child pornography regardless of content;
 873 and

874 (b) The content of at least one visual depiction ~~image~~
 875 contains one or more of the following:

- 876 | 1. A child who is younger than the age of 5.
- 877 | 2. Sadomasochistic abuse involving a child.
- 878 | 3. Sexual battery involving a child.
- 879 | 4. Sexual bestiality involving a child.
- 880 | 5. Any movie involving a child, regardless of length and
- 881 | regardless of whether the movie contains sound.

882 | Section 20. Paragraph (1) of subsection (1) of section
 883 | 775.0877, Florida Statutes, is amended to read:

884 | 775.0877 Criminal transmission of HIV; procedures;
 885 | penalties.-

886 | (1) In any case in which a person has been convicted of or
 887 | has pled nolo contendere or guilty to, regardless of whether
 888 | adjudication is withheld, any of the following offenses, or the
 889 | attempt thereof, which offense or attempted offense involves the
 890 | transmission of body fluids from one person to another:

- 891 | (a) Section 794.011, relating to sexual battery;
- 892 | (b) Section 826.04, relating to incest;
- 893 | (c) Section 800.04, relating to lewd or lascivious
- 894 | offenses committed upon or in the presence of persons less than
- 895 | 16 years of age;
- 896 | (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
- 897 | relating to assault;
- 898 | (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
- 899 | relating to aggravated assault;
- 900 | (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),

901 relating to battery;

902 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),

903 relating to aggravated battery;

904 (h) Section 827.03(2)(c), relating to child abuse;

905 (i) Section 827.03(2)(a), relating to aggravated child

906 abuse;

907 (j) Section 825.102(1), relating to abuse of an elderly

908 person or disabled adult;

909 (k) Section 825.102(2), relating to aggravated abuse of an

910 elderly person or disabled adult;

911 (l) Former s. Section 827.071 or s. 847.003, relating to

912 sexual performance by a child ~~person less than 18 years of age~~;

913 (m) Sections 796.07 and 796.08, relating to prostitution;

914 (n) Section 381.0041(11)(b), relating to donation of

915 blood, plasma, organs, skin, or other human tissue; or

916 (o) Sections 787.06(3)(b), (d), (f), and (g), relating to

917 human trafficking,

918

919 the court shall order the offender to undergo HIV testing, to be

920 performed under the direction of the Department of Health in

921 accordance with s. 381.004, unless the offender has undergone

922 HIV testing voluntarily or pursuant to procedures established in

923 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or

924 rule providing for HIV testing of criminal offenders or inmates,

925 subsequent to her or his arrest for an offense enumerated in

926 paragraphs (a)-(n) for which she or he was convicted or to which
 927 she or he pled nolo contendere or guilty. The results of an HIV
 928 test performed on an offender pursuant to this subsection are
 929 not admissible in any criminal proceeding arising out of the
 930 alleged offense.

931 Section 21. Paragraph (a) of subsection (4) and paragraph
 932 (b) of subsection (10) of section 775.21, Florida Statutes, are
 933 amended to read:

934 775.21 The Florida Sexual Predators Act.—

935 (4) SEXUAL PREDATOR CRITERIA.—

936 (a) For a current offense committed on or after October 1,
 937 1993, upon conviction, an offender shall be designated as a
 938 "sexual predator" under subsection (5), and subject to
 939 registration under subsection (6) and community and public
 940 notification under subsection (7) if:

941 1. The felony is:

942 a. A capital, life, or first degree felony violation, or
 943 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 944 is a minor, or s. 794.011, s. 800.04, or s. 847.0145, or a
 945 violation of a similar law of another jurisdiction; or

946 b. Any felony violation, or any attempt thereof, of s.
 947 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 948 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),
 949 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding
 950 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;

951 | s. 800.04; s. 810.145(8)(b); s. 825.1025; former s. 827.071; s.
952 | 847.003; s. 847.0135, excluding s. 847.0135(6); s. 847.0137(2);
953 | s. 847.0145; s. 895.03, if the court makes a written finding
954 | that the racketeering activity involved at least one sexual
955 | offense listed in this sub-subparagraph or at least one offense
956 | listed in this sub-subparagraph with sexual intent or motive; s.
957 | 916.1075(2); or s. 985.701(1); or a violation of a similar law
958 | of another jurisdiction, and the offender has previously been
959 | convicted of or found to have committed, or has pled nolo
960 | contendere or guilty to, regardless of adjudication, any
961 | violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.
962 | 787.02, or s. 787.025(2)(c), where the victim is a minor; s.
963 | 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
964 | 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
965 | former s. 796.035; s. 800.04; s. 825.1025; former s. 827.071; s.
966 | 847.003; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
967 | 847.0137(2); s. 847.0145; s. 895.03, if the court makes a
968 | written finding that the racketeering activity involved at least
969 | one sexual offense listed in this sub-subparagraph or at least
970 | one offense listed in this sub-subparagraph with sexual intent
971 | or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a
972 | similar law of another jurisdiction;

973 | 2. The offender has not received a pardon for any felony
974 | or similar law of another jurisdiction that is necessary for the
975 | operation of this paragraph; and

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

979 (10) PENALTIES.—

980 (b) A sexual predator who has been convicted of or found
 981 to have committed, or has pled nolo contendere or guilty to,
 982 regardless of adjudication, any violation, or attempted
 983 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 984 the victim is a minor; s. 794.011, excluding s. 794.011(10); s.
 985 794.05; former s. 796.03; former s. 796.035; s. 800.04; former
 986 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135(5); s.
 987 847.0137(2); s. 847.0145; or s. 985.701(1); or a violation of a
 988 similar law of another jurisdiction when the victim of the
 989 offense was a minor, and who works, whether for compensation or
 990 as a volunteer, at any business, school, child care facility,
 991 park, playground, or other place where children regularly
 992 congregate, commits a felony of the third degree, punishable as
 993 provided in s. 775.082, s. 775.083, or s. 775.084.

994 Section 22. Subsection (2) and paragraphs (a) and (c) of
 995 subsection (3) of section 775.215, Florida Statutes, are amended
 996 to read:

997 775.215 Residency restriction for persons convicted of
 998 certain sex offenses.—

999 (2)(a) A person who has been convicted of a violation of
 1000 s. 794.011, s. 800.04, former s. 827.071, s. 847.003, s.

1001 847.0135(5), s. 847.0137(2), or s. 847.0145, regardless of
 1002 whether adjudication has been withheld, in which the victim of
 1003 the offense was less than 16 years of age, may not reside within
 1004 1,000 feet of any school, child care facility, park, or
 1005 playground. However, a person does not violate this subsection
 1006 and may not be forced to relocate if he or she is living in a
 1007 residence that meets the requirements of this subsection and a
 1008 school, child care facility, park, or playground is subsequently
 1009 established within 1,000 feet of his or her residence.

1010 (b) A person who violates this subsection and whose
 1011 conviction under s. 794.011, s. 800.04, former s. 827.071, s.
 1012 847.003, s. 847.0135(5), s. 847.0137(2), or s. 847.0145 was
 1013 classified as a felony of the first degree or higher commits a
 1014 felony of the third degree, punishable as provided in s. 775.082
 1015 or s. 775.083. A person who violates this subsection and whose
 1016 conviction under s. 794.011, s. 800.04, former s. 827.071, s.
 1017 847.003, s. 847.0135(5), s. 847.0137(2), or s. 847.0145 was
 1018 classified as a felony of the second or third degree commits a
 1019 misdemeanor of the first degree, punishable as provided in s.
 1020 775.082 or s. 775.083.

1021 (c) This subsection applies to any person convicted of a
 1022 violation of s. 794.011, s. 800.04, former s. 827.071, s.
 1023 847.003, s. 847.0135(5), s. 847.0137(2), or s. 847.0145 for
 1024 offenses that occur on or after October 1, 2004, excluding
 1025 persons who have been removed from the requirement to register

1026 as a sexual offender or sexual predator pursuant to s.
 1027 943.04354.

1028 (3) (a) A person who has been convicted of an offense in
 1029 another jurisdiction that is similar to a violation of s.
 1030 794.011, s. 800.04; former s. 827.071, s. 847.003, s.
 1031 847.0135(5), s. 847.0137(2), or s. 847.0145, regardless of
 1032 whether adjudication has been withheld, in which the victim of
 1033 the offense was less than 16 years of age, may not reside within
 1034 1,000 feet of any school, child care facility, park, or
 1035 playground. However, a person does not violate this subsection
 1036 and may not be forced to relocate if he or she is living in a
 1037 residence that meets the requirements of this subsection and a
 1038 school, child care facility, park, or playground is subsequently
 1039 established within 1,000 feet of his or her residence.

1040 (c) This subsection applies to any person convicted of an
 1041 offense in another jurisdiction that is similar to a violation
 1042 of s. 794.011, s. 800.04, former s. 827.071, s. 847.003, s.
 1043 847.0135(5), s. 847.0137(2), or s. 847.0145 if such offense
 1044 occurred on or after May 26, 2010, excluding persons who have
 1045 been removed from the requirement to register as a sexual
 1046 offender or sexual predator pursuant to s. 943.04354.

1047 Section 23. Paragraph (c) of subsection (1) of section
 1048 784.046, Florida Statutes, is amended to read:

1049 784.046 Action by victim of repeat violence, sexual
 1050 violence, or dating violence for protective injunction; dating

1051 violence investigations, notice to victims, and reporting;
 1052 pretrial release violations; public records exemption.—
 1053 (1) As used in this section, the term:
 1054 (c) "Sexual violence" means any one incident of:
 1055 1. Sexual battery, as defined in chapter 794;
 1056 2. A lewd or lascivious act, as defined in chapter 800,
 1057 committed upon or in the presence of a person younger than 16
 1058 years of age;
 1059 3. Luring or enticing a child, as described in chapter
 1060 787;
 1061 4. Sexual performance by a child, as described in former
 1062 s. 827.071 or s. 847.003 ~~chapter 827~~; or
 1063 5. Any other forcible felony wherein a sexual act is
 1064 committed or attempted,
 1065
 1066 regardless of whether criminal charges based on the incident
 1067 were filed, reduced, or dismissed by the state attorney.
 1068 Section 24. Subsection (2) of section 794.0115, Florida
 1069 Statutes, is amended to read:
 1070 794.0115 Dangerous sexual felony offender; mandatory
 1071 sentencing.—
 1072 (2) Any person who is convicted of a violation of s.
 1073 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
 1074 800.04(4) or (5); s. 825.1025(2) or (3); former s. 827.071(2),
 1075 (3), or (4); s. 847.003; s. 847.0137(2)(a); or s. 847.0145; or

1076 of any similar offense under a former designation, which offense
1077 the person committed when he or she was 18 years of age or
1078 older, and the person:

1079 (a) Caused serious personal injury to the victim as a
1080 result of the commission of the offense;

1081 (b) Used or threatened to use a deadly weapon during the
1082 commission of the offense;

1083 (c) Victimized more than one person during the course of
1084 the criminal episode applicable to the offense;

1085 (d) Committed the offense while under the jurisdiction of
1086 a court for a felony offense under the laws of this state, for
1087 an offense that is a felony in another jurisdiction, or for an
1088 offense that would be a felony if that offense were committed in
1089 this state; or

1090 (e) Has previously been convicted of a violation of s.
1091 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
1092 800.04(4) or (5); s. 825.1025(2) or (3); former s. 827.071(2),
1093 (3), or (4); s. 847.003; s. 847.0137(2)(a); or s. 847.0145; of
1094 any offense under a former statutory designation which is
1095 similar in elements to an offense described in this paragraph;
1096 or of any offense that is a felony in another jurisdiction, or
1097 would be a felony if that offense were committed in this state,
1098 and which is similar in elements to an offense described in this
1099 paragraph,

1100

1101 is a dangerous sexual felony offender, who must be sentenced to
 1102 a mandatory minimum term of 25 years imprisonment up to, and
 1103 including, life imprisonment. If the offense described in this
 1104 subsection was committed on or after October 1, 2014, a person
 1105 who qualifies as a dangerous sexual felony offender pursuant to
 1106 this subsection must be sentenced to a mandatory minimum term of
 1107 50 years imprisonment up to, and including, life imprisonment.

1108 Section 25. Subsection (1) of section 794.024, Florida
 1109 Statutes, is amended to read:

1110 794.024 Unlawful to disclose identifying information.—

1111 (1) A public employee or officer who has access to the
 1112 photograph, name, or address of a person who is alleged to be
 1113 the victim of an offense described in this chapter, chapter 800,
 1114 s. 827.03, s. 827.04, or former ~~or~~ s. 827.071, or of a sexual
 1115 offense described in chapter 847 may not willfully and knowingly
 1116 disclose it to a person who is not assisting in the
 1117 investigation or prosecution of the alleged offense or to any
 1118 person other than the defendant, the defendant's attorney, a
 1119 person specified in an order entered by the court having
 1120 jurisdiction of the alleged offense, or organizations authorized
 1121 to receive such information made exempt by s. 119.071(2)(h), or
 1122 to a rape crisis center or sexual assault counselor, as defined
 1123 in s. 90.5035(1)(b), who will be offering services to the
 1124 victim.

1125 Section 26. Subsection (1) of section 794.056, Florida

1126 Statutes, is amended to read:
 1127 794.056 Rape Crisis Program Trust Fund.—
 1128 (1) The Rape Crisis Program Trust Fund is created within
 1129 the Department of Health for the purpose of providing funds for
 1130 rape crisis centers in this state. Trust fund moneys shall be
 1131 used exclusively for the purpose of providing services for
 1132 victims of sexual assault. Funds credited to the trust fund
 1133 consist of those funds collected as an additional court
 1134 assessment in each case in which a defendant pleads guilty or
 1135 nolo contendere to, or is found guilty of, regardless of
 1136 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 1137 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 1138 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 1139 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 1140 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 1141 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 1142 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 1143 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 1144 825.1025; former s. 827.071; s. 836.10; s. 847.003; s. 847.0133;
 1145 s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c),
 1146 (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds
 1147 credited to the trust fund also shall include revenues provided
 1148 by law, moneys appropriated by the Legislature, and grants from
 1149 public or private entities.
 1150 Section 27. Section 794.10, Florida Statutes, is created

1151 to read:

1152 794.10 Investigative subpoenas in certain cases involving

1153 child victims.-

1154 (1) DEFINITIONS.-As used in this section, the term:

1155 (a) "Child" means a person who is less than 18 years of

1156 age.

1157 (b) "Child sexual offender" means a person who is required

1158 to register as a sexual predator under s. 775.21 or as a sexual

1159 offender under s. 943.0435 if at least one of the offenses that

1160 qualified the person for such registration requirement involved

1161 a victim who was a child at the time of the offense.

1162 (c) "Criminal justice agency" means a law enforcement

1163 agency, court, or prosecutor in this state.

1164 (d) "Sexual exploitation or abuse of a child" means a

1165 criminal offense based on any conduct described in s. 39.01(71).

1166 (2) AUTHORIZATION.-

1167 (a) In any investigation of:

1168 1. An offense involving the sexual exploitation or abuse

1169 of a child;

1170 2. A sexual offense allegedly committed by a child sexual

1171 offender who has not registered as required under s. 775.21 or

1172 s. 943.0435; or

1173 3. An offense under chapter 847 involving a child victim

1174 which is not otherwise included in subparagraph 1. or

1175 subparagraph 2.,

1176
1177 a criminal justice agency may issue in writing and cause to be
1178 served a subpoena requiring the production of any record,
1179 object, or other information or testimony described in paragraph
1180 (b).
1181 (b) A subpoena issued under this section may require:
1182 1. The production of any record, object, or other
1183 information relevant to the investigation.
1184 2. Testimony by the custodian of the record, object, or
1185 other information concerning its production and authenticity.
1186 (3) CONTENTS OF SUBPOENAS.—A subpoena issued under this
1187 section shall describe any record, object, or other information
1188 required to be produced and prescribe a reasonable return date
1189 within which the record, object, or other information can be
1190 assembled and made available.
1191 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this
1192 section shall be reimbursed for fees and mileage at the same
1193 rate at which witnesses in the courts of this state are
1194 reimbursed.
1195 (5) PETITIONS BEFORE RETURN DATE.—At any time before the
1196 return date specified in the subpoena, the recipient of the
1197 subpoena may, in the circuit court of the county in which the
1198 recipient conducts business or resides, petition for an order
1199 modifying or setting aside the subpoena or the requirement for
1200 nondisclosure of certain information under subsection (6).

1201 (6) NONDISCLOSURE.—
 1202 (a)1. If a subpoena issued under this section is
 1203 accompanied by a written certification under subparagraph 2. and
 1204 notice under paragraph (c), the recipient of the subpoena, and a
 1205 person to whom information is disclosed under subparagraph
 1206 (b)1., shall not disclose, for a period of 180 days, to any
 1207 person the existence or contents of the subpoena.
 1208 2. The requirement in subparagraph 1. applies if the
 1209 criminal justice agency that issued the subpoena certifies in
 1210 writing that the disclosure may result in one or more of the
 1211 following circumstances:
 1212 a. Endangering a person's life or physical safety;
 1213 b. Encouraging a person's flight from prosecution;
 1214 c. Destruction of or tampering with evidence;
 1215 d. Intimidation of potential witnesses; or
 1216 e. Otherwise seriously jeopardizing an investigation or
 1217 unduly delaying a trial.
 1218 (b)1. A recipient of a subpoena may disclose information
 1219 subject to the nondisclosure requirement in subparagraph (a)1.
 1220 to:
 1221 a. A person to whom disclosure is necessary in order to
 1222 comply with the subpoena;
 1223 b. An attorney in order to obtain legal advice or
 1224 assistance regarding the subpoena; or
 1225 c. Any other person as authorized by the criminal justice

1226 agency that issued the subpoena.

1227 2. A recipient of a subpoena who discloses to a person

1228 described in subparagraph 1. information subject to the

1229 nondisclosure requirement shall notify such person of the

1230 nondisclosure requirement by providing the person with a copy of

1231 the subpoena. A person to whom information is disclosed under

1232 subparagraph 1. is subject to the nondisclosure requirement in

1233 subparagraph (a)1.

1234 3. At the request of the criminal justice agency that

1235 issued the subpoena, a recipient of a subpoena who discloses or

1236 intends to disclose to a person described in sub-subparagraph

1237 1.a. or sub-subparagraph 1.b. information subject to the

1238 nondisclosure requirement shall provide to the criminal justice

1239 agency the identity of the person to whom such disclosure was or

1240 will be made.

1241 (c)1. The nondisclosure requirement imposed under

1242 paragraph (a) is subject to judicial review under subsection

1243 (13).

1244 2. A subpoena issued under this section, in connection

1245 with which a nondisclosure requirement under paragraph (a) is

1246 imposed, shall include:

1247 a. Notice of the nondisclosure requirement and the

1248 availability of judicial review.

1249 b. Notice that a violation of the nondisclosure

1250 requirement is subject to the penalties provided in paragraph

1251 | (11) (b) .
 1252 | (d) The nondisclosure requirement in paragraph (a) may be
 1253 | extended under subsection (13).
 1254 | (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this
 1255 | section shall not require the production of anything that is
 1256 | protected from production under the standards applicable to a
 1257 | subpoena duces tecum issued by a court of this state.
 1258 | (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding
 1259 | resulting from the production of any record, object, or other
 1260 | information under this section does not arise within a
 1261 | reasonable period of time after such production, the criminal
 1262 | justice agency to which it was delivered shall, upon written
 1263 | demand made by the person producing it, return the record,
 1264 | object, or other information to such person, unless the record
 1265 | was a copy and not an original.
 1266 | (9) TIME OF PRODUCTION.—A subpoena issued under this
 1267 | section may require production of any record, object, or other
 1268 | information as soon as possible, but the recipient of the
 1269 | subpoena must have at least 24 hours after he or she is served
 1270 | to produce the record, object, or other information.
 1271 | (10) SERVICE.—A subpoena issued under this section may be
 1272 | served as provided in chapter 48.
 1273 | (11) ENFORCEMENT.—
 1274 | (a) If a recipient of a subpoena under this section
 1275 | refuses to comply with the subpoena, the criminal justice agency

1276 may invoke the aid of any circuit court described in subsection
 1277 (5) or of the circuit court of the county in which the
 1278 authorized investigation is being conducted. Such court may
 1279 issue an order requiring the recipient of a subpoena to appear
 1280 before the criminal justice agency that issued the subpoena to
 1281 produce any record, object, or other information or to testify
 1282 concerning the production and authenticity of the record,
 1283 object, or other information. Any failure to comply with an
 1284 order under this paragraph may be punished by the court as a
 1285 contempt of court. All process in any such case may be served in
 1286 any county in which such person may be found.

1287 (b) A recipient of a subpoena, or a person to whom
 1288 information is disclosed under subparagraph(6)(b)1., who
 1289 knowingly violates:

1290 1. A nondisclosure requirement imposed under paragraph
 1291 (6)(a) commits a noncriminal violation punishable as provided in
 1292 s. 775.083. Each person to whom a disclosure is made in
 1293 violation of this subparagraph constitutes a separate violation
 1294 subject to a separate fine.

1295 2. A nondisclosure requirement ordered by the court under
 1296 this section may be held in contempt of court.

1297 (12) IMMUNITY.—Notwithstanding any other law, any person,
 1298 including any officer, agent, or employee, receiving a subpoena
 1299 under this section who complies in good faith with the subpoena
 1300 and produces or discloses any record, object, or other

1301 information sought is not liable in any court in this state to
 1302 any customer or other person for such production or disclosure.

1303 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.-

1304 (a)1.a. If a recipient of a subpoena under this section,
 1305 or a person to whom information is disclosed under subparagraph
 1306 (6)(b)1., wishes to have a court review a nondisclosure
 1307 requirement under subsection (6), such recipient or person may
 1308 notify the criminal justice agency issuing the subpoena or file
 1309 a petition for judicial review in the circuit court described in
 1310 subsection (5).

1311 b. Within 30 days after the date on which the criminal
 1312 justice agency receives the notification under sub-subparagraph
 1313 a., the criminal justice agency shall apply for an order
 1314 prohibiting the disclosure of the existence or contents of the
 1315 subpoena. An application under this sub-subparagraph may be
 1316 filed in the circuit court described in subsection (5) or in the
 1317 circuit court of the county in which the authorized
 1318 investigation is being conducted.

1319 c. The nondisclosure requirement shall remain in effect
 1320 during the pendency of proceedings relating to the requirement.

1321 d. A circuit court that receives a petition under sub-
 1322 subparagraph a. or an application under sub-subparagraph b.
 1323 shall rule on such petition or application as expeditiously as
 1324 possible.

1325 2. An application for a nondisclosure order or extension

1326 thereof or a response to a petition filed under this paragraph
 1327 must include a certification from the criminal justice agency
 1328 that issued the subpoena indicating that the disclosure of such
 1329 information may result in one or more of the circumstances
 1330 described in subparagraph (6)(a)2.

1331 3. A circuit court shall issue a nondisclosure order or
 1332 extension thereof under this paragraph if it determines that
 1333 there is reason to believe that disclosure of such information
 1334 may result in one or more of the circumstances described in
 1335 subparagraph (6)(a)2.

1336 4. Upon a showing that any of the circumstances described
 1337 in subparagraph (6)(a)2. continue to exist, a circuit court may
 1338 issue an ex parte order extending a nondisclosure order imposed
 1339 under this section for an additional 180 days. There is no limit
 1340 on the number of nondisclosure extensions that may be granted
 1341 under this subparagraph.

1342 (b) In all proceedings under this subsection, subject to
 1343 any right to an open hearing in a contempt proceeding, a circuit
 1344 court must close any hearing to the extent necessary to prevent
 1345 the unauthorized disclosure of a request for records, objects,
 1346 or other information made to any person under this section.
 1347 Petitions, filings, records, orders, certifications, and
 1348 subpoenas must also be kept under seal to the extent and as long
 1349 as necessary to prevent the unauthorized disclosure of any
 1350 information under this section.

1351 Section 28. Section 796.001, Florida Statutes, is amended
 1352 to read:

1353 796.001 Offenses by adults involving minors; intent.—It is
 1354 the intent of the Legislature that adults who involve minors in
 1355 any behavior prohibited under this chapter be prosecuted under
 1356 other laws of this state, such as, but not limited to, s.
 1357 787.06, chapter 794, chapter 800, s. 810.145, former s. 827.071
 1358 ~~chapter 827~~, and chapter 847. The Legislature finds that
 1359 prosecution of such adults under this chapter is inappropriate
 1360 since a minor is unable to consent to such behavior.

1361 Section 29. Section 827.071, Florida Statutes, is
 1362 repealed.

1363 Section 30. Subsections (3), (8), and (16) of section
 1364 847.001, Florida Statutes, are amended to read:

1365 847.001 Definitions.—As used in this chapter, the term:

1366 (3) "Child pornography" has the same meaning as provided
 1367 in s. 847.0137 ~~means any image depicting a minor engaged in~~
 1368 ~~sexual conduct.~~

1369 (8) "Minor" or "child" means a ~~any~~ person under the age of
 1370 18 years.

1371 (16) "Sexual conduct" means actual or simulated sexual
 1372 intercourse, deviate sexual intercourse, sexual bestiality,
 1373 masturbation, or sadomasochistic abuse; actual or simulated lewd
 1374 exhibition of the genitals; actual physical contact with a
 1375 person's clothed or unclothed genitals, pubic area, buttocks,

1376 or, if such person is a female, breast with the intent to arouse
 1377 or gratify the sexual desire of either party; or any act or
 1378 conduct which constitutes sexual battery or simulates that
 1379 sexual battery is being or will be committed. A mother's
 1380 breastfeeding of her baby does not under any circumstance
 1381 constitute "sexual conduct."

1382 Section 31. Section 847.003, Florida Statutes, is created
 1383 to read:

1384 847.003 Sexual performance by a child; penalties.-

1385 (1) As used in this section, the term:

1386 (a) "Performance" means a play, motion picture,
 1387 photograph, or dance or other visual representation exhibited
 1388 before an audience.

1389 (b) "Promote" means to procure, manufacture, issue, sell,
 1390 give, provide, lend, mail, deliver, transfer, transmute,
 1391 publish, distribute, circulate, disseminate, present, exhibit,
 1392 or advertise or to offer or agree to do the same.

1393 (c) "Sexual performance" means a performance or part
 1394 thereof which includes sexual conduct by a child.

1395 (2) A person who, knowing the character and content
 1396 thereof, employs, authorizes, or induces a child to engage in a
 1397 sexual performance or, being a parent, legal guardian, or
 1398 custodian of such child, consents to the participation by such
 1399 child in a sexual performance commits the offense of use of a
 1400 child in a sexual performance, a felony of the second degree,

1401 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1402 (3) A person who, knowing the character and content
1403 thereof, produces, directs, or promotes a performance that
1404 includes sexual conduct by a child commits the offense of
1405 promoting a sexual performance by a child, a felony of the
1406 second degree, punishable as provided in s. 775.082, s. 775.083,
1407 or s. 775.084.

1408 Section 32. Subsections (2), (3), and (4) of section
1409 847.0135, Florida Statutes, are amended to read:

1410 847.0135 Computer pornography; child exploitation
1411 ~~prohibited computer usage; traveling to meet minor; penalties.-~~

1412 (2) COMPUTER PORNOGRAPHY.—A person who:

1413 (a) Knowingly compiles, enters into, or transmits by use
1414 of computer;

1415 (b) Makes, prints, publishes, or reproduces by other
1416 computerized means;

1417 (c) Knowingly causes or allows to be entered into or
1418 transmitted by use of computer; or

1419 (d) Buys, sells, receives, exchanges, or disseminates,

1420
1421 a any notice, statement, or advertisement of a any minor's name,
1422 telephone number, place of residence, physical characteristics,
1423 or other descriptive or identifying information for purposes of
1424 facilitating, encouraging, offering, or soliciting sexual
1425 conduct of or with a any minor, or the visual depiction of such

1426 | conduct, commits a felony of the third degree, punishable as
 1427 | provided in s. 775.082, s. 775.083, or s. 775.084. The fact that
 1428 | an undercover operative or law enforcement officer was involved
 1429 | in the detection and investigation of an offense under this
 1430 | section shall not constitute a defense to a prosecution under
 1431 | this section.

1432 | (3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES
 1433 | PROHIBITED.—A ~~Any~~ person who knowingly uses a computer online
 1434 | service, Internet service, local bulletin board service, or ~~any~~
 1435 | other device capable of electronic data storage or transmission
 1436 | to:

1437 | (a) Seduce, solicit, lure, or entice, or attempt to
 1438 | seduce, solicit, lure, or entice, a child or another person
 1439 | believed by the person to be a child, to commit an ~~any~~ illegal
 1440 | act described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 1441 | ~~chapter 827,~~ s. 847.003, or s. 847.0137, or to otherwise engage
 1442 | in ~~any~~ unlawful sexual conduct with a child or with another
 1443 | person believed by the person to be a child; or

1444 | (b) Solicit, lure, or entice, or attempt to solicit, lure,
 1445 | or entice a parent, legal guardian, or custodian of a child or a
 1446 | person believed to be a parent, legal guardian, or custodian of
 1447 | a child to consent to the participation of such child in an ~~any~~
 1448 | act described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 1449 | ~~chapter 827,~~ s. 847.003, or s. 847.0137, or to otherwise engage
 1450 | in ~~any~~ sexual conduct,

1451
 1452 commits a felony of the third degree, punishable as provided in
 1453 s. 775.082, s. 775.083, or s. 775.084. A ~~Any~~ person who, in
 1454 violating this subsection, misrepresents his or her age, commits
 1455 a felony of the second degree, punishable as provided in s.
 1456 775.082, s. 775.083, or s. 775.084. Each separate use of a
 1457 computer online service, Internet service, local bulletin board
 1458 service, or ~~any~~ other device capable of electronic data storage
 1459 or transmission wherein an offense described in this section is
 1460 committed may be charged as a separate offense.

1461 (4) TRAVELING TO MEET A MINOR.—A ~~Any~~ person who travels
 1462 any distance either within this state, to this state, or from
 1463 this state by any means, who attempts to do so, or who causes
 1464 another to do so or to attempt to do so for the purpose of
 1465 engaging in an ~~any~~ illegal act described in chapter 794, chapter
 1466 800, former s. 827.071 ~~or chapter 827,~~ s. 847.003, or s.
 1467 847.0137, or to otherwise engage in other unlawful sexual
 1468 conduct with a child or with another person believed by the
 1469 person to be a child after using a computer online service,
 1470 Internet service, local bulletin board service, or ~~any~~ other
 1471 device capable of electronic data storage or transmission to:

1472 (a) Seduce, solicit, lure, or entice or attempt to seduce,
 1473 solicit, lure, or entice a child or another person believed by
 1474 the person to be a child, to engage in an ~~any~~ illegal act
 1475 described in chapter 794, chapter 800, former s. 827.071 ~~or~~

1476 ~~chapter 827, s. 847.003, or s. 847.0137,~~ or to otherwise engage
 1477 in other unlawful sexual conduct with a child; or

1478 (b) Solicit, lure, or entice or attempt to solicit, lure,
 1479 or entice a parent, legal guardian, or custodian of a child or a
 1480 person believed to be a parent, legal guardian, or custodian of
 1481 a child to consent to the participation of such child in an ~~any~~
 1482 act described in chapter 794, chapter 800, former s. 827.071 ~~or~~
 1483 ~~chapter 827, s. 847.003, or s. 847.0137,~~ or to otherwise engage
 1484 in ~~any~~ sexual conduct,

1485
 1486 commits a felony of the second degree, punishable as provided in
 1487 s. 775.082, s. 775.083, or s. 775.084.

1488 Section 33. Subsection (1) of section 847.01357, Florida
 1489 Statutes, is amended to read:

1490 847.01357 Exploited children's civil remedy.-

1491 (1) A ~~Any~~ person who, while under the age of 18, was a
 1492 victim of a sexual abuse crime listed in chapter 794, chapter
 1493 800, former s. 827.071 ~~chapter 827,~~ or chapter 847, where any
 1494 portion of such abuse was used in the production of child
 1495 pornography, and who suffers personal or psychological injury as
 1496 a result of the production, promotion, or possession of such
 1497 images or movies, may bring an action in an appropriate state
 1498 court against the producer, promoter, or possessor of such
 1499 images or movies, regardless of whether the victim is now an
 1500 adult. In any action brought under this section, a prevailing

1501 plaintiff shall recover the actual damages such person sustained
1502 and the cost of the suit, including reasonable attorney
1503 ~~attorney's~~ fees. A Any victim who is awarded damages under this
1504 section shall be deemed to have sustained damages of at least
1505 \$150,000.

1506 Section 34. Section 847.0137, Florida Statutes, is amended
1507 to read:

1508 847.0137 Child pornography; Transmission of pornography by
1509 ~~electronic device or equipment~~ prohibited acts; penalties.-

1510 (1) For purposes of this section, the term:

1511 (a) ~~"Minor" means any person less than 18 years of age.~~

1512 "Child pornography" means a visual depiction of sexual conduct,
1513 in which:

1514 1. The production of such visual depiction involves the
1515 use of a minor engaging in sexual conduct; or

1516 2. Such visual depiction has been created, adapted, or
1517 modified to appear that an identifiable minor is engaging in
1518 sexual conduct.

1519 (b) "Identifiable minor" means a person who is
1520 recognizable as an actual person by the person's face, likeness,
1521 or other distinguishing characteristic, such as a unique
1522 birthmark, or other recognizable feature and:

1523 1. Who was a minor at the time the visual depiction was
1524 created, adapted, or modified; or

1525 2. Whose image as a minor was used in creating, adapting,

1526 or modifying the visual depiction.

1527

1528 This paragraph does not require proof of the actual identity of
 1529 the identifiable minor.

1530 (c) "Intentionally view" means to deliberately,
 1531 purposefully, and voluntarily view. Proof of intentional viewing
 1532 requires establishing that a person deliberately, purposefully,
 1533 and voluntarily viewed more than one visual depiction over any
 1534 period of time.

1535 (d) "Promote" means to procure, manufacture, issue, sell,
 1536 give, provide, lend, mail, deliver, transfer, transmute,
 1537 publish, distribute, circulate, disseminate, present, exhibit,
 1538 or advertise or to offer or agree to do the same.

1539 (e)~~(b)~~ "Transmit" means the act of sending and causing to
 1540 be delivered, including the act of providing access for
 1541 receiving and causing to be delivered, a visual depiction ~~any~~
 1542 image, information, or data ~~from one or more persons or places~~
 1543 ~~to one or more other persons or places~~ over or through any
 1544 medium, including the Internet or an interconnected network, by
 1545 use of ~~any~~ electronic equipment or other device.

1546 (f) "Visual depiction" includes, but is not limited to, a
 1547 photograph, picture, image, motion picture, film, video,
 1548 representation, or computer or computer-generated image or
 1549 picture, whether made or produced by electronic, mechanical, or
 1550 other means. The term also includes undeveloped film and

1551 videotape, data stored on computer disk or by electronic means
 1552 which is capable of conversion into a visual image, and data
 1553 that is capable of conversion into a visual image that has been
 1554 transmitted by any means, whether stored in a permanent or
 1555 nonpermanent format.

1556 (2)(a) It is unlawful for a person to possess, with the
 1557 intent to promote, child pornography. The possession of three or
 1558 more visual depictions of child pornography is prima facie
 1559 evidence of an intent to promote. A person who violates this
 1560 paragraph commits a felony of the second degree, punishable as
 1561 provided in s. 775.082, s. 775.083, or s. 775.084.

1562 (b) It is unlawful for a person to knowingly possess,
 1563 control, or intentionally view child pornography. The
 1564 possession, control, or intentional viewing of each visual
 1565 depiction of child pornography is a separate offense. If the
 1566 visual depiction includes sexual conduct by more than one minor,
 1567 each minor in each visual depiction that is knowingly possessed,
 1568 controlled, or intentionally viewed is a separate offense. A
 1569 person who violates this paragraph commits a felony of the third
 1570 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1571 775.084.

1572 (c) This subsection does not apply to child pornography
 1573 possessed, controlled, or intentionally viewed as part of a law
 1574 enforcement investigation.

1575 (d) Prosecution of a person for an offense under this

1576 subsection does not prohibit prosecution of that person in this
 1577 state for a violation of any law of this state, including a law
 1578 providing for greater penalties than prescribed in this section
 1579 or for any other crime punishing the sexual performance or
 1580 sexual exploitation of children.

1581 (3) (a) (2) Notwithstanding ss. 847.012 and 847.0133, a any
 1582 person in this state who knew or reasonably should have known
 1583 that he or she was transmitting child pornography, ~~as defined in~~
 1584 ~~s. 847.001,~~ to another person in this state or in another
 1585 jurisdiction commits a felony of the third degree, punishable as
 1586 provided in s. 775.082, s. 775.083, or s. 775.084.

1587 (b) (3) Notwithstanding ss. 847.012 and 847.0133, a any
 1588 person in any jurisdiction other than this state who knew or
 1589 reasonably should have known that he or she was transmitting
 1590 child pornography, ~~as defined in s. 847.001,~~ to another any
 1591 person in this state commits a felony of the third degree,
 1592 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1593 (c) (4) This subsection does ~~section shall~~ ~~not be construed~~
 1594 ~~to~~ prohibit prosecution of a person in this state or another
 1595 jurisdiction for a violation of any law of this state, including
 1596 a law providing for greater penalties than prescribed in this
 1597 subsection ~~section,~~ for the transmission of child pornography,
 1598 ~~as defined in s. 847.001,~~ to another any person in this state.

1599 (d) (5) A person is subject to prosecution in this state
 1600 pursuant to chapter 910 for any act or conduct proscribed by

1601 | this subsection ~~section~~, including a person in a jurisdiction
1602 | other than this state, if the act or conduct violates paragraph
1603 | (b) ~~subsection (3)~~.

1604 | (e) This subsection does ~~The provisions of this section do~~
1605 | not apply to subscription-based transmissions such as list
1606 | servers.

1607 | Section 35. Subsection (1) of section 856.022, Florida
1608 | Statutes, is amended to read:

1609 | 856.022 Loitering or prowling by certain offenders in
1610 | close proximity to children; penalty.—

1611 | (1) Except as provided in subsection (2), this section
1612 | applies to a person convicted of committing, or attempting,
1613 | soliciting, or conspiring to commit, any of the criminal
1614 | offenses proscribed in the following statutes in this state or
1615 | similar offenses in another jurisdiction against a victim who
1616 | was under 18 years of age at the time of the offense: s. 787.01,
1617 | s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s.
1618 | 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;
1619 | former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025;
1620 | former s. 827.071; s. 847.003; s. 847.0133; s. 847.0135,
1621 | excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
1622 | s. 985.701(1); or any similar offense committed in this state
1623 | which has been redesignated from a former statute number to one
1624 | of those listed in this subsection, if the person has not
1625 | received a pardon for any felony or similar law of another

1626 jurisdiction necessary for the operation of this subsection and
 1627 a conviction of a felony or similar law of another jurisdiction
 1628 necessary for the operation of this subsection has not been set
 1629 aside in any postconviction proceeding.

1630 Section 36. Paragraph (a) of subsection (8) of section
 1631 895.02, Florida Statutes, is amended to read:

1632 895.02 Definitions.—As used in ss. 895.01-895.08, the
 1633 term:

1634 (8) "Racketeering activity" means to commit, to attempt to
 1635 commit, to conspire to commit, or to solicit, coerce, or
 1636 intimidate another person to commit:

1637 (a) Any crime that is chargeable by petition, indictment,
 1638 or information under the following provisions of the Florida
 1639 Statutes:

1640 1. Section 210.18, relating to evasion of payment of
 1641 cigarette taxes.

1642 2. Section 316.1935, relating to fleeing or attempting to
 1643 elude a law enforcement officer and aggravated fleeing or
 1644 eluding.

1645 3. Section 403.727(3)(b), relating to environmental
 1646 control.

1647 4. Section 409.920 or s. 409.9201, relating to Medicaid
 1648 fraud.

1649 5. Section 414.39, relating to public assistance fraud.

1650 6. Section 440.105 or s. 440.106, relating to workers'

- 1651 compensation.
- 1652 7. Section 443.071(4), relating to creation of a
- 1653 fictitious employer scheme to commit reemployment assistance
- 1654 fraud.
- 1655 8. Section 465.0161, relating to distribution of medicinal
- 1656 drugs without a permit as an Internet pharmacy.
- 1657 9. Section 499.0051, relating to crimes involving
- 1658 contraband, adulterated, or misbranded drugs.
- 1659 10. Part IV of chapter 501, relating to telemarketing.
- 1660 11. Chapter 517, relating to sale of securities and
- 1661 investor protection.
- 1662 12. Section 550.235 or s. 550.3551, relating to dogracing
- 1663 and horseracing.
- 1664 13. Chapter 550, relating to jai alai frontons.
- 1665 14. Section 551.109, relating to slot machine gaming.
- 1666 15. Chapter 552, relating to the manufacture,
- 1667 distribution, and use of explosives.
- 1668 16. Chapter 560, relating to money transmitters, if the
- 1669 violation is punishable as a felony.
- 1670 17. Chapter 562, relating to beverage law enforcement.
- 1671 18. Section 624.401, relating to transacting insurance
- 1672 without a certificate of authority, s. 624.437(4)(c)1., relating
- 1673 to operating an unauthorized multiple-employer welfare
- 1674 arrangement, or s. 626.902(1)(b), relating to representing or
- 1675 aiding an unauthorized insurer.

- 1676 19. Section 655.50, relating to reports of currency
 1677 transactions, when such violation is punishable as a felony.
 1678 20. Chapter 687, relating to interest and usurious
 1679 practices.
 1680 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 1681 real estate timeshare plans.
 1682 22. Section 775.13(5)(b), relating to registration of
 1683 persons found to have committed any offense for the purpose of
 1684 benefiting, promoting, or furthering the interests of a criminal
 1685 gang.
 1686 23. Section 777.03, relating to commission of crimes by
 1687 accessories after the fact.
 1688 24. Chapter 782, relating to homicide.
 1689 25. Chapter 784, relating to assault and battery.
 1690 26. Chapter 787, relating to kidnapping or human
 1691 trafficking.
 1692 27. Chapter 790, relating to weapons and firearms.
 1693 28. Chapter 794, relating to sexual battery, but only if
 1694 such crime was committed with the intent to benefit, promote, or
 1695 further the interests of a criminal gang, or for the purpose of
 1696 increasing a criminal gang member's own standing or position
 1697 within a criminal gang.
 1698 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 1699 796.05, or s. 796.07, relating to prostitution.
 1700 30. Chapter 806, relating to arson and criminal mischief.

- 1701 31. Chapter 810, relating to burglary and trespass.
- 1702 32. Chapter 812, relating to theft, robbery, and related
- 1703 crimes.
- 1704 33. Chapter 815, relating to computer-related crimes.
- 1705 34. Chapter 817, relating to fraudulent practices, false
- 1706 pretenses, fraud generally, credit card crimes, and patient
- 1707 brokering.
- 1708 35. Chapter 825, relating to abuse, neglect, or
- 1709 exploitation of an elderly person or disabled adult.
- 1710 36. Former s. Section 827.071, relating to commercial
- 1711 sexual exploitation of children.
- 1712 37. Section 828.122, relating to fighting or baiting
- 1713 animals.
- 1714 38. Chapter 831, relating to forgery and counterfeiting.
- 1715 39. Chapter 832, relating to issuance of worthless checks
- 1716 and drafts.
- 1717 40. Section 836.05, relating to extortion.
- 1718 41. Chapter 837, relating to perjury.
- 1719 42. Chapter 838, relating to bribery and misuse of public
- 1720 office.
- 1721 43. Chapter 843, relating to obstruction of justice.
- 1722 44. Section 847.003, relating to sexual performance by a
- 1723 child.
- 1724 45.44. Section 847.011, s. 847.012, s. 847.013, s. 847.06,
- 1725 or s. 847.07, relating to obscene literature and profanity.

1726 ~~46.45.~~ Chapter 849, relating to gambling, lottery,
 1727 gambling or gaming devices, slot machines, or any of the
 1728 provisions within that chapter.

1729 ~~47.46.~~ Chapter 874, relating to criminal gangs.

1730 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and
 1731 control.

1732 ~~49.48.~~ Chapter 896, relating to offenses related to
 1733 financial transactions.

1734 ~~50.49.~~ Sections 914.22 and 914.23, relating to tampering
 1735 with or harassing a witness, victim, or informant, and
 1736 retaliation against a witness, victim, or informant.

1737 ~~51.50.~~ Sections 918.12 and 918.13, relating to tampering
 1738 with jurors and evidence.

1739 Section 37. Subsection (8) of section 905.34, Florida
 1740 Statutes, is amended to read:

1741 905.34 Powers and duties; law applicable.—The jurisdiction
 1742 of a statewide grand jury impaneled under this chapter shall
 1743 extend throughout the state. The subject matter jurisdiction of
 1744 the statewide grand jury shall be limited to the offenses of:

1745 (8) Any violation of s. 847.003, s. 847.0135, s. 847.0137,
 1746 or s. 847.0138 relating to computer pornography and child
 1747 exploitation prevention, or any offense related to a violation
 1748 of s. 847.003, s. 847.0135, s. 847.0137, or s. 847.0138 or any
 1749 violation of former s. 827.071 ~~chapter 827~~ where the crime is
 1750 facilitated by or connected to the use of the Internet or any

1751 device capable of electronic data storage or transmission;
 1752
 1753 or any attempt, solicitation, or conspiracy to commit any
 1754 violation of the crimes specifically enumerated above, when any
 1755 such offense is occurring, or has occurred, in two or more
 1756 judicial circuits as part of a related transaction or when any
 1757 such offense is connected with an organized criminal conspiracy
 1758 affecting two or more judicial circuits. The statewide grand
 1759 jury may return indictments and presentments irrespective of the
 1760 county or judicial circuit where the offense is committed or
 1761 triable. If an indictment is returned, it shall be certified and
 1762 transferred for trial to the county where the offense was
 1763 committed. The powers and duties of, and law applicable to,
 1764 county grand juries shall apply to a statewide grand jury except
 1765 when such powers, duties, and law are inconsistent with the
 1766 provisions of ss. 905.31-905.40.

1767 Section 38. Paragraph (a) of subsection (1) of section
 1768 934.07, Florida Statutes, is amended to read:

1769 934.07 Authorization for interception of wire, oral, or
 1770 electronic communications.—

1771 (1) The Governor, the Attorney General, the statewide
 1772 prosecutor, or any state attorney may authorize an application
 1773 to a judge of competent jurisdiction for, and such judge may
 1774 grant in conformity with ss. 934.03-934.09 an order authorizing
 1775 or approving the interception of, wire, oral, or electronic

1776 | communications by:

1777 | (a) The Department of Law Enforcement or any law
 1778 | enforcement agency as defined in s. 934.02 having responsibility
 1779 | for the investigation of the offense as to which the application
 1780 | is made when such interception may provide or has provided
 1781 | evidence of the commission of the offense of murder, kidnapping,
 1782 | aircraft piracy, arson, gambling, robbery, burglary, theft,
 1783 | dealing in stolen property, criminal usury, bribery, or
 1784 | extortion; any felony violation of ss. 790.161-790.166,
 1785 | inclusive; any violation of s. 787.06; any violation of chapter
 1786 | 893; any violation of the provisions of the Florida Anti-Fencing
 1787 | Act; any violation of chapter 895; any violation of chapter 896;
 1788 | any violation of chapter 815; any violation of chapter 847; any
 1789 | violation of former s. 827.071; any violation of s. 944.40; or
 1790 | any conspiracy or solicitation to commit any violation of the
 1791 | laws of this state relating to the crimes specifically
 1792 | enumerated in this paragraph.

1793 | Section 39. Section 938.085, Florida Statutes, is amended
 1794 | to read:

1795 | 938.085 Additional cost to fund rape crisis centers.—In
 1796 | addition to any sanction imposed when a person pleads guilty or
 1797 | nolo contendere to, or is found guilty of, regardless of
 1798 | adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
 1799 | (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
 1800 | s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.

1801 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
 1802 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
 1803 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
 1804 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
 1805 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; former
 1806 s. 827.071; s. 836.10; s. 847.003; s. 847.0133; s. 847.0135
 1807 ~~847.0135(2)~~; s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7),
 1808 (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court
 1809 shall impose a surcharge of \$151. Payment of the surcharge shall
 1810 be a condition of probation, community control, or any other
 1811 court-ordered supervision. The sum of \$150 of the surcharge
 1812 shall be deposited into the Rape Crisis Program Trust Fund
 1813 established within the Department of Health by chapter 2003-140,
 1814 Laws of Florida. The clerk of the court shall retain \$1 of each
 1815 surcharge that the clerk of the court collects as a service
 1816 charge of the clerk's office.

1817 Section 40. Subsection (1) of section 938.10, Florida
 1818 Statutes, is amended to read:

1819 938.10 Additional court cost imposed in cases of certain
 1820 crimes.-

1821 (1) If a person pleads guilty or nolo contendere to, or is
 1822 found guilty of, regardless of adjudication, any offense against
 1823 a minor in violation of s. 784.085, chapter 787, chapter 794,
 1824 former s. 796.03, former s. 796.035, s. 800.04, chapter 827,
 1825 former s. 827.071, s. 847.003, s. 847.012, s. 847.0133, s.

1826 847.0135 ~~847.0135(5)~~, s. 847.0137, s. 847.0138, s. 847.0145, s.
 1827 893.147(3), or s. 985.701, or any offense in violation of s.
 1828 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the
 1829 court shall impose a court cost of \$151 against the offender in
 1830 addition to any other cost or penalty required by law.

1831 Section 41. Paragraph (h) of subsection (1) of section
 1832 943.0435, Florida Statutes, is amended to read:

1833 943.0435 Sexual offenders required to register with the
 1834 department; penalty.-

1835 (1) As used in this section, the term:

1836 (h)1. "Sexual offender" means a person who meets the
 1837 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 1838 subparagraph c., or sub-subparagraph d., as follows:

1839 a.(I) Has been convicted of committing, or attempting,
 1840 soliciting, or conspiring to commit, any of the criminal
 1841 offenses proscribed in the following statutes in this state or
 1842 similar offenses in another jurisdiction: s. 393.135(2); s.
 1843 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 1844 the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former
 1845 s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s.
 1846 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.
 1847 810.145(8); s. 825.1025; former s. 827.071; s. 847.003; s.
 1848 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 1849 847.0138; s. 847.0145; s. 895.03, if the court makes a written
 1850 finding that the racketeering activity involved at least one

1851 sexual offense listed in this sub-sub-subparagraph or at least
 1852 one offense listed in this sub-sub-subparagraph with sexual
 1853 intent or motive; s. 916.1075(2); or s. 985.701(1); or any
 1854 similar offense committed in this state which has been
 1855 redesignated from a former statute number to one of those listed
 1856 in this sub-sub-subparagraph; and

1857 (II) Has been released on or after October 1, 1997, from
 1858 the sanction imposed for any conviction of an offense described
 1859 in sub-sub-subparagraph (I). For purposes of sub-sub-
 1860 subparagraph (I), a sanction imposed in this state or in any
 1861 other jurisdiction includes, but is not limited to, a fine,
 1862 probation, community control, parole, conditional release,
 1863 control release, or incarceration in a state prison, federal
 1864 prison, private correctional facility, or local detention
 1865 facility;

1866 b. Establishes or maintains a residence in this state and
 1867 who has not been designated as a sexual predator by a court of
 1868 this state but who has been designated as a sexual predator, as
 1869 a sexually violent predator, or by another sexual offender
 1870 designation in another state or jurisdiction and was, as a
 1871 result of such designation, subjected to registration or
 1872 community or public notification, or both, or would be if the
 1873 person were a resident of that state or jurisdiction, without
 1874 regard to whether the person otherwise meets the criteria for
 1875 registration as a sexual offender;

1876 c. Establishes or maintains a residence in this state who
 1877 is in the custody or control of, or under the supervision of,
 1878 any other state or jurisdiction as a result of a conviction for
 1879 committing, or attempting, soliciting, or conspiring to commit,
 1880 any of the criminal offenses proscribed in the following
 1881 statutes or similar offense in another jurisdiction: s.
 1882 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 1883 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),
 1884 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding
 1885 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
 1886 s. 800.04; s. 810.145(8); s. 825.1025; former s. 827.071; s.
 1887 847.003; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1888 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court
 1889 makes a written finding that the racketeering activity involved
 1890 at least one sexual offense listed in this sub-subparagraph or
 1891 at least one offense listed in this sub-subparagraph with sexual
 1892 intent or motive; s. 916.1075(2); or s. 985.701(1); or any
 1893 similar offense committed in this state which has been
 1894 redesignated from a former statute number to one of those listed
 1895 in this sub-subparagraph; or

1896 d. On or after July 1, 2007, has been adjudicated
 1897 delinquent for committing, or attempting, soliciting, or
 1898 conspiring to commit, any of the criminal offenses proscribed in
 1899 the following statutes in this state or similar offenses in
 1900 another jurisdiction when the juvenile was 14 years of age or

1901 | older at the time of the offense:
 1902 | (I) Section 794.011, excluding s. 794.011(10);
 1903 | (II) Section 800.04(4)(a)2. where the victim is under 12
 1904 | years of age or where the court finds sexual activity by the use
 1905 | of force or coercion;
 1906 | (III) Section 800.04(5)(c)1. where the court finds
 1907 | molestation involving unclothed genitals;
 1908 | (IV) Section 800.04(5)(d) where the court finds the use of
 1909 | force or coercion and unclothed genitals; or
 1910 | (V) Any similar offense committed in this state which has
 1911 | been redesignated from a former statute number to one of those
 1912 | listed in this sub-subparagraph.
 1913 | 2. For all qualifying offenses listed in sub-subparagraph
 1914 | 1.d., the court shall make a written finding of the age of the
 1915 | offender at the time of the offense.
 1916 |
 1917 | For each violation of a qualifying offense listed in this
 1918 | subsection, except for a violation of s. 794.011, the court
 1919 | shall make a written finding of the age of the victim at the
 1920 | time of the offense. For a violation of s. 800.04(4), the court
 1921 | shall also make a written finding indicating whether the offense
 1922 | involved sexual activity and indicating whether the offense
 1923 | involved force or coercion. For a violation of s. 800.04(5), the
 1924 | court shall also make a written finding that the offense did or
 1925 | did not involve unclothed genitals or genital area and that the

1926 | offense did or did not involve the use of force or coercion.
 1927 | Section 42. Paragraph (a) of subsection (1) and subsection
 1928 | (3) of section 943.04354, Florida Statutes, are amended to read:
 1929 | 943.04354 Removal of the requirement to register as a
 1930 | sexual offender or sexual predator in special circumstances.—
 1931 | (1) For purposes of this section, a person shall be
 1932 | considered for removal of the requirement to register as a
 1933 | sexual offender or sexual predator only if the person:
 1934 | (a) Was convicted, regardless of adjudication, or
 1935 | adjudicated delinquent of a violation of s. 800.04, former s.
 1936 | 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s. 847.0137(2) or of
 1937 | a similar offense in another jurisdiction and if the person does
 1938 | not have any other conviction, regardless of adjudication, or
 1939 | adjudication of delinquency for a violation of s. 794.011, s.
 1940 | 800.04, former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s.
 1941 | 847.0137(2) or for a similar offense in another jurisdiction;
 1942 | (3) If a person provides to the Department of Law
 1943 | Enforcement a certified copy of the court's order removing the
 1944 | requirement that the person register as a sexual offender or
 1945 | sexual predator for the violation of s. 794.011, s. 800.04,
 1946 | former s. 827.071, s. 847.003, ~~or~~ s. 847.0135(5), or s.
 1947 | 847.0137(2) or a similar offense in another jurisdiction, the
 1948 | registration requirement will not apply to the person and the
 1949 | department shall remove all information about the person from
 1950 | the public registry of sexual offenders and sexual predators

1951 maintained by the department. However, the removal of this
 1952 information from the public registry does not mean that the
 1953 public is denied access to information about the person's
 1954 criminal history or record that is otherwise available as a
 1955 public record.

1956 Section 43. Section 943.0585, Florida Statutes, is amended
 1957 to read:

1958 943.0585 Court-ordered expunction of criminal history
 1959 records.—The courts of this state have jurisdiction over their
 1960 own procedures, including the maintenance, expunction, and
 1961 correction of judicial records containing criminal history
 1962 information to the extent such procedures are not inconsistent
 1963 with the conditions, responsibilities, and duties established by
 1964 this section. Any court of competent jurisdiction may order a
 1965 criminal justice agency to expunge the criminal history record
 1966 of a minor or an adult who complies with the requirements of
 1967 this section. The court shall not order a criminal justice
 1968 agency to expunge a criminal history record until the person
 1969 seeking to expunge a criminal history record has applied for and
 1970 received a certificate of eligibility for expunction pursuant to
 1971 subsection (2) or subsection (5). A criminal history record that
 1972 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
 1973 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
 1974 s. 825.1025, former s. 827.071, chapter 839, s. 847.003, s.
 1975 847.0133, s. 847.0135, s. 847.0137(2), s. 847.0145, s. 893.135,

1976 s. 916.1075, a violation enumerated in s. 907.041, or any
 1977 violation specified as a predicate offense for registration as a
 1978 sexual predator pursuant to s. 775.21, without regard to whether
 1979 that offense alone is sufficient to require such registration,
 1980 or for registration as a sexual offender pursuant to s.
 1981 943.0435, may not be expunged, without regard to whether
 1982 adjudication was withheld, if the defendant was found guilty of
 1983 or pled guilty or nolo contendere to the offense, or if the
 1984 defendant, as a minor, was found to have committed, or pled
 1985 guilty or nolo contendere to committing, the offense as a
 1986 delinquent act. The court may only order expunction of a
 1987 criminal history record pertaining to one arrest or one incident
 1988 of alleged criminal activity, except as provided in this
 1989 section. The court may, at its sole discretion, order the
 1990 expunction of a criminal history record pertaining to more than
 1991 one arrest if the additional arrests directly relate to the
 1992 original arrest. If the court intends to order the expunction of
 1993 records pertaining to such additional arrests, such intent must
 1994 be specified in the order. A criminal justice agency may not
 1995 expunge any record pertaining to such additional arrests if the
 1996 order to expunge does not articulate the intention of the court
 1997 to expunge a record pertaining to more than one arrest. This
 1998 section does not prevent the court from ordering the expunction
 1999 of only a portion of a criminal history record pertaining to one
 2000 arrest or one incident of alleged criminal activity.

2001 Notwithstanding any law to the contrary, a criminal justice
 2002 agency may comply with laws, court orders, and official requests
 2003 of other jurisdictions relating to expunction, correction, or
 2004 confidential handling of criminal history records or information
 2005 derived therefrom. This section does not confer any right to the
 2006 expunction of any criminal history record, and any request for
 2007 expunction of a criminal history record may be denied at the
 2008 sole discretion of the court.

2009 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 2010 petition to a court to expunge a criminal history record is
 2011 complete only when accompanied by:

2012 (a) A valid certificate of eligibility for expunction
 2013 issued by the department pursuant to subsection (2).

2014 (b) The petitioner's sworn statement attesting that the
 2015 petitioner:

2016 1. Has never, prior to the date on which the petition is
 2017 filed, been adjudicated guilty of a criminal offense or
 2018 comparable ordinance violation, or been adjudicated delinquent
 2019 for committing any felony or a misdemeanor specified in s.
 2020 943.051(3)(b).

2021 2. Has not been adjudicated guilty of, or adjudicated
 2022 delinquent for committing, any of the acts stemming from the
 2023 arrest or alleged criminal activity to which the petition
 2024 pertains.

2025 3. Has never secured a prior sealing or expunction of a

2026 criminal history record under this section, s. 943.059, former
 2027 s. 893.14, former s. 901.33, or former s. 943.058, unless
 2028 expunction is sought of a criminal history record previously
 2029 sealed for 10 years pursuant to paragraph (2)(h) and the record
 2030 is otherwise eligible for expunction.

2031 4. Is eligible for such an expunction to the best of his
 2032 or her knowledge or belief and does not have any other petition
 2033 to expunge or any petition to seal pending before any court.

2034
 2035 Any person who knowingly provides false information on such
 2036 sworn statement to the court commits a felony of the third
 2037 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2038 775.084.

2039 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 2040 petitioning the court to expunge a criminal history record, a
 2041 person seeking to expunge a criminal history record shall apply
 2042 to the department for a certificate of eligibility for
 2043 expunction. The department shall, by rule adopted pursuant to
 2044 chapter 120, establish procedures pertaining to the application
 2045 for and issuance of certificates of eligibility for expunction.
 2046 A certificate of eligibility for expunction is valid for 12
 2047 months after the date stamped on the certificate when issued by
 2048 the department. After that time, the petitioner must reapply to
 2049 the department for a new certificate of eligibility. Eligibility
 2050 for a renewed certification of eligibility must be based on the

2051 status of the applicant and the law in effect at the time of the
 2052 renewal application. The department shall issue a certificate of
 2053 eligibility for expunction to a person who is the subject of a
 2054 criminal history record if that person:

2055 (a) Has obtained, and submitted to the department, a
 2056 written, certified statement from the appropriate state attorney
 2057 or statewide prosecutor which indicates:

2058 1. That an indictment, information, or other charging
 2059 document was not filed or issued in the case.

2060 2. That an indictment, information, or other charging
 2061 document, if filed or issued in the case, was dismissed or nolle
 2062 prosequi by the state attorney or statewide prosecutor, or was
 2063 dismissed by a court of competent jurisdiction, and that none of
 2064 the charges related to the arrest or alleged criminal activity
 2065 to which the petition to expunge pertains resulted in a trial,
 2066 without regard to whether the outcome of the trial was other
 2067 than an adjudication of guilt.

2068 3. That the criminal history record does not relate to a
 2069 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 2070 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 2071 former s. 827.071, chapter 839, s. 847.003, s. 847.0133, s.
 2072 847.0135, s. 847.0137(2), s. 847.0145, s. 893.135, s. 916.1075,
 2073 a violation enumerated in s. 907.041, or any violation specified
 2074 as a predicate offense for registration as a sexual predator
 2075 pursuant to s. 775.21, without regard to whether that offense

2076 | alone is sufficient to require such registration, or for
 2077 | registration as a sexual offender pursuant to s. 943.0435, where
 2078 | the defendant was found guilty of, or pled guilty or nolo
 2079 | contendere to any such offense, or that the defendant, as a
 2080 | minor, was found to have committed, or pled guilty or nolo
 2081 | contendere to committing, such an offense as a delinquent act,
 2082 | without regard to whether adjudication was withheld.

2083 | (b) Remits a \$75 processing fee to the department for
 2084 | placement in the Department of Law Enforcement Operating Trust
 2085 | Fund, unless such fee is waived by the executive director.

2086 | (c) Has submitted to the department a certified copy of
 2087 | the disposition of the charge to which the petition to expunge
 2088 | pertains.

2089 | (d) Has never, prior to the date on which the application
 2090 | for a certificate of eligibility is filed, been adjudicated
 2091 | guilty of a criminal offense or comparable ordinance violation,
 2092 | or been adjudicated delinquent for committing any felony or a
 2093 | misdemeanor specified in s. 943.051(3)(b).

2094 | (e) Has not been adjudicated guilty of, or adjudicated
 2095 | delinquent for committing, any of the acts stemming from the
 2096 | arrest or alleged criminal activity to which the petition to
 2097 | expunge pertains.

2098 | (f) Has never secured a prior sealing or expunction of a
 2099 | criminal history record under this section, s. 943.059, former
 2100 | s. 893.14, former s. 901.33, or former s. 943.058, unless

2101 expunction is sought of a criminal history record previously
 2102 sealed for 10 years pursuant to paragraph (h) and the record is
 2103 otherwise eligible for expunction.

2104 (g) Is no longer under court supervision applicable to the
 2105 disposition of the arrest or alleged criminal activity to which
 2106 the petition to expunge pertains.

2107 (h) Has previously obtained a court order sealing the
 2108 record under this section, former s. 893.14, former s. 901.33,
 2109 or former s. 943.058 for a minimum of 10 years because
 2110 adjudication was withheld or because all charges related to the
 2111 arrest or alleged criminal activity to which the petition to
 2112 expunge pertains were not dismissed prior to trial, without
 2113 regard to whether the outcome of the trial was other than an
 2114 adjudication of guilt. The requirement for the record to have
 2115 previously been sealed for a minimum of 10 years does not apply
 2116 when a plea was not entered or all charges related to the arrest
 2117 or alleged criminal activity to which the petition to expunge
 2118 pertains were dismissed prior to trial.

2119 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

2120 (a) In judicial proceedings under this section, a copy of
 2121 the completed petition to expunge shall be served upon the
 2122 appropriate state attorney or the statewide prosecutor and upon
 2123 the arresting agency; however, it is not necessary to make any
 2124 agency other than the state a party. The appropriate state
 2125 attorney or the statewide prosecutor and the arresting agency

2126 | may respond to the court regarding the completed petition to
 2127 | expunge.

2128 | (b) If relief is granted by the court, the clerk of the
 2129 | court shall certify copies of the order to the appropriate state
 2130 | attorney or the statewide prosecutor and the arresting agency.
 2131 | The arresting agency is responsible for forwarding the order to
 2132 | any other agency to which the arresting agency disseminated the
 2133 | criminal history record information to which the order pertains.
 2134 | The department shall forward the order to expunge to the Federal
 2135 | Bureau of Investigation. The clerk of the court shall certify a
 2136 | copy of the order to any other agency which the records of the
 2137 | court reflect has received the criminal history record from the
 2138 | court.

2139 | (c) For an order to expunge entered by a court prior to
 2140 | July 1, 1992, the department shall notify the appropriate state
 2141 | attorney or statewide prosecutor of an order to expunge which is
 2142 | contrary to law because the person who is the subject of the
 2143 | record has previously been convicted of a crime or comparable
 2144 | ordinance violation or has had a prior criminal history record
 2145 | sealed or expunged. Upon receipt of such notice, the appropriate
 2146 | state attorney or statewide prosecutor shall take action, within
 2147 | 60 days, to correct the record and petition the court to void
 2148 | the order to expunge. The department shall seal the record until
 2149 | such time as the order is voided by the court.

2150 | (d) On or after July 1, 1992, the department or any other

2151 criminal justice agency is not required to act on an order to
 2152 expunge entered by a court when such order does not comply with
 2153 the requirements of this section. Upon receipt of such an order,
 2154 the department must notify the issuing court, the appropriate
 2155 state attorney or statewide prosecutor, the petitioner or the
 2156 petitioner's attorney, and the arresting agency of the reason
 2157 for noncompliance. The appropriate state attorney or statewide
 2158 prosecutor shall take action within 60 days to correct the
 2159 record and petition the court to void the order. No cause of
 2160 action, including contempt of court, shall arise against any
 2161 criminal justice agency for failure to comply with an order to
 2162 expunge when the petitioner for such order failed to obtain the
 2163 certificate of eligibility as required by this section or such
 2164 order does not otherwise comply with the requirements of this
 2165 section.

2166 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 2167 criminal history record of a minor or an adult which is ordered
 2168 expunged by a court of competent jurisdiction pursuant to this
 2169 section must be physically destroyed or obliterated by any
 2170 criminal justice agency having custody of such record; except
 2171 that any criminal history record in the custody of the
 2172 department must be retained in all cases. A criminal history
 2173 record ordered expunged that is retained by the department is
 2174 confidential and exempt from the provisions of s. 119.07(1) and
 2175 s. 24(a), Art. I of the State Constitution and not available to

2176 any person or entity except upon order of a court of competent
 2177 jurisdiction. A criminal justice agency may retain a notation
 2178 indicating compliance with an order to expunge.

2179 (a) The person who is the subject of a criminal history
 2180 record that is expunged under this section or under other
 2181 provisions of law, including former s. 893.14, former s. 901.33,
 2182 and former s. 943.058, may lawfully deny or fail to acknowledge
 2183 the arrests covered by the expunged record, except when the
 2184 subject of the record:

- 2185 1. Is a candidate for employment with a criminal justice
 2186 agency;
- 2187 2. Is a defendant in a criminal prosecution;
- 2188 3. Concurrently or subsequently petitions for relief under
 2189 this section, s. 943.0583, or s. 943.059;
- 2190 4. Is a candidate for admission to The Florida Bar;
- 2191 5. Is seeking to be employed or licensed by or to contract
 2192 with the Department of Children and Families, the Division of
 2193 Vocational Rehabilitation within the Department of Education,
 2194 the Agency for Health Care Administration, the Agency for
 2195 Persons with Disabilities, the Department of Health, the
 2196 Department of Elderly Affairs, or the Department of Juvenile
 2197 Justice or to be employed or used by such contractor or licensee
 2198 in a sensitive position having direct contact with children, the
 2199 disabled, or the elderly;
- 2200 6. Is seeking to be employed or licensed by the Department

2201 of Education, any district school board, any university
2202 laboratory school, any charter school, any private or parochial
2203 school, or any local governmental entity that licenses child
2204 care facilities;

2205 7. Is seeking to be licensed by the Division of Insurance
2206 Agent and Agency Services within the Department of Financial
2207 Services; or

2208 8. Is seeking to be appointed as a guardian pursuant to s.
2209 744.3125.

2210 (b) Subject to the exceptions in paragraph (a), a person
2211 who has been granted an expunction under this section, former s.
2212 893.14, former s. 901.33, or former s. 943.058 may not be held
2213 under any provision of law of this state to commit perjury or to
2214 be otherwise liable for giving a false statement by reason of
2215 such person's failure to recite or acknowledge an expunged
2216 criminal history record.

2217 (c) Information relating to the existence of an expunged
2218 criminal history record which is provided in accordance with
2219 paragraph (a) is confidential and exempt from the provisions of
2220 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
2221 except that the department shall disclose the existence of a
2222 criminal history record ordered expunged to the entities set
2223 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their
2224 respective licensing, access authorization, and employment
2225 purposes, and to criminal justice agencies for their respective

2226 criminal justice purposes. It is unlawful for any employee of an
 2227 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 2228 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or
 2229 subparagraph (a)8. to disclose information relating to the
 2230 existence of an expunged criminal history record of a person
 2231 seeking employment, access authorization, or licensure with such
 2232 entity or contractor, except to the person to whom the criminal
 2233 history record relates or to persons having direct
 2234 responsibility for employment, access authorization, or
 2235 licensure decisions. Any person who violates this paragraph
 2236 commits a misdemeanor of the first degree, punishable as
 2237 provided in s. 775.082 or s. 775.083.

2238 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the
 2239 eligibility requirements prescribed in paragraph (1)(b) and
 2240 subsection (2), the department shall issue a certificate of
 2241 eligibility for expunction under this subsection to a person who
 2242 is the subject of a criminal history record if that person:

2243 (a) Has obtained, and submitted to the department, on a
 2244 form provided by the department, a written, certified statement
 2245 from the appropriate state attorney or statewide prosecutor
 2246 which states whether an information, indictment, or other
 2247 charging document was not filed or was dismissed by the state
 2248 attorney, or dismissed by the court, because it was found that
 2249 the person acted in lawful self-defense pursuant to the
 2250 provisions related to justifiable use of force in chapter 776.

2251 (b) Each petition to a court to expunge a criminal history
2252 record pursuant to this subsection is complete only when
2253 accompanied by:

2254 1. A valid certificate of eligibility for expunction
2255 issued by the department pursuant to this subsection.

2256 2. The petitioner's sworn statement attesting that the
2257 petitioner is eligible for such an expunction to the best of his
2258 or her knowledge or belief.

2259

2260 Any person who knowingly provides false information on such
2261 sworn statement to the court commits a felony of the third
2262 degree, punishable as provided in s. 775.082, s. 775.083, or s.
2263 775.084.

2264 (c) This subsection does not confer any right to the
2265 expunction of a criminal history record, and any request for
2266 expunction of a criminal history record may be denied at the
2267 discretion of the court.

2268 (d) Subsections (3) and (4) shall apply to expunction
2269 ordered under this subsection.

2270 (e) The department shall, by rule adopted pursuant to
2271 chapter 120, establish procedures pertaining to the application
2272 for and issuance of certificates of eligibility for expunction
2273 under this subsection.

2274 (6) STATUTORY REFERENCES.—Any reference to any other
2275 chapter, section, or subdivision of the Florida Statutes in this

2276 section constitutes a general reference under the doctrine of
 2277 incorporation by reference.
 2278 Section 44. Section 943.059, Florida Statutes, is amended
 2279 to read:
 2280 943.059 Court-ordered sealing of criminal history
 2281 records.—The courts of this state shall continue to have
 2282 jurisdiction over their own procedures, including the
 2283 maintenance, sealing, and correction of judicial records
 2284 containing criminal history information to the extent such
 2285 procedures are not inconsistent with the conditions,
 2286 responsibilities, and duties established by this section. Any
 2287 court of competent jurisdiction may order a criminal justice
 2288 agency to seal the criminal history record of a minor or an
 2289 adult who complies with the requirements of this section. The
 2290 court shall not order a criminal justice agency to seal a
 2291 criminal history record until the person seeking to seal a
 2292 criminal history record has applied for and received a
 2293 certificate of eligibility for sealing pursuant to subsection
 2294 (2). A criminal history record that relates to a violation of s.
 2295 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 2296 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, former s.
 2297 827.071, chapter 839, s. 847.003, s. 847.0133, s. 847.0135, s.
 2298 847.0137(2), s. 847.0145, s. 893.135, s. 916.1075, a violation
 2299 enumerated in s. 907.041, or any violation specified as a
 2300 predicate offense for registration as a sexual predator pursuant

2301 to s. 775.21, without regard to whether that offense alone is
 2302 sufficient to require such registration, or for registration as
 2303 a sexual offender pursuant to s. 943.0435, may not be sealed,
 2304 without regard to whether adjudication was withheld, if the
 2305 defendant was found guilty of or pled guilty or nolo contendere
 2306 to the offense, or if the defendant, as a minor, was found to
 2307 have committed or pled guilty or nolo contendere to committing
 2308 the offense as a delinquent act. The court may only order
 2309 sealing of a criminal history record pertaining to one arrest or
 2310 one incident of alleged criminal activity, except as provided in
 2311 this section. The court may, at its sole discretion, order the
 2312 sealing of a criminal history record pertaining to more than one
 2313 arrest if the additional arrests directly relate to the original
 2314 arrest. If the court intends to order the sealing of records
 2315 pertaining to such additional arrests, such intent must be
 2316 specified in the order. A criminal justice agency may not seal
 2317 any record pertaining to such additional arrests if the order to
 2318 seal does not articulate the intention of the court to seal
 2319 records pertaining to more than one arrest. This section does
 2320 not prevent the court from ordering the sealing of only a
 2321 portion of a criminal history record pertaining to one arrest or
 2322 one incident of alleged criminal activity. Notwithstanding any
 2323 law to the contrary, a criminal justice agency may comply with
 2324 laws, court orders, and official requests of other jurisdictions
 2325 relating to sealing, correction, or confidential handling of

2326 | criminal history records or information derived therefrom. This
2327 | section does not confer any right to the sealing of any criminal
2328 | history record, and any request for sealing a criminal history
2329 | record may be denied at the sole discretion of the court.

2330 | (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
2331 | petition to a court to seal a criminal history record is
2332 | complete only when accompanied by:

2333 | (a) A valid certificate of eligibility for sealing issued
2334 | by the department pursuant to subsection (2).

2335 | (b) The petitioner's sworn statement attesting that the
2336 | petitioner:

2337 | 1. Has never, prior to the date on which the petition is
2338 | filed, been adjudicated guilty of a criminal offense or
2339 | comparable ordinance violation, or been adjudicated delinquent
2340 | for committing any felony or a misdemeanor specified in s.
2341 | 943.051(3)(b).

2342 | 2. Has not been adjudicated guilty of or adjudicated
2343 | delinquent for committing any of the acts stemming from the
2344 | arrest or alleged criminal activity to which the petition to
2345 | seal pertains.

2346 | 3. Has never secured a prior sealing or expunction of a
2347 | criminal history record under this section, s. 943.0585, former
2348 | s. 893.14, former s. 901.33, or former s. 943.058.

2349 | 4. Is eligible for such a sealing to the best of his or
2350 | her knowledge or belief and does not have any other petition to

2351 seal or any petition to expunge pending before any court.

2352

2353 Any person who knowingly provides false information on such
 2354 sworn statement to the court commits a felony of the third
 2355 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2356 775.084.

2357 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 2358 petitioning the court to seal a criminal history record, a
 2359 person seeking to seal a criminal history record shall apply to
 2360 the department for a certificate of eligibility for sealing. The
 2361 department shall, by rule adopted pursuant to chapter 120,
 2362 establish procedures pertaining to the application for and
 2363 issuance of certificates of eligibility for sealing. A
 2364 certificate of eligibility for sealing is valid for 12 months
 2365 after the date stamped on the certificate when issued by the
 2366 department. After that time, the petitioner must reapply to the
 2367 department for a new certificate of eligibility. Eligibility for
 2368 a renewed certification of eligibility must be based on the
 2369 status of the applicant and the law in effect at the time of the
 2370 renewal application. The department shall issue a certificate of
 2371 eligibility for sealing to a person who is the subject of a
 2372 criminal history record provided that such person:

2373 (a) Has submitted to the department a certified copy of
 2374 the disposition of the charge to which the petition to seal
 2375 pertains.

2376 (b) Remits a \$75 processing fee to the department for
2377 placement in the Department of Law Enforcement Operating Trust
2378 Fund, unless such fee is waived by the executive director.

2379 (c) Has never, prior to the date on which the application
2380 for a certificate of eligibility is filed, been adjudicated
2381 guilty of a criminal offense or comparable ordinance violation,
2382 or been adjudicated delinquent for committing any felony or a
2383 misdemeanor specified in s. 943.051(3)(b).

2384 (d) Has not been adjudicated guilty of or adjudicated
2385 delinquent for committing any of the acts stemming from the
2386 arrest or alleged criminal activity to which the petition to
2387 seal pertains.

2388 (e) Has never secured a prior sealing or expunction of a
2389 criminal history record under this section, s. 943.0585, former
2390 s. 893.14, former s. 901.33, or former s. 943.058.

2391 (f) Is no longer under court supervision applicable to the
2392 disposition of the arrest or alleged criminal activity to which
2393 the petition to seal pertains.

2394 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

2395 (a) In judicial proceedings under this section, a copy of
2396 the completed petition to seal shall be served upon the
2397 appropriate state attorney or the statewide prosecutor and upon
2398 the arresting agency; however, it is not necessary to make any
2399 agency other than the state a party. The appropriate state
2400 attorney or the statewide prosecutor and the arresting agency

2401 may respond to the court regarding the completed petition to
 2402 seal.

2403 (b) If relief is granted by the court, the clerk of the
 2404 court shall certify copies of the order to the appropriate state
 2405 attorney or the statewide prosecutor and to the arresting
 2406 agency. The arresting agency is responsible for forwarding the
 2407 order to any other agency to which the arresting agency
 2408 disseminated the criminal history record information to which
 2409 the order pertains. The department shall forward the order to
 2410 seal to the Federal Bureau of Investigation. The clerk of the
 2411 court shall certify a copy of the order to any other agency
 2412 which the records of the court reflect has received the criminal
 2413 history record from the court.

2414 (c) For an order to seal entered by a court prior to July
 2415 1, 1992, the department shall notify the appropriate state
 2416 attorney or statewide prosecutor of any order to seal which is
 2417 contrary to law because the person who is the subject of the
 2418 record has previously been convicted of a crime or comparable
 2419 ordinance violation or has had a prior criminal history record
 2420 sealed or expunged. Upon receipt of such notice, the appropriate
 2421 state attorney or statewide prosecutor shall take action, within
 2422 60 days, to correct the record and petition the court to void
 2423 the order to seal. The department shall seal the record until
 2424 such time as the order is voided by the court.

2425 (d) On or after July 1, 1992, the department or any other

2426 criminal justice agency is not required to act on an order to
 2427 seal entered by a court when such order does not comply with the
 2428 requirements of this section. Upon receipt of such an order, the
 2429 department must notify the issuing court, the appropriate state
 2430 attorney or statewide prosecutor, the petitioner or the
 2431 petitioner's attorney, and the arresting agency of the reason
 2432 for noncompliance. The appropriate state attorney or statewide
 2433 prosecutor shall take action within 60 days to correct the
 2434 record and petition the court to void the order. No cause of
 2435 action, including contempt of court, shall arise against any
 2436 criminal justice agency for failure to comply with an order to
 2437 seal when the petitioner for such order failed to obtain the
 2438 certificate of eligibility as required by this section or when
 2439 such order does not comply with the requirements of this
 2440 section.

2441 (e) An order sealing a criminal history record pursuant to
 2442 this section does not require that such record be surrendered to
 2443 the court, and such record shall continue to be maintained by
 2444 the department and other criminal justice agencies.

2445 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 2446 history record of a minor or an adult which is ordered sealed by
 2447 a court pursuant to this section is confidential and exempt from
 2448 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 2449 Constitution and is available only to the person who is the
 2450 subject of the record, to the subject's attorney, to criminal

2451 justice agencies for their respective criminal justice purposes,
 2452 which include conducting a criminal history background check for
 2453 approval of firearms purchases or transfers as authorized by
 2454 state or federal law, to judges in the state courts system for
 2455 the purpose of assisting them in their case-related
 2456 decisionmaking responsibilities, as set forth in s. 943.053(5),
 2457 or to those entities set forth in subparagraphs (a)1., 4., 5.,
 2458 6., 8., 9., and 10. for their respective licensing, access
 2459 authorization, and employment purposes.

2460 (a) The subject of a criminal history record sealed under
 2461 this section or under other provisions of law, including former
 2462 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 2463 deny or fail to acknowledge the arrests covered by the sealed
 2464 record, except when the subject of the record:

- 2465 1. Is a candidate for employment with a criminal justice
 2466 agency;
- 2467 2. Is a defendant in a criminal prosecution;
- 2468 3. Concurrently or subsequently petitions for relief under
 2469 this section, s. 943.0583, or s. 943.0585;
- 2470 4. Is a candidate for admission to The Florida Bar;
- 2471 5. Is seeking to be employed or licensed by or to contract
 2472 with the Department of Children and Families, the Division of
 2473 Vocational Rehabilitation within the Department of Education,
 2474 the Agency for Health Care Administration, the Agency for
 2475 Persons with Disabilities, the Department of Health, the

2476 Department of Elderly Affairs, or the Department of Juvenile
 2477 Justice or to be employed or used by such contractor or licensee
 2478 in a sensitive position having direct contact with children, the
 2479 disabled, or the elderly;

2480 6. Is seeking to be employed or licensed by the Department
 2481 of Education, a district school board, a university laboratory
 2482 school, a charter school, a private or parochial school, or a
 2483 local governmental entity that licenses child care facilities;

2484 7. Is attempting to purchase a firearm from a licensed
 2485 importer, licensed manufacturer, or licensed dealer and is
 2486 subject to a criminal history check under state or federal law;

2487 8. Is seeking to be licensed by the Division of Insurance
 2488 Agent and Agency Services within the Department of Financial
 2489 Services;

2490 9. Is seeking to be appointed as a guardian pursuant to s.
 2491 744.3125; or

2492 10. Is seeking to be licensed by the Bureau of License
 2493 Issuance of the Division of Licensing within the Department of
 2494 Agriculture and Consumer Services to carry a concealed weapon or
 2495 concealed firearm. This subparagraph applies only in the
 2496 determination of an applicant's eligibility under s. 790.06.

2497 (b) Subject to the exceptions in paragraph (a), a person
 2498 who has been granted a sealing under this section, former s.
 2499 893.14, former s. 901.33, or former s. 943.058 may not be held
 2500 under any provision of law of this state to commit perjury or to

2501 | be otherwise liable for giving a false statement by reason of
 2502 | such person's failure to recite or acknowledge a sealed criminal
 2503 | history record.

2504 | (c) Information relating to the existence of a sealed
 2505 | criminal record provided in accordance with the provisions of
 2506 | paragraph (a) is confidential and exempt from the provisions of
 2507 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 2508 | except that the department shall disclose the sealed criminal
 2509 | history record to the entities set forth in subparagraphs (a)1.,
 2510 | 4., 5., 6., 8., 9., and 10. for their respective licensing,
 2511 | access authorization, and employment purposes. An employee of an
 2512 | entity set forth in subparagraph (a)1., subparagraph (a)4.,
 2513 | subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
 2514 | subparagraph (a)9., or subparagraph (a)10. may not disclose
 2515 | information relating to the existence of a sealed criminal
 2516 | history record of a person seeking employment, access
 2517 | authorization, or licensure with such entity or contractor,
 2518 | except to the person to whom the criminal history record relates
 2519 | or to persons having direct responsibility for employment,
 2520 | access authorization, or licensure decisions. A person who
 2521 | violates the provisions of this paragraph commits a misdemeanor
 2522 | of the first degree, punishable as provided in s. 775.082 or s.
 2523 | 775.083.

2524 | (5) STATUTORY REFERENCES.—Any reference to any other
 2525 | chapter, section, or subdivision of the Florida Statutes in this

2526 section constitutes a general reference under the doctrine of
 2527 incorporation by reference.

2528 Section 45. Paragraph (f) of subsection (1) of section
 2529 944.606, Florida Statutes, is amended to read:

2530 944.606 Sexual offenders; notification upon release.—

2531 (1) As used in this section, the term:

2532 (f) "Sexual offender" means a person who has been
 2533 convicted of committing, or attempting, soliciting, or
 2534 conspiring to commit, any of the criminal offenses proscribed in
 2535 the following statutes in this state or similar offenses in
 2536 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 2537 s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s.
 2538 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 2539 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 2540 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; former
 2541 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135, excluding s.
 2542 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03,
 2543 if the court makes a written finding that the racketeering
 2544 activity involved at least one sexual offense listed in this
 2545 paragraph or at least one offense listed in this paragraph with
 2546 sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or
 2547 any similar offense committed in this state which has been
 2548 redesignated from a former statute number to one of those listed
 2549 in this subsection, when the department has received verified
 2550 information regarding such conviction; an offender's

2551 computerized criminal history record is not, in and of itself,
 2552 verified information.

2553 Section 46. Paragraph (f) of subsection (1) of section
 2554 944.607, Florida Statutes, is amended to read:

2555 944.607 Notification to Department of Law Enforcement of
 2556 information on sexual offenders.—

2557 (1) As used in this section, the term:

2558 (f) "Sexual offender" means a person who is in the custody
 2559 or control of, or under the supervision of, the department or is
 2560 in the custody of a private correctional facility:

2561 1. On or after October 1, 1997, as a result of a
 2562 conviction for committing, or attempting, soliciting, or
 2563 conspiring to commit, any of the criminal offenses proscribed in
 2564 the following statutes in this state or similar offenses in
 2565 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 2566 s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s.
 2567 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 2568 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 2569 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; former
 2570 s. 827.071; s. 847.003; s. 847.0133; s. 847.0135, excluding s.
 2571 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03,
 2572 if the court makes a written finding that the racketeering
 2573 activity involved at least one sexual offense listed in this
 2574 subparagraph or at least one offense listed in this subparagraph
 2575 with sexual intent or motive; s. 916.1075(2); or s. 985.701(1);

2576 or any similar offense committed in this state which has been
2577 redesignated from a former statute number to one of those listed
2578 in this paragraph; or

2579 2. Who establishes or maintains a residence in this state
2580 and who has not been designated as a sexual predator by a court
2581 of this state but who has been designated as a sexual predator,
2582 as a sexually violent predator, or by another sexual offender
2583 designation in another state or jurisdiction and was, as a
2584 result of such designation, subjected to registration or
2585 community or public notification, or both, or would be if the
2586 person were a resident of that state or jurisdiction, without
2587 regard as to whether the person otherwise meets the criteria for
2588 registration as a sexual offender.

2589 Section 47. Subsections (7), (10), and (14) of section
2590 947.1405, Florida Statutes, are amended, and subsection (15) is
2591 added to that section, to read:

2592 947.1405 Conditional release program.—

2593 (7)(a) Any inmate who is convicted of a crime committed on
2594 or after October 1, 1995, or who has been previously convicted
2595 of a crime committed on or after October 1, 1995, in violation
2596 of chapter 794, s. 800.04, former s. 827.071, s. 847.0135(5), or
2597 s. 847.0145, and is subject to conditional release supervision,
2598 shall have, in addition to any other conditions imposed, the
2599 following special conditions imposed by the commission:

2600 1. A mandatory curfew from 10 p.m. to 6 a.m. The

2601 | commission may designate another 8-hour period if the offender's
 2602 | employment precludes the above specified time, and such
 2603 | alternative is recommended by the Department of Corrections. If
 2604 | the commission determines that imposing a curfew would endanger
 2605 | the victim, the commission may consider alternative sanctions.

2606 | 2. If the victim was under the age of 18, a prohibition on
 2607 | living within 1,000 feet of a school, child care facility, park,
 2608 | playground, designated public school bus stop, or other place
 2609 | where children regularly congregate. A releasee who is subject
 2610 | to this subparagraph may not relocate to a residence that is
 2611 | within 1,000 feet of a public school bus stop. Beginning October
 2612 | 1, 2004, the commission or the department may not approve a
 2613 | residence that is located within 1,000 feet of a school, child
 2614 | care facility, park, playground, designated school bus stop, or
 2615 | other place where children regularly congregate for any releasee
 2616 | who is subject to this subparagraph. On October 1, 2004, the
 2617 | department shall notify each affected school district of the
 2618 | location of the residence of a releasee 30 days prior to release
 2619 | and thereafter, if the releasee relocates to a new residence,
 2620 | shall notify any affected school district of the residence of
 2621 | the releasee within 30 days after relocation. If, on October 1,
 2622 | 2004, any public school bus stop is located within 1,000 feet of
 2623 | the existing residence of such releasee, the district school
 2624 | board shall relocate that school bus stop. Beginning October 1,
 2625 | 2004, a district school board may not establish or relocate a

2626 public school bus stop within 1,000 feet of the residence of a
 2627 releasee who is subject to this subparagraph. The failure of the
 2628 district school board to comply with this subparagraph shall not
 2629 result in a violation of conditional release supervision. A
 2630 releasee who is subject to this subparagraph may not be forced
 2631 to relocate and does not violate his or her conditional release
 2632 supervision if he or she is living in a residence that meets the
 2633 requirements of this subparagraph and a school, child care
 2634 facility, park, playground, designated public school bus stop,
 2635 or other place where children regularly congregate is
 2636 subsequently established within 1,000 feet of his or her
 2637 residence.

2638 3. Active participation in and successful completion of a
 2639 sex offender treatment program with qualified practitioners
 2640 specifically trained to treat sex offenders, at the releasee's
 2641 own expense. If a qualified practitioner is not available within
 2642 a 50-mile radius of the releasee's residence, the offender shall
 2643 participate in other appropriate therapy.

2644 4. A prohibition on any contact with the victim, directly
 2645 or indirectly, including through a third person, unless approved
 2646 by the victim, a qualified practitioner in the sexual offender
 2647 treatment program, and the sentencing court.

2648 5. If the victim was under the age of 18, a prohibition
 2649 against contact with children under the age of 18 without review
 2650 and approval by the commission. The commission may approve

2651 supervised contact with a child under the age of 18 if the
 2652 approval is based upon a recommendation for contact issued by a
 2653 qualified practitioner who is basing the recommendation on a
 2654 risk assessment. Further, the sex offender must be currently
 2655 enrolled in or have successfully completed a sex offender
 2656 therapy program. The commission may not grant supervised contact
 2657 with a child if the contact is not recommended by a qualified
 2658 practitioner and may deny supervised contact with a child at any
 2659 time. When considering whether to approve supervised contact
 2660 with a child, the commission must review and consider the
 2661 following:

2662 a. A risk assessment completed by a qualified
 2663 practitioner. The qualified practitioner must prepare a written
 2664 report that must include the findings of the assessment and
 2665 address each of the following components:

- 2666 (I) The sex offender's current legal status;
- 2667 (II) The sex offender's history of adult charges with
 2668 apparent sexual motivation;
- 2669 (III) The sex offender's history of adult charges without
 2670 apparent sexual motivation;
- 2671 (IV) The sex offender's history of juvenile charges,
 2672 whenever available;
- 2673 (V) The sex offender's offender treatment history,
 2674 including a consultation from the sex offender's treating, or
 2675 most recent treating, therapist;

2676 (VI) The sex offender's current mental status;

2677 (VII) The sex offender's mental health and substance abuse

2678 history as provided by the Department of Corrections;

2679 (VIII) The sex offender's personal, social, educational,

2680 and work history;

2681 (IX) The results of current psychological testing of the

2682 sex offender if determined necessary by the qualified

2683 practitioner;

2684 (X) A description of the proposed contact, including the

2685 location, frequency, duration, and supervisory arrangement;

2686 (XI) The child's preference and relative comfort level

2687 with the proposed contact, when age-appropriate;

2688 (XII) The parent's or legal guardian's preference

2689 regarding the proposed contact; and

2690 (XIII) The qualified practitioner's opinion, along with

2691 the basis for that opinion, as to whether the proposed contact

2692 would likely pose significant risk of emotional or physical harm

2693 to the child.

2694

2695 The written report of the assessment must be given to the

2696 commission.

2697 b. A recommendation made as a part of the risk-assessment

2698 report as to whether supervised contact with the child should be

2699 approved;

2700 c. A written consent signed by the child's parent or legal

2701 guardian, if the parent or legal guardian is not the sex
 2702 offender, agreeing to the sex offender having supervised contact
 2703 with the child after receiving full disclosure of the sex
 2704 offender's present legal status, past criminal history, and the
 2705 results of the risk assessment. The commission may not approve
 2706 contact with the child if the parent or legal guardian refuses
 2707 to give written consent for supervised contact;

2708 d. A safety plan prepared by the qualified practitioner,
 2709 who provides treatment to the offender, in collaboration with
 2710 the sex offender, the child's parent or legal guardian, and the
 2711 child, when age appropriate, which details the acceptable
 2712 conditions of contact between the sex offender and the child.
 2713 The safety plan must be reviewed and approved by the Department
 2714 of Corrections before being submitted to the commission; and

2715 e. Evidence that the child's parent or legal guardian, if
 2716 the parent or legal guardian is not the sex offender,
 2717 understands the need for and agrees to the safety plan and has
 2718 agreed to provide, or to designate another adult to provide,
 2719 constant supervision any time the child is in contact with the
 2720 offender.

2721
 2722 The commission may not appoint a person to conduct a risk
 2723 assessment and may not accept a risk assessment from a person
 2724 who has not demonstrated to the commission that he or she has
 2725 met the requirements of a qualified practitioner as defined in

2726
2727
2728
2729
2730
2731
2732
2733
2734
2735
2736
2737
2738
2739
2740
2741
2742
2743
2744
2745
2746
2747
2748
2749
2750

this section.

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

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

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

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

10. A requirement that the releasee make restitution to the victim, as determined by the sentencing court or the commission, for all necessary medical and related professional

2751 services relating to physical, psychiatric, and psychological
 2752 care.

2753 11. Submission to a warrantless search by the community
 2754 control or probation officer of the probationer's or community
 2755 controllee's person, residence, or vehicle.

2756 (b) For a releasee whose crime was committed on or after
 2757 October 1, 1997, in violation of chapter 794, s. 800.04, former
 2758 s. 827.071, s. 847.0135(5), or s. 847.0145, and who is subject
 2759 to conditional release supervision, in addition to any other
 2760 provision of this subsection, the commission shall impose the
 2761 following additional conditions of conditional release
 2762 supervision:

2763 1. As part of a treatment program, participation in a
 2764 minimum of one annual polygraph examination to obtain
 2765 information necessary for risk management and treatment and to
 2766 reduce the sex offender's denial mechanisms. The polygraph
 2767 examination must be conducted by a polygrapher who is a member
 2768 of a national or state polygraph association and who is
 2769 certified as a postconviction sex offender polygrapher, where
 2770 available, and at the expense of the releasee. The results of
 2771 the examination shall be provided to the releasee's probation
 2772 officer and qualified practitioner and may not be used as
 2773 evidence in a hearing to prove that a violation of supervision
 2774 has occurred.

2775 2. Maintenance of a driving log and a prohibition against

2776 driving a motor vehicle alone without the prior approval of the
2777 supervising officer.

2778 3. A prohibition against obtaining or using a post office
2779 box without the prior approval of the supervising officer.

2780 4. If there was sexual contact, a submission to, at the
2781 releasee's expense, an HIV test with the results to be released
2782 to the victim or the victim's parent or guardian.

2783 5. Electronic monitoring of any form when ordered by the
2784 commission. Any person who has been placed under supervision and
2785 is electronically monitored by the department must pay the
2786 department for the cost of the electronic monitoring service at
2787 a rate that may not exceed the full cost of the monitoring
2788 service. Funds collected under this subparagraph shall be
2789 deposited into the General Revenue Fund. The department may
2790 exempt a person from the payment of all or any part of the
2791 electronic monitoring service cost if the department finds that
2792 any of the factors listed in s. 948.09(3) exist.

2793 (10) Effective for a releasee whose crime was committed on
2794 or after September 1, 2005, in violation of chapter 794, s.
2795 800.04(4), (5), or (6), former s. 827.071, or s. 847.0145, and
2796 the unlawful activity involved a victim who was 15 years of age
2797 or younger and the offender is 18 years of age or older or for a
2798 releasee who is designated as a sexual predator pursuant to s.
2799 775.21, in addition to any other provision of this section, the
2800 commission must order electronic monitoring for the duration of

2801 the releasee's supervision.

2802 (14) Effective for a releasee whose crime was committed on
 2803 or after October 1, 2014, in violation of chapter 794, s.
 2804 800.04, former s. 827.071, s. 847.0135(5), or s. 847.0145, in
 2805 addition to any other provision of this section, the commission
 2806 must impose a condition prohibiting the releasee from viewing,
 2807 accessing, owning, or possessing any obscene, pornographic, or
 2808 sexually stimulating visual or auditory material unless
 2809 otherwise indicated in the treatment plan provided by a
 2810 qualified practitioner in the sexual offender treatment program.
 2811 Visual or auditory material includes, but is not limited to,
 2812 telephone, electronic media, computer programs, and computer
 2813 services.

2814 (15) Effective for a releasee whose crime was committed on
 2815 or after October 1, 2018, in violation of s. 847.003 or s.
 2816 847.0137(2), in addition to any other provision of this section,
 2817 the commission must impose the conditions specified in
 2818 subsections (7), (10), (12), and (14).

2819 Section 48. Subsection (2) of section 948.03, Florida
 2820 Statutes, is amended to read:

2821 948.03 Terms and conditions of probation.—

2822 (2) The enumeration of specific kinds of terms and
 2823 conditions does not prevent the court from adding thereto such
 2824 other or others as it considers proper. However, the sentencing
 2825 court may only impose a condition of supervision allowing an

2826 offender convicted of s. 794.011, s. 800.04, former s. 827.071,
 2827 s. 847.003, s. 847.0135(5), s. 847.0137(2), or s. 847.0145 to
 2828 reside in another state if the order stipulates that it is
 2829 contingent upon the approval of the receiving state interstate
 2830 compact authority. The court may rescind or modify at any time
 2831 the terms and conditions theretofore imposed by it upon the
 2832 probationer. However, if the court withholds adjudication of
 2833 guilt or imposes a period of incarceration as a condition of
 2834 probation, the period may not exceed 364 days, and incarceration
 2835 shall be restricted to either a county facility, or a probation
 2836 and restitution center under the jurisdiction of the Department
 2837 of Corrections.

2838 Section 49. Subsection (1) of section 948.04, Florida
 2839 Statutes, is amended to read:

2840 948.04 Period of probation; duty of probationer; early
 2841 termination.—

2842 (1) Defendants found guilty of felonies who are placed on
 2843 probation shall be under supervision not to exceed 2 years
 2844 unless otherwise specified by the court. No defendant placed on
 2845 probation pursuant to s. 948.012(1) is subject to the probation
 2846 limitations of this subsection. A defendant who is placed on
 2847 probation or community control for a violation of chapter 794,
 2848 ~~or~~ chapter 827, s. 847.003, or s. 847.0137(2) is subject to the
 2849 maximum level of supervision provided by the supervising agency,
 2850 and that supervision shall continue through the full term of the

2851 court-imposed probation or community control.

2852 Section 50. Subsection (4) and paragraph (c) of subsection
2853 (8) of section 948.06, Florida Statutes, are amended to read:

2854 948.06 Violation of probation or community control;
2855 revocation; modification; continuance; failure to pay
2856 restitution or cost of supervision.—

2857 (4) Notwithstanding any other provision of this section, a
2858 felony probationer or an offender in community control who is
2859 arrested for violating his or her probation or community control
2860 in a material respect may be taken before the court in the
2861 county or circuit in which the probationer or offender was
2862 arrested. That court shall advise him or her of the charge of a
2863 violation and, if such charge is admitted, shall cause him or
2864 her to be brought before the court that granted the probation or
2865 community control. If the violation is not admitted by the
2866 probationer or offender, the court may commit him or her or
2867 release him or her with or without bail to await further
2868 hearing. However, if the probationer or offender is under
2869 supervision for any criminal offense proscribed in chapter 794,
2870 s. 800.04(4), (5), (6), former s. 827.071, or s. 847.0145, or is
2871 a registered sexual predator or a registered sexual offender, or
2872 is under supervision for a criminal offense for which he or she
2873 would meet the registration criteria in s. 775.21, s. 943.0435,
2874 or s. 944.607 but for the effective date of those sections, the
2875 court must make a finding that the probationer or offender is

2876 not a danger to the public prior to release with or without
 2877 bail. In determining the danger posed by the offender's or
 2878 probationer's release, the court may consider the nature and
 2879 circumstances of the violation and any new offenses charged; the
 2880 offender's or probationer's past and present conduct, including
 2881 convictions of crimes; any record of arrests without conviction
 2882 for crimes involving violence or sexual crimes; any other
 2883 evidence of allegations of unlawful sexual conduct or the use of
 2884 violence by the offender or probationer; the offender's or
 2885 probationer's family ties, length of residence in the community,
 2886 employment history, and mental condition; his or her history and
 2887 conduct during the probation or community control supervision
 2888 from which the violation arises and any other previous
 2889 supervisions, including disciplinary records of previous
 2890 incarcerations; the likelihood that the offender or probationer
 2891 will engage again in a criminal course of conduct; the weight of
 2892 the evidence against the offender or probationer; and any other
 2893 facts the court considers relevant. The court, as soon as is
 2894 practicable, shall give the probationer or offender an
 2895 opportunity to be fully heard on his or her behalf in person or
 2896 by counsel. After the hearing, the court shall make findings of
 2897 fact and forward the findings to the court that granted the
 2898 probation or community control and to the probationer or
 2899 offender or his or her attorney. The findings of fact by the
 2900 hearing court are binding on the court that granted the

2901 probation or community control. Upon the probationer or offender
 2902 being brought before it, the court that granted the probation or
 2903 community control may revoke, modify, or continue the probation
 2904 or community control or may place the probationer into community
 2905 control as provided in this section. However, the probationer or
 2906 offender shall not be released and shall not be admitted to
 2907 bail, but shall be brought before the court that granted the
 2908 probation or community control if any violation of felony
 2909 probation or community control other than a failure to pay costs
 2910 or fines or make restitution payments is alleged to have been
 2911 committed by:

2912 (a) A violent felony offender of special concern, as
 2913 defined in this section;

2914 (b) A person who is on felony probation or community
 2915 control for any offense committed on or after the effective date
 2916 of this act and who is arrested for a qualifying offense as
 2917 defined in this section; or

2918 (c) A person who is on felony probation or community
 2919 control and has previously been found by a court to be a
 2920 habitual violent felony offender as defined in s. 775.084(1)(b),
 2921 a three-time violent felony offender as defined in s.
 2922 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 2923 arrested for committing a qualifying offense as defined in this
 2924 section on or after the effective date of this act.

2925 (8)

2926 (c) For purposes of this section, the term "qualifying
 2927 offense" means any of the following:

2928 1. Kidnapping or attempted kidnapping under s. 787.01,
 2929 false imprisonment of a child under the age of 13 under s.
 2930 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 2931 or (c).

2932 2. Murder or attempted murder under s. 782.04, attempted
 2933 felony murder under s. 782.051, or manslaughter under s. 782.07.

2934 3. Aggravated battery or attempted aggravated battery
 2935 under s. 784.045.

2936 4. Sexual battery or attempted sexual battery under s.
 2937 794.011(2), (3), (4), or (8)(b) or (c).

2938 5. Lewd or lascivious battery or attempted lewd or
 2939 lascivious battery under s. 800.04(4), lewd or lascivious
 2940 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
 2941 conduct under s. 800.04(6)(b), or lewd or lascivious exhibition
 2942 under s. 800.04(7)(b), ~~or lewd or lascivious exhibition on~~
 2943 ~~computer under s. 847.0135(5)(b).~~

2944 6. Robbery or attempted robbery under s. 812.13,
 2945 carjacking or attempted carjacking under s. 812.133, or home
 2946 invasion robbery or attempted home invasion robbery under s.
 2947 812.135.

2948 7. Lewd or lascivious offense upon or in the presence of
 2949 an elderly or disabled person or attempted lewd or lascivious
 2950 offense upon or in the presence of an elderly or disabled person

2951 under s. 825.1025.

2952 8. Sexual performance by a child or attempted sexual

2953 performance by a child under former s. 827.071 or s. 847.003.

2954 9. Computer pornography or child exploitation under s.

2955 847.0135 ~~847.0135(2) or (3)~~, ~~transmission of~~ child pornography

2956 under s. 847.0137, or selling or buying of minors under s.

2957 847.0145.

2958 10. Poisoning food or water under s. 859.01.

2959 11. Abuse of a dead human body under s. 872.06.

2960 12. Any burglary offense or attempted burglary offense

2961 that is either a first degree felony or second degree felony

2962 under s. 810.02(2) or (3).

2963 13. Arson or attempted arson under s. 806.01(1).

2964 14. Aggravated assault under s. 784.021.

2965 15. Aggravated stalking under s. 784.048(3), (4), (5), or

2966 (7).

2967 16. Aircraft piracy under s. 860.16.

2968 17. Unlawful throwing, placing, or discharging of a

2969 destructive device or bomb under s. 790.161(2), (3), or (4).

2970 18. Treason under s. 876.32.

2971 19. Any offense committed in another jurisdiction which

2972 would be an offense listed in this paragraph if that offense had

2973 been committed in this state.

2974 Section 51. Paragraph (c) of subsection (1) of section

2975 948.062, Florida Statutes, is amended to read:

2976 948.062 Reviewing and reporting serious offenses committed
 2977 by offenders placed on probation or community control.-

2978 (1) The department shall review the circumstances related
 2979 to an offender placed on probation or community control who has
 2980 been arrested while on supervision for the following offenses:

2981 (c) Any sexual performance by a child as provided in
 2982 former s. 827.071 or s. 847.003;

2983 Section 52. Subsection (2) of section 948.101, Florida
 2984 Statutes, is amended to read:

2985 948.101 Terms and conditions of community control.-

2986 (2) The enumeration of specific kinds of terms and
 2987 conditions does not prevent the court from adding any other
 2988 terms or conditions that the court considers proper. However,
 2989 the sentencing court may only impose a condition of supervision
 2990 allowing an offender convicted of s. 794.011, s. 800.04, former
 2991 s. 827.071, s. 847.003, s. 847.0135(5), 847.0137(2), or s.
 2992 847.0145 to reside in another state if the order stipulates that
 2993 it is contingent upon the approval of the receiving state
 2994 interstate compact authority. The court may rescind or modify at
 2995 any time the terms and conditions theretofore imposed by it upon
 2996 the offender in community control. However, if the court
 2997 withholds adjudication of guilt or imposes a period of
 2998 incarceration as a condition of community control, the period
 2999 may not exceed 364 days, and incarceration shall be restricted
 3000 to a county facility, a probation and restitution center under

3001 the jurisdiction of the Department of Corrections, or a
 3002 residential treatment facility owned or operated by any entity
 3003 providing such services.

3004 Section 53. Subsections (1) and (2), paragraphs (a) and
 3005 (c) of subsection (3), and subsection (5) of section 948.30,
 3006 Florida Statutes, are amended, and subsection (6) is added to
 3007 that section, to read:

3008 948.30 Additional terms and conditions of probation or
 3009 community control for certain sex offenses.—Conditions imposed
 3010 pursuant to this section do not require oral pronouncement at
 3011 the time of sentencing and shall be considered standard
 3012 conditions of probation or community control for offenders
 3013 specified in this section.

3014 (1) Effective for probationers or community controllees
 3015 whose crime was committed on or after October 1, 1995, and who
 3016 are placed under supervision for violation of chapter 794, s.
 3017 800.04, former s. 827.071, s. 847.0135(5), or s. 847.0145, the
 3018 court must impose the following conditions in addition to all
 3019 other standard and special conditions imposed:

3020 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court
 3021 may designate another 8-hour period if the offender's employment
 3022 precludes the above specified time, and the alternative is
 3023 recommended by the Department of Corrections. If the court
 3024 determines that imposing a curfew would endanger the victim, the
 3025 court may consider alternative sanctions.

3026 (b) If the victim was under the age of 18, a prohibition
3027 on living within 1,000 feet of a school, child care facility,
3028 park, playground, or other place where children regularly
3029 congregate, as prescribed by the court. The 1,000-foot distance
3030 shall be measured in a straight line from the offender's place
3031 of residence to the nearest boundary line of the school, child
3032 care facility, park, playground, or other place where children
3033 congregate. The distance may not be measured by a pedestrian
3034 route or automobile route. A probationer or community controllee
3035 who is subject to this paragraph may not be forced to relocate
3036 and does not violate his or her probation or community control
3037 if he or she is living in a residence that meets the
3038 requirements of this paragraph and a school, child care
3039 facility, park, playground, or other place where children
3040 regularly congregate is subsequently established within 1,000
3041 feet of his or her residence.

3042 (c) Active participation in and successful completion of a
3043 sex offender treatment program with qualified practitioners
3044 specifically trained to treat sex offenders, at the
3045 probationer's or community controllee's own expense. If a
3046 qualified practitioner is not available within a 50-mile radius
3047 of the probationer's or community controllee's residence, the
3048 offender shall participate in other appropriate therapy.

3049 (d) A prohibition on any contact with the victim, directly
3050 or indirectly, including through a third person, unless approved

3051 | by the victim, a qualified practitioner in the sexual offender
 3052 | treatment program, and the sentencing court.

3053 | (e) If the victim was under the age of 18, a prohibition
 3054 | on contact with a child under the age of 18 except as provided
 3055 | in this paragraph. The court may approve supervised contact with
 3056 | a child under the age of 18 if the approval is based upon a
 3057 | recommendation for contact issued by a qualified practitioner
 3058 | who is basing the recommendation on a risk assessment. Further,
 3059 | the sex offender must be currently enrolled in or have
 3060 | successfully completed a sex offender therapy program. The court
 3061 | may not grant supervised contact with a child if the contact is
 3062 | not recommended by a qualified practitioner and may deny
 3063 | supervised contact with a child at any time. When considering
 3064 | whether to approve supervised contact with a child, the court
 3065 | must review and consider the following:

3066 | 1. A risk assessment completed by a qualified
 3067 | practitioner. The qualified practitioner must prepare a written
 3068 | report that must include the findings of the assessment and
 3069 | address each of the following components:

- 3070 | a. The sex offender's current legal status;
- 3071 | b. The sex offender's history of adult charges with
 3072 | apparent sexual motivation;
- 3073 | c. The sex offender's history of adult charges without
 3074 | apparent sexual motivation;
- 3075 | d. The sex offender's history of juvenile charges,

3076 whenever available;

3077 e. The sex offender's offender treatment history,

3078 including consultations with the sex offender's treating, or

3079 most recent treating, therapist;

3080 f. The sex offender's current mental status;

3081 g. The sex offender's mental health and substance abuse

3082 treatment history as provided by the Department of Corrections;

3083 h. The sex offender's personal, social, educational, and

3084 work history;

3085 i. The results of current psychological testing of the sex

3086 offender if determined necessary by the qualified practitioner;

3087 j. A description of the proposed contact, including the

3088 location, frequency, duration, and supervisory arrangement;

3089 k. The child's preference and relative comfort level with

3090 the proposed contact, when age appropriate;

3091 l. The parent's or legal guardian's preference regarding

3092 the proposed contact; and

3093 m. The qualified practitioner's opinion, along with the

3094 basis for that opinion, as to whether the proposed contact would

3095 likely pose significant risk of emotional or physical harm to

3096 the child.

3097

3098 The written report of the assessment must be given to the court;

3099 2. A recommendation made as a part of the risk assessment

3100 report as to whether supervised contact with the child should be

3101 approved;

3102 3. A written consent signed by the child's parent or legal
 3103 guardian, if the parent or legal guardian is not the sex
 3104 offender, agreeing to the sex offender having supervised contact
 3105 with the child after receiving full disclosure of the sex
 3106 offender's present legal status, past criminal history, and the
 3107 results of the risk assessment. The court may not approve
 3108 contact with the child if the parent or legal guardian refuses
 3109 to give written consent for supervised contact;

3110 4. A safety plan prepared by the qualified practitioner,
 3111 who provides treatment to the offender, in collaboration with
 3112 the sex offender, the child's parent or legal guardian, if the
 3113 parent or legal guardian is not the sex offender, and the child,
 3114 when age appropriate, which details the acceptable conditions of
 3115 contact between the sex offender and the child. The safety plan
 3116 must be reviewed and approved by the court; and

3117 5. Evidence that the child's parent or legal guardian
 3118 understands the need for and agrees to the safety plan and has
 3119 agreed to provide, or to designate another adult to provide,
 3120 constant supervision any time the child is in contact with the
 3121 offender.

3122
 3123 The court may not appoint a person to conduct a risk assessment
 3124 and may not accept a risk assessment from a person who has not
 3125 demonstrated to the court that he or she has met the

3126 requirements of a qualified practitioner as defined in this
 3127 section.

3128 (f) If the victim was under age 18, a prohibition on
 3129 working for pay or as a volunteer at any place where children
 3130 regularly congregate, including, but not limited to, schools,
 3131 child care facilities, parks, playgrounds, pet stores,
 3132 libraries, zoos, theme parks, and malls.

3133 (g) Unless otherwise indicated in the treatment plan
 3134 provided by a qualified practitioner in the sexual offender
 3135 treatment program, a prohibition on viewing, accessing, owning,
 3136 or possessing any obscene, pornographic, or sexually stimulating
 3137 visual or auditory material, including telephone, electronic
 3138 media, computer programs, or computer services that are relevant
 3139 to the offender's deviant behavior pattern.

3140 (h) Effective for probationers and community controllees
 3141 whose crime is committed on or after July 1, 2005, a prohibition
 3142 on accessing the Internet or other computer services until a
 3143 qualified practitioner in the offender's sex offender treatment
 3144 program, after a risk assessment is completed, approves and
 3145 implements a safety plan for the offender's accessing or using
 3146 the Internet or other computer services.

3147 (i) A requirement that the probationer or community
 3148 controllee must submit a specimen of blood or other approved
 3149 biological specimen to the Department of Law Enforcement to be
 3150 registered with the DNA data bank.

3151 (j) A requirement that the probationer or community
 3152 controllee make restitution to the victim, as ordered by the
 3153 court under s. 775.089, for all necessary medical and related
 3154 professional services relating to physical, psychiatric, and
 3155 psychological care.

3156 (k) Submission to a warrantless search by the community
 3157 control or probation officer of the probationer's or community
 3158 controllee's person, residence, or vehicle.

3159 (2) Effective for a probationer or community controllee
 3160 whose crime was committed on or after October 1, 1997, and who
 3161 is placed on community control or sex offender probation for a
 3162 violation of chapter 794, s. 800.04, former s. 827.071, s.
 3163 847.0135(5), or s. 847.0145, in addition to any other provision
 3164 of this section, the court must impose the following conditions
 3165 of probation or community control:

3166 (a) As part of a treatment program, participation at least
 3167 annually in polygraph examinations to obtain information
 3168 necessary for risk management and treatment and to reduce the
 3169 sex offender's denial mechanisms. A polygraph examination must
 3170 be conducted by a polygrapher who is a member of a national or
 3171 state polygraph association and who is certified as a
 3172 postconviction sex offender polygrapher, where available, and
 3173 shall be paid for by the probationer or community controllee.
 3174 The results of the polygraph examination shall be provided to
 3175 the probationer's or community controllee's probation officer

3176 and qualified practitioner and shall not be used as evidence in
 3177 court to prove that a violation of community supervision has
 3178 occurred.

3179 (b) Maintenance of a driving log and a prohibition against
 3180 driving a motor vehicle alone without the prior approval of the
 3181 supervising officer.

3182 (c) A prohibition against obtaining or using a post office
 3183 box without the prior approval of the supervising officer.

3184 (d) If there was sexual contact, a submission to, at the
 3185 probationer's or community controllee's expense, an HIV test
 3186 with the results to be released to the victim or the victim's
 3187 parent or guardian.

3188 (e) Electronic monitoring when deemed necessary by the
 3189 community control or probation officer and his or her
 3190 supervisor, and ordered by the court at the recommendation of
 3191 the Department of Corrections.

3192 (3) Effective for a probationer or community controllee
 3193 whose crime was committed on or after September 1, 2005, and
 3194 who:

3195 (a) Is placed on probation or community control for a
 3196 violation of chapter 794, s. 800.04(4), (5), or (6), former s.
 3197 827.071, or s. 847.0145 and the unlawful sexual activity
 3198 involved a victim 15 years of age or younger and the offender is
 3199 18 years of age or older;

3200 (c) Has previously been convicted of a violation of

3201 chapter 794, s. 800.04(4), (5), or (6), former s. 827.071, or s.
3202 847.0145 and the unlawful sexual activity involved a victim 15
3203 years of age or younger and the offender is 18 years of age or
3204 older,

3205
3206 the court must order, in addition to any other provision of this
3207 section, mandatory electronic monitoring as a condition of the
3208 probation or community control supervision.

3209 (5) Effective for a probationer or community controllee
3210 whose crime was committed on or after October 1, 2014, and who
3211 is placed on probation or community control for a violation of
3212 chapter 794, s. 800.04, former s. 827.071, s. 847.0135(5), or s.
3213 847.0145, in addition to all other conditions imposed, the court
3214 must impose a condition prohibiting the probationer or community
3215 controllee from viewing, accessing, owning, or possessing any
3216 obscene, pornographic, or sexually stimulating visual or
3217 auditory material unless otherwise indicated in the treatment
3218 plan provided by a qualified practitioner in the sexual offender
3219 treatment program. Visual or auditory material includes, but is
3220 not limited to, telephone, electronic media, computer programs,
3221 and computer services.

3222 (6) Effective for a probationer or community controllee
3223 whose crime was committed on or after October 1, 2018, and who
3224 is placed under supervision for violation of s. 847.003 or s.
3225 847.0137(2), the court must impose the conditions specified in

3226 subsections (1)-(5) in addition to all other standard and
 3227 special conditions imposed.

3228 Section 54. Subsection (1) of section 948.32, Florida
 3229 Statutes, is amended to read:

3230 948.32 Requirements of law enforcement agency upon arrest
 3231 of persons for certain sex offenses.—

3232 (1) When any state or local law enforcement agency
 3233 investigates or arrests a person for committing, or attempting,
 3234 soliciting, or conspiring to commit, a violation of s.
 3235 787.025(2)(c), s. 787.06(3)(g), chapter 794, former s. 796.03,
 3236 s. 800.04, former s. 827.071, s. 847.003, s. 847.0133, s.
 3237 847.0135, 847.0137(2), or s. 847.0145, the law enforcement
 3238 agency shall contact the Department of Corrections to verify
 3239 whether the person under investigation or under arrest is on
 3240 probation, community control, parole, conditional release, or
 3241 control release.

3242 Section 55. Paragraph (e) of subsection (3) and subsection
 3243 (10) of section 960.03, Florida Statutes, are amended to read:

3244 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
 3245 960.01-960.28, unless the context otherwise requires, the term:

3246 (3) "Crime" means:

3247 (e) A violation of former s. 827.071, s. 847.003, s.
 3248 847.0135, s. 847.0137, or s. 847.0138, related to online sexual
 3249 exploitation and child pornography.

3250 (10) "Identified victim of child pornography" means any

3251 person who, while under the age of 18, is depicted in any visual
 3252 depiction ~~image or movie~~ of child pornography, as defined in s.
 3253 847.0137, and who is identified through a report generated by a
 3254 law enforcement agency and provided to the National Center for
 3255 Missing and Exploited Children's Child Victim Identification
 3256 Program.

3257 Section 56. Section 960.197, Florida Statutes, is amended
 3258 to read:

3259 960.197 Assistance to victims of online sexual
 3260 exploitation and child pornography.—

3261 (1) Notwithstanding the criteria set forth in s. 960.13
 3262 for crime victim compensation awards, the department may award
 3263 compensation for counseling and other mental health services to
 3264 treat psychological injury or trauma to:

3265 (a) A child younger than 18 years of age who suffers
 3266 psychiatric or psychological injury as a direct result of online
 3267 sexual exploitation under former ~~any provision of~~ s. 827.071, s.
 3268 847.003, s. 847.0135, s. 847.0137, or s. 847.0138~~7~~, and who does
 3269 not otherwise sustain a personal injury or death; or

3270 (b) Any person who, while younger than age 18, was
 3271 depicted in any visual depiction ~~image or movie, regardless of~~
 3272 ~~length,~~ of child pornography as defined in s. 847.0137 ~~847.001,~~
 3273 who has been identified by a law enforcement agency or the
 3274 National Center for Missing and Exploited Children as an
 3275 identified victim of child pornography, who suffers psychiatric

3276 or psychological injury as a direct result of the crime, and who
 3277 does not otherwise sustain a personal injury or death.

3278 (2) Compensation under this section is not contingent upon
 3279 pursuit of a criminal investigation or prosecution.

3280 Section 57. Paragraph (d) of subsection (4) of section
 3281 985.04, Florida Statutes, is amended to read:

3282 985.04 Oaths; records; confidential information.—

3283 (4)

3284 (d) The department shall disclose to the school
 3285 superintendent the presence of any child in the care and custody
 3286 or under the jurisdiction or supervision of the department who
 3287 has a known history of criminal sexual behavior with other
 3288 juveniles; is alleged to have committed juvenile sexual abuse as
 3289 defined in s. 39.01; or has pled guilty or nolo contendere to,
 3290 or has been found to have committed, a violation of chapter 794,
 3291 chapter 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s.
 3292 847.0133, s. 847.0135(5), or s. 847.0137, regardless of
 3293 adjudication. Any employee of a district school board who
 3294 knowingly and willfully discloses such information to an
 3295 unauthorized person commits a misdemeanor of the second degree,
 3296 punishable as provided in s. 775.082 or s. 775.083.

3297 Section 58. Paragraph (a) of subsection (1) of section
 3298 985.475, Florida Statutes, is amended to read:

3299 985.475 Juvenile sexual offenders.—

3300 (1) CRITERIA.—A "juvenile sexual offender" means:

3301 (a) A juvenile who has been found by the court under s.
 3302 985.35 to have committed a violation of chapter 794, chapter
 3303 796, chapter 800, former s. 827.071, s. 847.003, ~~or~~ s. 847.0133,
 3304 or s. 847.0137(2);

3305 Section 59. Paragraphs (mm) and (oo) of subsection (1) of
 3306 section 1012.315, Florida Statutes, are amended to read:

3307 1012.315 Disqualification from employment.—A person is
 3308 ineligible for educator certification, and instructional
 3309 personnel and school administrators, as defined in s. 1012.01,
 3310 are ineligible for employment in any position that requires
 3311 direct contact with students in a district school system,
 3312 charter school, or private school that accepts scholarship
 3313 students under s. 1002.39 or s. 1002.395, if the person,
 3314 instructional personnel, or school administrator has been
 3315 convicted of:

3316 (1) Any felony offense prohibited under any of the
 3317 following statutes:

3318 (mm) Former s. Section 827.071, relating to sexual
 3319 performance by a child.

3320 (oo) Chapter 847, relating to obscenity and child
 3321 exploitation.

3322 Section 60. Paragraphs (e), (f), and (h) of subsection (3)
 3323 of section 921.0022, Florida Statutes, are amended to read:

3324 921.0022 Criminal Punishment Code; offense severity
 3325 ranking chart.—

3326	(3)	OFFENSE SEVERITY RANKING CHART	
3327	(e)	LEVEL 5	
3328			
	Florida	Felony	
	Statute	Degree	Description
3329			
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
3330			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
3331			
	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
3332			
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
3333			
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
3334			
	379.365(2)(c)1.	3rd	Violation of rules relating to:

willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

3335

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

3336

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

3337

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

3338	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
3339	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
3340	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
3341	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
3342	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
3343	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
	790.01(2)	3rd	Carrying a concealed firearm.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

3344	790.162	2nd	Threat to throw or discharge destructive device.
3345	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
3346	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
3347	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
3348	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
3349	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
3350	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or

PCB CRJ 18-01

ORIGINAL

2018

3351			older.
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
3352			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
3353			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
3354			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
3355			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
3356			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
3357			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.

PCB CRJ 18-01

ORIGINAL

2018

3358	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
3359	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
3360	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 persons.
3361	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

PCB CRJ 18-01

ORIGINAL

2018

3362	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
3363	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
3364	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
3365	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
3366	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or

PCB CRJ 18-01

ORIGINAL

2018

3367	843.01	3rd	death. Resist officer with violence to person; resist arrest with violence.
3368	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
3369	<u>847.0137 (2) (a)</u>	<u>2nd</u>	<u>Possess child pornography with intent to promote.</u>
3370	<u>847.0137 (2) (b)</u>	<u>3rd</u>	<u>Possess, control, or intentionally view child pornography.</u>
3371	<u>847.0137 (3)</u> 847.0137 (2) & (3)	3rd	Transmission of <u>child</u> pornography by electronic device or equipment.
3372	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
3373			

PCB CRJ 18-01

ORIGINAL

2018

3374	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
3375	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
3376	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).
3376	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

3377	893.13(1)(d)1.	1st	recreational facility or community center.
3378	893.13(1)(e)2.	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) within 1,000 feet of university.
3379	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cannabis or other drug prohibited under 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) within 1,000 feet of property used for religious services or a specified business site.
	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.

PCB CRJ 18-01

ORIGINAL

2018

3380			drugs) within 1,000 feet of public housing facility.
	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
3381			
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
3382			
3383	(f) LEVEL 6		
3384			
	Florida Statute	Felony Degree	Description
3385			
	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
3386			
	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
3387			
	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure,

PCB CRJ 18-01

ORIGINAL

2018

3388			without a license.
	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
3389			
	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
3390			
	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
3391			
	775.0875(1)	3rd	Taking firearm from law enforcement officer.
3392			
	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
3393			
	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
3394			
	784.041	3rd	Felony battery; domestic

PCB CRJ 18-01

ORIGINAL

2018

3395			battery by strangulation.
	784.048 (3)	3rd	Aggravated stalking; credible threat.
3396			
	784.048 (5)	3rd	Aggravated stalking of person under 16.
3397			
	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
3398			
	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
3399			
	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
3400			
	784.081 (2)	2nd	Aggravated assault on specified official or employee.
3401			
	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
3402			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

3403	784.083(2)	2nd	Aggravated assault on code inspector.
3404	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
3405	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
3406	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
3407	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

PCB CRJ 18-01

ORIGINAL

2018

3408	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
3409	794.05(1)	2nd	Unlawful sexual activity with specified minor.
3410	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
3411	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
3412	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
3413	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
3414	810.145(8)(b)	2nd	Video voyeurism; certain minor

PCB CRJ 18-01

ORIGINAL

2018

			victims; 2nd or subsequent offense.
3415	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
3416	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
3417	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
3418	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
3419	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
3420	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

PCB CRJ 18-01

ORIGINAL

2018

3421	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
3422	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
3423	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
3424	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
3425	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
3426	827.03(2)(c)	3rd	Abuse of a child.
3427	827.03(2)(d)	3rd	Neglect of a child.
3428	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.

PCB CRJ 18-01

ORIGINAL

2018

3429	836.05	2nd	Threats; extortion.
3430	836.10	2nd	Written threats to kill or do bodily injury.
3431	843.12	3rd	Aids or assists person to escape.
3432	<u>847.003</u>	<u>2nd</u>	<u>Use or induce a child in a sexual performance, or promote or direct such performance.</u>
3433	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
3434	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
3435	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

3436	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
3437	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
3438	944.40	2nd	Escapes.
3439	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
3440	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
3441	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
3442			

PCB CRJ 18-01

ORIGINAL

2018

3443	(h) LEVEL 8		
3444			
	Florida	Felony	
	Statute	Degree	Description
3445	316.193	2nd	DUI manslaughter.
	(3) (c) 3.a.		
3446	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
3447	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
3448	499.0051 (6)	1st	Knowing trafficking in contraband prescription drugs.
3449	499.0051 (7)	1st	Knowing forgery of prescription labels or prescription drug labels.
3450	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money

3451	560.125(5)(b)	2nd	transmitter. Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
3452	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
3453	777.03(2)(a)	1st	Accessory after the fact, capital felony.
3454	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or

PCB CRJ 18-01

ORIGINAL

2018

3455	782.051(2)	1st	unlawfully discharging bomb. Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
3456	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
3457	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
3458	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
3459	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
3460	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.

3461 | 787.06(3)(e)1. | 1st | Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.

3462 | 787.06(3)(f)2. | 1st | Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.

3463 | 790.161(3) | 1st | Discharging a destructive device which results in bodily harm or property damage.

3464 | 794.011(5)(a) | 1st | Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.

3465

PCB CRJ 18-01

ORIGINAL

2018

3466	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
3467	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
3468	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
3469	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
	800.04(4)(b)	2nd	Lewd or lascivious battery.

PCB CRJ 18-01

ORIGINAL

2018

3470	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
3471	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
3472	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
3473	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
3474	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
3475	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
3476			

PCB CRJ 18-01

ORIGINAL

2018

3477	812.13(2)(b)	1st	Robbery with a weapon.
3478	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
3479	817.505(4)(c)	1st	Patient brokering; 20 or more patients.
3480	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
3481	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
3482	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of

PCB CRJ 18-01

ORIGINAL

2018

3483			the property incurs financial loss as a result of the false instrument.
	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
3484			
	817.611 (2) (c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
3485			
	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
3486			
	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
3487			
	825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
3488			
	837.02 (2)	2nd	Perjury in official proceedings

PCB CRJ 18-01

ORIGINAL

2018

3489			relating to prosecution of a capital felony.
	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
3490	<u>847.0135(3)</u>	<u>2nd</u>	<u>Solicitation of a child, via a computer service, to commit an unlawful sex act while misrepresenting one's age.</u>
3491	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
3492	860.16	1st	Aircraft piracy.
3493	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
3494			

PCB CRJ 18-01

ORIGINAL

2018

3495	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
3496	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
3497	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
3498	893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
3499	893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
3500	893.135(1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
	893.135	1st	Trafficking in oxycodone, 25

PCB CRJ 18-01

ORIGINAL

2018

3501	(1) (c) 3.c.		grams or more, less than 100 grams.
	893.135	1st	Trafficking in fentanyl, 14 grams or more, less than 28 grams.
3502	(1) (c) 4.b. (II)		
	893.135	1st	Trafficking in phencyclidine, 200 grams or more, less than 400 grams.
3503	(1) (d) 1.b.		
	893.135	1st	Trafficking in methaqualone, 5 kilograms or more, less than 25 kilograms.
3504	(1) (e) 1.b.		
	893.135	1st	Trafficking in amphetamine, 28 grams or more, less than 200 grams.
3505	(1) (f) 1.b.		
	893.135	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
3506	(1) (g) 1.b.		
	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5
	(1) (h) 1.b.		

PCB CRJ 18-01

ORIGINAL

2018

			kilograms or more, less than 10 kilograms.
3507	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
3508	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
3509	893.135 (1) (m) 2.c.	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.
3510	893.135 (1) (n) 2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
3511	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
3512	895.03 (1)	1st	Use or invest proceeds derived

PCB CRJ 18-01

ORIGINAL

2018

3513			from pattern of racketeering activity.
	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
3514			
	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
3515			
	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
3516			
	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
3517			
3518	Section 61.		<u>The Division of Law Revision and Information</u>

3519 is directed to rename chapter 847, Florida Statutes, as
 3520 "Obscenity; Child Exploitation."

3521 Section 62. For the purpose of incorporating the amendment
 3522 made by this act to section 39.0139, Florida Statutes, in a
 3523 reference thereto, paragraph (a) of subsection (9) of section
 3524 39.402, Florida Statutes, is reenacted to read:

3525 39.402 Placement in a shelter.—

3526 (9)(a) At any shelter hearing, the department shall
 3527 provide to the court a recommendation for scheduled contact
 3528 between the child and parents, if appropriate. The court shall
 3529 determine visitation rights absent a clear and convincing
 3530 showing that visitation is not in the best interest of the
 3531 child. Any order for visitation or other contact must conform to
 3532 s. 39.0139. If visitation is ordered but will not commence
 3533 within 72 hours of the shelter hearing, the department shall
 3534 provide justification to the court.

3535 Section 63. For the purpose of incorporating the amendment
 3536 made by this act to section 39.0139, Florida Statutes, in a
 3537 reference thereto, subsection (6) of section 39.506, Florida
 3538 Statutes, is reenacted to read:

3539 39.506 Arraignment hearings.—

3540 (6) At any arraignment hearing, if the child is in an out-
 3541 of-home placement, the court shall order visitation rights
 3542 absent a clear and convincing showing that visitation is not in
 3543 the best interest of the child. Any order for visitation or

3544 other contact must conform to the provisions of s. 39.0139.

3545 Section 64. For the purpose of incorporating the amendment
 3546 made by this act to section 775.21, Florida Statutes, in a
 3547 reference thereto, paragraph (b) of subsection (6) of section
 3548 39.509, Florida Statutes, is reenacted to read:

3549 39.509 Grandparents rights.—Notwithstanding any other
 3550 provision of law, a maternal or paternal grandparent as well as
 3551 a stepgrandparent is entitled to reasonable visitation with his
 3552 or her grandchild who has been adjudicated a dependent child and
 3553 taken from the physical custody of the parent unless the court
 3554 finds that such visitation is not in the best interest of the
 3555 child or that such visitation would interfere with the goals of
 3556 the case plan. Reasonable visitation may be unsupervised and,
 3557 where appropriate and feasible, may be frequent and continuing.
 3558 Any order for visitation or other contact must conform to the
 3559 provisions of s. 39.0139.

3560 (6) In determining whether grandparental visitation is not
 3561 in the child's best interest, consideration may be given to the
 3562 following:

3563 (b) The designation by a court as a sexual predator as
 3564 defined in s. 775.21 or a substantially similar designation
 3565 under laws of another jurisdiction.

3566 Section 65. For the purpose of incorporating the amendment
 3567 made by this act to section 39.0139, Florida Statutes, in a
 3568 reference thereto, paragraph (d) of subsection (3) of section

3569 | 39.521, Florida Statutes, is reenacted to read:

3570 | 39.521 Disposition hearings; powers of disposition.—

3571 | (3) When any child is adjudicated by a court to be
3572 | dependent, the court shall determine the appropriate placement
3573 | for the child as follows:

3574 | (d) If the child cannot be safely placed in a nonlicensed
3575 | placement, the court shall commit the child to the temporary
3576 | legal custody of the department. Such commitment invests in the
3577 | department all rights and responsibilities of a legal custodian.
3578 | The department shall not return any child to the physical care
3579 | and custody of the person from whom the child was removed,
3580 | except for court-approved visitation periods, without the
3581 | approval of the court. Any order for visitation or other contact
3582 | must conform to the provisions of s. 39.0139. The term of such
3583 | commitment continues until terminated by the court or until the
3584 | child reaches the age of 18. After the child is committed to the
3585 | temporary legal custody of the department, all further
3586 | proceedings under this section are governed by this chapter.

3587 |
3588 | Protective supervision continues until the court terminates it
3589 | or until the child reaches the age of 18, whichever date is
3590 | first. Protective supervision shall be terminated by the court
3591 | whenever the court determines that permanency has been achieved
3592 | for the child, whether with a parent, another relative, or a
3593 | legal custodian, and that protective supervision is no longer

3594 needed. The termination of supervision may be with or without
 3595 retaining jurisdiction, at the court's discretion, and shall in
 3596 either case be considered a permanency option for the child. The
 3597 order terminating supervision by the department shall set forth
 3598 the powers of the custodian of the child and shall include the
 3599 powers ordinarily granted to a guardian of the person of a minor
 3600 unless otherwise specified. Upon the court's termination of
 3601 supervision by the department, no further judicial reviews are
 3602 required, so long as permanency has been established for the
 3603 child.

3604 Section 66. For the purpose of incorporating the amendment
 3605 made by this act to section 775.21, Florida Statutes, in
 3606 references thereto, paragraphs (d) and (n) of subsection (1) of
 3607 section 39.806, Florida Statutes, are reenacted to read:

3608 39.806 Grounds for termination of parental rights.—

3609 (1) Grounds for the termination of parental rights may be
 3610 established under any of the following circumstances:

3611 (d) When the parent of a child is incarcerated and either:

3612 1. The period of time for which the parent is expected to
 3613 be incarcerated will constitute a significant portion of the
 3614 child's minority. When determining whether the period of time is
 3615 significant, the court shall consider the child's age and the
 3616 child's need for a permanent and stable home. The period of time
 3617 begins on the date that the parent enters into incarceration;

3618 2. The incarcerated parent has been determined by the

3619 court to be a violent career criminal as defined in s. 775.084,
 3620 a habitual violent felony offender as defined in s. 775.084, or
 3621 a sexual predator as defined in s. 775.21; has been convicted of
 3622 first degree or second degree murder in violation of s. 782.04
 3623 or a sexual battery that constitutes a capital, life, or first
 3624 degree felony violation of s. 794.011; or has been convicted of
 3625 an offense in another jurisdiction which is substantially
 3626 similar to one of the offenses listed in this paragraph. As used
 3627 in this section, the term "substantially similar offense" means
 3628 any offense that is substantially similar in elements and
 3629 penalties to one of those listed in this subparagraph, and that
 3630 is in violation of a law of any other jurisdiction, whether that
 3631 of another state, the District of Columbia, the United States or
 3632 any possession or territory thereof, or any foreign
 3633 jurisdiction; or

3634 3. The court determines by clear and convincing evidence
 3635 that continuing the parental relationship with the incarcerated
 3636 parent would be harmful to the child and, for this reason, that
 3637 termination of the parental rights of the incarcerated parent is
 3638 in the best interest of the child. When determining harm, the
 3639 court shall consider the following factors:

- 3640 a. The age of the child.
- 3641 b. The relationship between the child and the parent.
- 3642 c. The nature of the parent's current and past provision
- 3643 for the child's developmental, cognitive, psychological, and

3644 physical needs.

3645 d. The parent's history of criminal behavior, which may
 3646 include the frequency of incarceration and the unavailability of
 3647 the parent to the child due to incarceration.

3648 e. Any other factor the court deems relevant.

3649 (n) The parent is convicted of an offense that requires
 3650 the parent to register as a sexual predator under s. 775.21.

3651 Section 67. For the purpose of incorporating the amendment
 3652 made by this act to section 775.21, Florida Statutes, in a
 3653 reference thereto, paragraph (b) of subsection (4) of section
 3654 63.089, Florida Statutes, is reenacted to read:

3655 63.089 Proceeding to terminate parental rights pending
 3656 adoption; hearing; grounds; dismissal of petition; judgment.—

3657 (4) FINDING OF ABANDONMENT.—A finding of abandonment
 3658 resulting in a termination of parental rights must be based upon
 3659 clear and convincing evidence that a parent or person having
 3660 legal custody has abandoned the child in accordance with the
 3661 definition contained in s. 63.032. A finding of abandonment may
 3662 also be based upon emotional abuse or a refusal to provide
 3663 reasonable financial support, when able, to a birth mother
 3664 during her pregnancy or on whether the person alleged to have
 3665 abandoned the child, while being able, failed to establish
 3666 contact with the child or accept responsibility for the child's
 3667 welfare.

3668 (b) The child has been abandoned when the parent of a

3669 child is incarcerated on or after October 1, 2001, in a federal,
 3670 state, or county correctional institution and:

3671 1. The period of time for which the parent has been or is
 3672 expected to be incarcerated will constitute a significant
 3673 portion of the child's minority. In determining whether the
 3674 period of time is significant, the court shall consider the
 3675 child's age and the child's need for a permanent and stable
 3676 home. The period of time begins on the date that the parent
 3677 enters into incarceration;

3678 2. The incarcerated parent has been determined by a court
 3679 of competent jurisdiction to be a violent career criminal as
 3680 defined in s. 775.084, a habitual violent felony offender as
 3681 defined in s. 775.084, convicted of child abuse as defined in s.
 3682 827.03, or a sexual predator as defined in s. 775.21; has been
 3683 convicted of first degree or second degree murder in violation
 3684 of s. 782.04 or a sexual battery that constitutes a capital,
 3685 life, or first degree felony violation of s. 794.011; or has
 3686 been convicted of a substantially similar offense in another
 3687 jurisdiction. As used in this section, the term "substantially
 3688 similar offense" means any offense that is substantially similar
 3689 in elements and penalties to one of those listed in this
 3690 subparagraph, and that is in violation of a law of any other
 3691 jurisdiction, whether that of another state, the District of
 3692 Columbia, the United States or any possession or territory
 3693 thereof, or any foreign jurisdiction; or

3694 3. The court determines by clear and convincing evidence
 3695 that continuing the parental relationship with the incarcerated
 3696 parent would be harmful to the child and, for this reason,
 3697 termination of the parental rights of the incarcerated parent is
 3698 in the best interests of the child.

3699 Section 68. For the purpose of incorporating the amendment
 3700 made by this act to section 775.21, Florida Statutes, in a
 3701 reference thereto, subsection (3) of section 63.092, Florida
 3702 Statutes, is reenacted to read:

3703 63.092 Report to the court of intended placement by an
 3704 adoption entity; at-risk placement; preliminary study.-

3705 (3) PRELIMINARY HOME STUDY.-Before placing the minor in
 3706 the intended adoptive home, a preliminary home study must be
 3707 performed by a licensed child-placing agency, a child-caring
 3708 agency registered under s. 409.176, a licensed professional, or
 3709 an agency described in s. 61.20(2), unless the adoptee is an
 3710 adult or the petitioner is a stepparent or a relative. If the
 3711 adoptee is an adult or the petitioner is a stepparent or a
 3712 relative, a preliminary home study may be required by the court
 3713 for good cause shown. The department is required to perform the
 3714 preliminary home study only if there is no licensed child-
 3715 placing agency, child-caring agency registered under s. 409.176,
 3716 licensed professional, or agency described in s. 61.20(2), in
 3717 the county where the prospective adoptive parents reside. The
 3718 preliminary home study must be made to determine the suitability

3719 of the intended adoptive parents and may be completed prior to
 3720 identification of a prospective adoptive minor. A favorable
 3721 preliminary home study is valid for 1 year after the date of its
 3722 completion. Upon its completion, a signed copy of the home study
 3723 must be provided to the intended adoptive parents who were the
 3724 subject of the home study. A minor may not be placed in an
 3725 intended adoptive home before a favorable preliminary home study
 3726 is completed unless the adoptive home is also a licensed foster
 3727 home under s. 409.175. The preliminary home study must include,
 3728 at a minimum:

- 3729 (a) An interview with the intended adoptive parents;
- 3730 (b) Records checks of the department's central abuse
 3731 registry and criminal records correspondence checks under s.
 3732 39.0138 through the Department of Law Enforcement on the
 3733 intended adoptive parents;
- 3734 (c) An assessment of the physical environment of the home;
- 3735 (d) A determination of the financial security of the
 3736 intended adoptive parents;
- 3737 (e) Documentation of counseling and education of the
 3738 intended adoptive parents on adoptive parenting;
- 3739 (f) Documentation that information on adoption and the
 3740 adoption process has been provided to the intended adoptive
 3741 parents;
- 3742 (g) Documentation that information on support services
 3743 available in the community has been provided to the intended

3744 adoptive parents; and

3745 (h) A copy of each signed acknowledgment of receipt of
 3746 disclosure required by s. 63.085.

3747

3748 If the preliminary home study is favorable, a minor may be
 3749 placed in the home pending entry of the judgment of adoption. A
 3750 minor may not be placed in the home if the preliminary home
 3751 study is unfavorable. If the preliminary home study is
 3752 unfavorable, the adoption entity may, within 20 days after
 3753 receipt of a copy of the written recommendation, petition the
 3754 court to determine the suitability of the intended adoptive
 3755 home. A determination as to suitability under this subsection
 3756 does not act as a presumption of suitability at the final
 3757 hearing. In determining the suitability of the intended adoptive
 3758 home, the court must consider the totality of the circumstances
 3759 in the home. A minor may not be placed in a home in which there
 3760 resides any person determined by the court to be a sexual
 3761 predator as defined in s. 775.21 or to have been convicted of an
 3762 offense listed in s. 63.089(4)(b)2.

3763 Section 69. For the purpose of incorporating the
 3764 amendments made by this act to sections 775.21 and 943.0435,
 3765 Florida Statutes, in references thereto, paragraph (i) of
 3766 subsection (3) and subsection (6) of section 68.07, Florida
 3767 Statutes, are reenacted to read:

3768 68.07 Change of name.—

3769 (3) Each petition shall be verified and show:
 3770 (i) Whether the petitioner has ever been required to
 3771 register as a sexual predator under s. 775.21 or as a sexual
 3772 offender under s. 943.0435.
 3773 (6) The clerk of the court must, within 5 business days
 3774 after the filing of the final judgment, send a report of the
 3775 judgment to the Department of Law Enforcement on a form to be
 3776 furnished by that department. If the petitioner is required to
 3777 register as a sexual predator or a sexual offender pursuant to
 3778 s. 775.21 or s. 943.0435, the clerk of court shall
 3779 electronically notify the Department of Law Enforcement of the
 3780 name change, in a manner prescribed by that department, within 2
 3781 business days after the filing of the final judgment. The
 3782 Department of Law Enforcement must send a copy of the report to
 3783 the Department of Highway Safety and Motor Vehicles, which may
 3784 be delivered by electronic transmission. The report must contain
 3785 sufficient information to identify the petitioner, including the
 3786 results of the criminal history records check if applicable, the
 3787 new name of the petitioner, and the file number of the judgment.
 3788 The Department of Highway Safety and Motor Vehicles shall
 3789 monitor the records of any sexual predator or sexual offender
 3790 whose name has been provided to it by the Department of Law
 3791 Enforcement. If the sexual predator or sexual offender does not
 3792 obtain a replacement driver license or identification card
 3793 within the required time as specified in s. 775.21 or s.

3794 943.0435, the Department of Highway Safety and Motor Vehicles
 3795 shall notify the Department of Law Enforcement. The Department
 3796 of Law Enforcement shall notify applicable law enforcement
 3797 agencies of the predator's or offender's failure to comply with
 3798 registration requirements. Any information retained by the
 3799 Department of Law Enforcement and the Department of Highway
 3800 Safety and Motor Vehicles may be revised or supplemented by said
 3801 departments to reflect changes made by the final judgment. With
 3802 respect to a person convicted of a felony in another state or of
 3803 a federal offense, the Department of Law Enforcement must send
 3804 the report to the respective state's office of law enforcement
 3805 records or to the office of the Federal Bureau of Investigation.
 3806 The Department of Law Enforcement may forward the report to any
 3807 other law enforcement agency it believes may retain information
 3808 related to the petitioner.

3809 Section 70. For the purpose of incorporating the
 3810 amendments made by this act to sections 775.21 and 943.0435,
 3811 Florida Statutes, in references thereto, paragraph (b) of
 3812 subsection (1) of section 92.55, Florida Statutes, is reenacted
 3813 to read:

3814 92.55 Judicial or other proceedings involving victim or
 3815 witness under the age of 18, a person who has an intellectual
 3816 disability, or a sexual offense victim or witness; special
 3817 protections; use of therapy animals or facility dogs.—

3818 (1) For purposes of this section, the term:

3819 (b) "Sexual offense" means any offense specified in s.
 3820 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

3821 Section 71. For the purpose of incorporating the amendment
 3822 made by this act to section 16.56, Florida Statutes, in a
 3823 reference thereto, paragraph (b) of subsection (1) of section
 3824 92.605, Florida Statutes, is reenacted to read:

3825 92.605 Production of certain records by Florida businesses
 3826 and out-of-state corporations.—

3827 (1) For the purposes of this section, the term:

3828 (b) "Applicant" means a law enforcement officer who is
 3829 seeking a court order or subpoena under s. 16.56, s. 27.04, s.
 3830 905.185, or s. 914.04 or who is issued a search warrant under s.
 3831 933.01, or anyone who is authorized to issue a subpoena under
 3832 the Florida Rules of Criminal Procedure.

3833 Section 72. For the purpose of incorporating the
 3834 amendments made by this act to sections 775.21, 943.0435, and
 3835 944.607, Florida Statutes, in references thereto, subsection (3)
 3836 of section 322.141, Florida Statutes, is reenacted to read:

3837 322.141 Color or markings of certain licenses or
 3838 identification cards.—

3839 (3) All licenses for the operation of motor vehicles or
 3840 identification cards originally issued or reissued by the
 3841 department to persons who are designated as sexual predators
 3842 under s. 775.21 or subject to registration as sexual offenders
 3843 under s. 943.0435 or s. 944.607, or who have a similar

3844 designation or are subject to a similar registration under the
 3845 laws of another jurisdiction, shall have on the front of the
 3846 license or identification card the following:

3847 (a) For a person designated as a sexual predator under s.
 3848 775.21 or who has a similar designation under the laws of
 3849 another jurisdiction, the marking "SEXUAL PREDATOR."

3850 (b) For a person subject to registration as a sexual
 3851 offender under s. 943.0435 or s. 944.607, or subject to a
 3852 similar registration under the laws of another jurisdiction, the
 3853 marking "943.0435, F.S."

3854 Section 73. For the purpose of incorporating the amendment
 3855 made by this act to section 775.0877, Florida Statutes, in a
 3856 reference thereto, paragraph (h) of subsection (2) of section
 3857 381.004, Florida Statutes, is reenacted to read:

3858 381.004 HIV testing.—

3859 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
 3860 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

3861 (h) Paragraph (a) does not apply:

3862 1. When testing for sexually transmissible diseases is
 3863 required by state or federal law, or by rule, including the
 3864 following situations:

3865 a. HIV testing pursuant to s. 796.08 of persons convicted
 3866 of prostitution or of procuring another to commit prostitution.

3867 b. HIV testing of inmates pursuant to s. 945.355 before
 3868 their release from prison by reason of parole, accumulation of

3869 gain-time credits, or expiration of sentence.
 3870 c. Testing for HIV by a medical examiner in accordance
 3871 with s. 406.11.
 3872 d. HIV testing of pregnant women pursuant to s. 384.31.
 3873 2. To those exceptions provided for blood, plasma, organs,
 3874 skin, semen, or other human tissue pursuant to s. 381.0041.
 3875 3. For the performance of an HIV-related test by licensed
 3876 medical personnel in bona fide medical emergencies if the test
 3877 results are necessary for medical diagnostic purposes to provide
 3878 appropriate emergency care or treatment to the person being
 3879 tested and the patient is unable to consent, as supported by
 3880 documentation in the medical record. Notification of test
 3881 results in accordance with paragraph (c) is required.
 3882 4. For the performance of an HIV-related test by licensed
 3883 medical personnel for medical diagnosis of acute illness where,
 3884 in the opinion of the attending physician, providing
 3885 notification would be detrimental to the patient, as supported
 3886 by documentation in the medical record, and the test results are
 3887 necessary for medical diagnostic purposes to provide appropriate
 3888 care or treatment to the person being tested. Notification of
 3889 test results in accordance with paragraph (c) is required if it
 3890 would not be detrimental to the patient. This subparagraph does
 3891 not authorize the routine testing of patients for HIV infection
 3892 without notification.
 3893 5. If HIV testing is performed as part of an autopsy for

3894 | which consent was obtained pursuant to s. 872.04.

3895 | 6. For the performance of an HIV test upon a defendant
 3896 | pursuant to the victim's request in a prosecution for any type
 3897 | of sexual battery where a blood sample is taken from the
 3898 | defendant voluntarily, pursuant to court order for any purpose,
 3899 | or pursuant to s. 775.0877, s. 951.27, or s. 960.003; however,
 3900 | the results of an HIV test performed shall be disclosed solely
 3901 | to the victim and the defendant, except as provided in ss.
 3902 | 775.0877, 951.27, and 960.003.

3903 | 7. If an HIV test is mandated by court order.

3904 | 8. For epidemiological research pursuant to s. 381.0031,
 3905 | for research consistent with institutional review boards created
 3906 | by 45 C.F.R. part 46, or for the performance of an HIV-related
 3907 | test for the purpose of research, if the testing is performed in
 3908 | a manner by which the identity of the test subject is not known
 3909 | and may not be retrieved by the researcher.

3910 | 9. If human tissue is collected lawfully without the
 3911 | consent of the donor for corneal removal as authorized by s.
 3912 | 765.5185 or enucleation of the eyes as authorized by s. 765.519.

3913 | 10. For the performance of an HIV test upon an individual
 3914 | who comes into contact with medical personnel in such a way that
 3915 | a significant exposure has occurred during the course of
 3916 | employment, within the scope of practice, or during the course
 3917 | of providing emergency medical assistance to the individual. The
 3918 | term "medical personnel" includes a licensed or certified health

3919 care professional; an employee of a health care professional or
 3920 health care facility; employees of a laboratory licensed under
 3921 chapter 483; personnel of a blood bank or plasma center; a
 3922 medical student or other student who is receiving training as a
 3923 health care professional at a health care facility; and a
 3924 paramedic or emergency medical technician certified by the
 3925 department to perform life-support procedures under s. 401.23.

3926 a. The occurrence of a significant exposure shall be
 3927 documented by medical personnel under the supervision of a
 3928 licensed physician and recorded only in the personnel record of
 3929 the medical personnel.

3930 b. Costs of an HIV test shall be borne by the medical
 3931 personnel or the employer of the medical personnel. However,
 3932 costs of testing or treatment not directly related to the
 3933 initial HIV tests or costs of subsequent testing or treatment
 3934 may not be borne by the medical personnel or the employer of the
 3935 medical personnel.

3936 c. In order to use the provisions of this subparagraph,
 3937 the medical personnel must be tested for HIV pursuant to this
 3938 section or provide the results of an HIV test taken within 6
 3939 months before the significant exposure if such test results are
 3940 negative.

3941 d. A person who receives the results of an HIV test
 3942 pursuant to this subparagraph shall maintain the confidentiality
 3943 of the information received and of the persons tested. Such

3944 confidential information is exempt from s. 119.07(1).

3945 e. If the source of the exposure is not available and will
 3946 not voluntarily present himself or herself to a health facility
 3947 to be tested for HIV, the medical personnel or the employer of
 3948 such person acting on behalf of the employee may seek a court
 3949 order directing the source of the exposure to submit to HIV
 3950 testing. A sworn statement by a physician licensed under chapter
 3951 458 or chapter 459 that a significant exposure has occurred and
 3952 that, in the physician's medical judgment, testing is medically
 3953 necessary to determine the course of treatment constitutes
 3954 probable cause for the issuance of an order by the court. The
 3955 results of the test shall be released to the source of the
 3956 exposure and to the person who experienced the exposure.

3957 11. For the performance of an HIV test upon an individual
 3958 who comes into contact with nonmedical personnel in such a way
 3959 that a significant exposure has occurred while the nonmedical
 3960 personnel provides emergency medical assistance during a medical
 3961 emergency. For the purposes of this subparagraph, a medical
 3962 emergency means an emergency medical condition outside of a
 3963 hospital or health care facility that provides physician care.
 3964 The test may be performed only during the course of treatment
 3965 for the medical emergency.

3966 a. The occurrence of a significant exposure shall be
 3967 documented by medical personnel under the supervision of a
 3968 licensed physician and recorded in the medical record of the

3969 nonmedical personnel.

3970 b. Costs of any HIV test shall be borne by the nonmedical
 3971 personnel or the employer of the nonmedical personnel. However,
 3972 costs of testing or treatment not directly related to the
 3973 initial HIV tests or costs of subsequent testing or treatment
 3974 may not be borne by the nonmedical personnel or the employer of
 3975 the nonmedical personnel.

3976 c. In order to use the provisions of this subparagraph,
 3977 the nonmedical personnel shall be tested for HIV pursuant to
 3978 this section or shall provide the results of an HIV test taken
 3979 within 6 months before the significant exposure if such test
 3980 results are negative.

3981 d. A person who receives the results of an HIV test
 3982 pursuant to this subparagraph shall maintain the confidentiality
 3983 of the information received and of the persons tested. Such
 3984 confidential information is exempt from s. 119.07(1).

3985 e. If the source of the exposure is not available and will
 3986 not voluntarily present himself or herself to a health facility
 3987 to be tested for HIV, the nonmedical personnel or the employer
 3988 of the nonmedical personnel acting on behalf of the employee may
 3989 seek a court order directing the source of the exposure to
 3990 submit to HIV testing. A sworn statement by a physician licensed
 3991 under chapter 458 or chapter 459 that a significant exposure has
 3992 occurred and that, in the physician's medical judgment, testing
 3993 is medically necessary to determine the course of treatment

3994 constitutes probable cause for the issuance of an order by the
 3995 court. The results of the test shall be released to the source
 3996 of the exposure and to the person who experienced the exposure.

3997 12. For the performance of an HIV test by the medical
 3998 examiner or attending physician upon an individual who expired
 3999 or could not be resuscitated while receiving emergency medical
 4000 assistance or care and who was the source of a significant
 4001 exposure to medical or nonmedical personnel providing such
 4002 assistance or care.

4003 a. HIV testing may be conducted only after appropriate
 4004 medical personnel under the supervision of a licensed physician
 4005 documents in the medical record of the medical personnel or
 4006 nonmedical personnel that there has been a significant exposure
 4007 and that, in accordance with the written protocols based on the
 4008 National Centers for Disease Control and Prevention guidelines
 4009 on HIV postexposure prophylaxis and in the physician's medical
 4010 judgment, the information is medically necessary to determine
 4011 the course of treatment for the medical personnel or nonmedical
 4012 personnel.

4013 b. Costs of an HIV test performed under this subparagraph
 4014 may not be charged to the deceased or to the family of the
 4015 deceased person.

4016 c. For this subparagraph to be applicable, the medical
 4017 personnel or nonmedical personnel must be tested for HIV under
 4018 this section or must provide the results of an HIV test taken

4019 within 6 months before the significant exposure if such test
 4020 results are negative.

4021 d. A person who receives the results of an HIV test
 4022 pursuant to this subparagraph shall comply with paragraph (e).

4023 13. For the performance of an HIV-related test medically
 4024 indicated by licensed medical personnel for medical diagnosis of
 4025 a hospitalized infant as necessary to provide appropriate care
 4026 and treatment of the infant if, after a reasonable attempt, a
 4027 parent cannot be contacted to provide consent. The medical
 4028 records of the infant must reflect the reason consent of the
 4029 parent was not initially obtained. Test results shall be
 4030 provided to the parent when the parent is located.

4031 14. For the performance of HIV testing conducted to
 4032 monitor the clinical progress of a patient previously diagnosed
 4033 to be HIV positive.

4034 15. For the performance of repeated HIV testing conducted
 4035 to monitor possible conversion from a significant exposure.

4036 Section 74. For the purpose of incorporating the amendment
 4037 made by this act to section 775.0877, Florida Statutes, in
 4038 references thereto, paragraph (c) of subsection (1) and
 4039 subsection (3) of section 384.29, Florida Statutes, are
 4040 reenacted to read:

4041 384.29 Confidentiality.—

4042 (1) All information and records held by the department or
 4043 its authorized representatives relating to known or suspected

4044 cases of sexually transmissible diseases are strictly
 4045 confidential and exempt from the provisions of s. 119.07(1).
 4046 Such information shall not be released or made public by the
 4047 department or its authorized representatives, or by a court or
 4048 parties to a lawsuit upon revelation by subpoena, except under
 4049 the following circumstances:

4050 (c) When made to medical personnel, appropriate state
 4051 agencies, public health agencies, or courts of appropriate
 4052 jurisdiction, to enforce the provisions of this chapter or s.
 4053 775.0877 and related rules;

4054 (3) No employee of the department or its authorized
 4055 representatives shall be examined in a civil, criminal, special,
 4056 or other proceeding as to the existence or contents of pertinent
 4057 records of a person examined or treated for a sexually
 4058 transmissible disease by the department or its authorized
 4059 representatives, or of the existence or contents of such reports
 4060 received from a private physician or private health facility,
 4061 without the consent of the person examined and treated for such
 4062 diseases, except in proceedings under ss. 384.27 and 384.28 or
 4063 involving offenders pursuant to s. 775.0877.

4064 Section 75. For the purpose of incorporating the amendment
 4065 made by this act to section 39.01, Florida Statutes, in
 4066 references thereto, paragraphs (b) and (e) of subsection (2) of
 4067 section 390.01114, Florida Statutes, are reenacted to read:

4068 390.01114 Parental Notice of Abortion Act.-

4069 (2) DEFINITIONS.—As used in this section, the term:
 4070 (b) "Child abuse" means abandonment, abuse, harm, mental
 4071 injury, neglect, physical injury, or sexual abuse of a child as
 4072 those terms are defined in ss. 39.01, 827.04, and 984.03.
 4073 (e) "Sexual abuse" has the meaning ascribed in s. 39.01.
 4074 Section 76. For the purpose of incorporating the amendment
 4075 made by this act to section 39.01, Florida Statutes, in
 4076 references thereto, paragraph (h) of subsection (4) and
 4077 subsections (7) and (9) of section 393.067, Florida Statutes,
 4078 are reenacted to read:
 4079 393.067 Facility licensure.—
 4080 (4) The application shall be under oath and shall contain
 4081 the following:
 4082 (h) Certification that the staff of the facility or
 4083 program will receive training to detect, report, and prevent
 4084 sexual abuse, abuse, neglect, exploitation, and abandonment, as
 4085 defined in ss. 39.01 and 415.102, of residents and clients.
 4086 (7) The agency shall adopt rules establishing minimum
 4087 standards for facilities and programs licensed under this
 4088 section, including rules requiring facilities and programs to
 4089 train staff to detect, report, and prevent sexual abuse, abuse,
 4090 neglect, exploitation, and abandonment, as defined in ss. 39.01
 4091 and 415.102, of residents and clients, minimum standards of
 4092 quality and adequacy of client care, incident reporting
 4093 requirements, and uniform firesafety standards established by

4094 | the State Fire Marshal which are appropriate to the size of the
 4095 | facility or of the component centers or units of the program.

4096 | (9) The agency may conduct unannounced inspections to
 4097 | determine compliance by foster care facilities, group home
 4098 | facilities, residential habilitation centers, and comprehensive
 4099 | transitional education programs with the applicable provisions
 4100 | of this chapter and the rules adopted pursuant hereto, including
 4101 | the rules adopted for training staff of a facility or a program
 4102 | to detect, report, and prevent sexual abuse, abuse, neglect,
 4103 | exploitation, and abandonment, as defined in ss. 39.01 and
 4104 | 415.102, of residents and clients. The facility or program shall
 4105 | make copies of inspection reports available to the public upon
 4106 | request.

4107 | Section 77. For the purpose of incorporating the amendment
 4108 | made by this act to section 39.01, Florida Statutes, in a
 4109 | reference thereto, paragraph (p) of subsection (4) of section
 4110 | 394.495, Florida Statutes, is reenacted to read:

4111 | 394.495 Child and adolescent mental health system of care;
 4112 | programs and services.—

4113 | (4) The array of services may include, but is not limited
 4114 | to:

4115 | (p) Trauma-informed services for children who have
 4116 | suffered sexual exploitation as defined in s. 39.01(71)(g).

4117 | Section 78. For the purpose of incorporating the amendment
 4118 | made by this act to section 943.0435, Florida Statutes, in a

4119 | reference thereto, paragraph (a) of subsection (2) of section
 4120 | 394.9125, Florida Statutes, is reenacted to read:

4121 | 394.9125 State attorney; authority to refer a person for
 4122 | civil commitment.—

4123 | (2) A state attorney may refer a person to the department
 4124 | for civil commitment proceedings if the person:

4125 | (a) Is required to register as a sexual offender pursuant
 4126 | to s. 943.0435;

4127 | Section 79. For the purpose of incorporating the
 4128 | amendments made by this act to sections 775.21, 943.0435, and
 4129 | 943.04354, Florida Statutes, in references thereto, paragraphs
 4130 | (a) and (c) of subsection (2) of section 397.4872, Florida
 4131 | Statutes, are reenacted to read:

4132 | 397.4872 Exemption from disqualification; publication.—

4133 | (2) The department may exempt a person from ss. 397.487(6)
 4134 | and 397.4871(5) if it has been at least 3 years since the person
 4135 | has completed or been lawfully released from confinement,
 4136 | supervision, or sanction for the disqualifying offense. An
 4137 | exemption from the disqualifying offenses may not be given under
 4138 | any circumstances for any person who is a:

4139 | (a) Sexual predator pursuant to s. 775.21;

4140 | (c) Sexual offender pursuant to s. 943.0435, unless the
 4141 | requirement to register as a sexual offender has been removed
 4142 | pursuant to s. 943.04354.

4143 | Section 80. For the purpose of incorporating the

4144 amendments made by this act to sections 775.21, 943.0435, and
 4145 943.04354, Florida Statutes, in references thereto, paragraph
 4146 (b) of subsection (4) of section 435.07, Florida Statutes, is
 4147 reenacted to read:

4148 435.07 Exemptions from disqualification.—Unless otherwise
 4149 provided by law, the provisions of this section apply to
 4150 exemptions from disqualification for disqualifying offenses
 4151 revealed pursuant to background screenings required under this
 4152 chapter, regardless of whether those disqualifying offenses are
 4153 listed in this chapter or other laws.

4154 (4)

4155 (b) Disqualification from employment under this chapter
 4156 may not be removed from, nor may an exemption be granted to, any
 4157 person who is a:

- 4158 1. Sexual predator as designated pursuant to s. 775.21;
- 4159 2. Career offender pursuant to s. 775.261; or
- 4160 3. Sexual offender pursuant to s. 943.0435, unless the
 4161 requirement to register as a sexual offender has been removed
 4162 pursuant to s. 943.04354.

4163 Section 81. For the purpose of incorporating the amendment
 4164 made by this act to section 775.21, Florida Statutes, in a
 4165 reference thereto, subsection (9) of section 507.07, Florida
 4166 Statutes, is reenacted to read:

4167 507.07 Violations.—It is a violation of this chapter:

4168 (9) For a mover or a moving broker to knowingly refuse or

4169 fail to disclose in writing to a customer before a household
 4170 move that the mover, or an employee or subcontractor of the
 4171 mover or moving broker, who has access to the dwelling or
 4172 property of the customer, including access to give a quote for
 4173 the move, has been convicted of a felony listed in s.
 4174 775.21(4)(a)1. or convicted of a similar offense of another
 4175 jurisdiction, regardless of when such felony offense was
 4176 committed.

4177 Section 82. For the purpose of incorporating the amendment
 4178 made by this act to section 895.02, Florida Statutes, in a
 4179 reference thereto, paragraph (g) of subsection (3) of section
 4180 655.50, Florida Statutes, is reenacted to read:

4181 655.50 Florida Control of Money Laundering and Terrorist
 4182 Financing in Financial Institutions Act.—

4183 (3) As used in this section, the term:

4184 (g) "Specified unlawful activity" means "racketeering
 4185 activity" as defined in s. 895.02.

4186 Section 83. For the purpose of incorporating the amendment
 4187 made by this act to section 784.046, Florida Statutes, in a
 4188 reference thereto, paragraph (e) of subsection (1) of section
 4189 741.313, Florida Statutes, is reenacted to read:

4190 741.313 Unlawful action against employees seeking
 4191 protection.—

4192 (1) As used in this section, the term:

4193 (e) "Sexual violence" means sexual violence, as defined in

4194 s. 784.046, or any crime the underlying factual basis of which
 4195 has been found by a court to include an act of sexual violence.

4196 Section 84. For the purpose of incorporating the amendment
 4197 made by this act to section 947.1405, Florida Statutes, in a
 4198 reference thereto, paragraph (j) of subsection (4) of section
 4199 775.084, Florida Statutes, is reenacted to read:

4200 775.084 Violent career criminals; habitual felony
 4201 offenders and habitual violent felony offenders; three-time
 4202 violent felony offenders; definitions; procedure; enhanced
 4203 penalties or mandatory minimum prison terms.-

4204 (4)

4205 (j) The provisions of s. 947.1405 shall apply to persons
 4206 sentenced as habitual felony offenders and persons sentenced as
 4207 habitual violent felony offenders.

4208 Section 85. For the purpose of incorporating the amendment
 4209 made by this act to section 943.0435, Florida Statutes, in a
 4210 reference thereto, subsection (2) of section 775.0862, Florida
 4211 Statutes, is reenacted to read:

4212 775.0862 Sexual offenses against students by authority
 4213 figures; reclassification.-

4214 (2) The felony degree of a violation of an offense listed
 4215 in s. 943.0435(1)(h)1.a., unless the offense is a violation of
 4216 s. 794.011(4)(e)7. or s. 810.145(8)(a)2., shall be reclassified
 4217 as provided in this section if the offense is committed by an
 4218 authority figure of a school against a student of the school.

4219 Section 86. For the purpose of incorporating the
 4220 amendments made by this act to sections 775.21, 943.0435, and
 4221 944.607, Florida Statutes, in references thereto, paragraphs (e)
 4222 and (f) of subsection (4) of section 775.13, Florida Statutes,
 4223 are reenacted to read:

4224 775.13 Registration of convicted felons, exemptions;
 4225 penalties.—

4226 (4) This section does not apply to an offender:

4227 (e) Who is a sexual predator and has registered as
 4228 required under s. 775.21;

4229 (f) Who is a sexual offender and has registered as
 4230 required in s. 943.0435 or s. 944.607; or

4231 Section 87. For the purpose of incorporating the
 4232 amendments made by this act to sections 943.0435, 944.607,
 4233 947.1405, and 948.30, Florida Statutes, in references thereto,
 4234 paragraph (b) of subsection (3), paragraph (d) of subsection
 4235 (5), paragraph (f) of subsection (6), and paragraph (c) of
 4236 subsection (10) of section 775.21, Florida Statutes, are
 4237 reenacted to read:

4238 775.21 The Florida Sexual Predators Act.—

4239 (3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

4240 (b) The high level of threat that a sexual predator
 4241 presents to the public safety, and the long-term effects
 4242 suffered by victims of sex offenses, provide the state with
 4243 sufficient justification to implement a strategy that includes:

4244 1. Incarcerating sexual predators and maintaining adequate
 4245 facilities to ensure that decisions to release sexual predators
 4246 into the community are not made on the basis of inadequate
 4247 space.

4248 2. Providing for specialized supervision of sexual
 4249 predators who are in the community by specially trained
 4250 probation officers with low caseloads, as described in ss.
 4251 947.1405(7) and 948.30. The sexual predator is subject to
 4252 specified terms and conditions implemented at sentencing or at
 4253 the time of release from incarceration, with a requirement that
 4254 those who are financially able must pay all or part of the costs
 4255 of supervision.

4256 3. Requiring the registration of sexual predators, with a
 4257 requirement that complete and accurate information be maintained
 4258 and accessible for use by law enforcement authorities,
 4259 communities, and the public.

4260 4. Providing for community and public notification
 4261 concerning the presence of sexual predators.

4262 5. Prohibiting sexual predators from working with
 4263 children, either for compensation or as a volunteer.

4264 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated
 4265 as a sexual predator as follows:

4266 (d) A person who establishes or maintains a residence in
 4267 this state and who has not been designated as a sexual predator
 4268 by a court of this state but who has been designated as a sexual

4269 predator, as a sexually violent predator, or by another sexual
 4270 offender designation in another state or jurisdiction and was,
 4271 as a result of such designation, subjected to registration or
 4272 community or public notification, or both, or would be if the
 4273 person was a resident of that state or jurisdiction, without
 4274 regard to whether the person otherwise meets the criteria for
 4275 registration as a sexual offender, shall register in the manner
 4276 provided in s. 943.0435 or s. 944.607 and shall be subject to
 4277 community and public notification as provided in s. 943.0435 or
 4278 s. 944.607. A person who meets the criteria of this section is
 4279 subject to the requirements and penalty provisions of s.
 4280 943.0435 or s. 944.607 until the person provides the department
 4281 with an order issued by the court that designated the person as
 4282 a sexual predator, as a sexually violent predator, or by another
 4283 sexual offender designation in the state or jurisdiction in
 4284 which the order was issued which states that such designation
 4285 has been removed or demonstrates to the department that such
 4286 designation, if not imposed by a court, has been removed by
 4287 operation of law or court order in the state or jurisdiction in
 4288 which the designation was made, and provided such person no
 4289 longer meets the criteria for registration as a sexual offender
 4290 under the laws of this state.

4291 (6) REGISTRATION.—

4292 (f) Within 48 hours after the registration required under
 4293 paragraph (a) or paragraph (e), a sexual predator who is not

4294 | incarcerated and who resides in the community, including a
 4295 | sexual predator under the supervision of the Department of
 4296 | Corrections, shall register in person at a driver license office
 4297 | of the Department of Highway Safety and Motor Vehicles and shall
 4298 | present proof of registration unless a driver license or an
 4299 | identification card that complies with the requirements of s.
 4300 | 322.141(3) was previously secured or updated under s. 944.607.
 4301 | At the driver license office the sexual predator shall:
 4302 | 1. If otherwise qualified, secure a Florida driver
 4303 | license, renew a Florida driver license, or secure an
 4304 | identification card. The sexual predator shall identify himself
 4305 | or herself as a sexual predator who is required to comply with
 4306 | this section, provide his or her place of permanent, temporary,
 4307 | or transient residence, including a rural route address and a
 4308 | post office box, and submit to the taking of a photograph for
 4309 | use in issuing a driver license, a renewed license, or an
 4310 | identification card, and for use by the department in
 4311 | maintaining current records of sexual predators. A post office
 4312 | box may not be provided in lieu of a physical residential
 4313 | address. If the sexual predator's place of residence is a motor
 4314 | vehicle, trailer, mobile home, or manufactured home, as defined
 4315 | in chapter 320, the sexual predator shall also provide to the
 4316 | Department of Highway Safety and Motor Vehicles the vehicle
 4317 | identification number; the license tag number; the registration
 4318 | number; and a description, including color scheme, of the motor

4319 vehicle, trailer, mobile home, or manufactured home. If a sexual
 4320 predator's place of residence is a vessel, live-aboard vessel,
 4321 or houseboat, as defined in chapter 327, the sexual predator
 4322 shall also provide to the Department of Highway Safety and Motor
 4323 Vehicles the hull identification number; the manufacturer's
 4324 serial number; the name of the vessel, live-aboard vessel, or
 4325 houseboat; the registration number; and a description, including
 4326 color scheme, of the vessel, live-aboard vessel, or houseboat.

4327 2. Pay the costs assessed by the Department of Highway
 4328 Safety and Motor Vehicles for issuing or renewing a driver
 4329 license or an identification card as required by this section.
 4330 The driver license or identification card issued to the sexual
 4331 predator must comply with s. 322.141(3).

4332 3. Provide, upon request, any additional information
 4333 necessary to confirm the identity of the sexual predator,
 4334 including a set of fingerprints.

4335 (10) PENALTIES.—

4336 (c) Any person who misuses public records information
 4337 relating to a sexual predator, as defined in this section, or a
 4338 sexual offender, as defined in s. 943.0435 or s. 944.607, to
 4339 secure a payment from such a predator or offender; who knowingly
 4340 distributes or publishes false information relating to such a
 4341 predator or offender which the person misrepresents as being
 4342 public records information; or who materially alters public
 4343 records information with the intent to misrepresent the

4344 information, including documents, summaries of public records
 4345 information provided by law enforcement agencies, or public
 4346 records information displayed by law enforcement agencies on
 4347 websites or provided through other means of communication,
 4348 commits a misdemeanor of the first degree, punishable as
 4349 provided in s. 775.082 or s. 775.083.

4350 Section 88. For the purpose of incorporating the
 4351 amendments made by this act to section 943.0435, 944.606, and
 4352 944.607, Florida Statutes, in references thereto, subsection (2)
 4353 of section 775.24, Florida Statutes, is reenacted to read:

4354 775.24 Duty of the court to uphold laws governing sexual
 4355 predators and sexual offenders.—

4356 (2) If a person meets the criteria in this chapter for
 4357 designation as a sexual predator or meets the criteria in s.
 4358 943.0435, s. 944.606, s. 944.607, or any other law for
 4359 classification as a sexual offender, the court may not enter an
 4360 order, for the purpose of approving a plea agreement or for any
 4361 other reason, which:

4362 (a) Exempts a person who meets the criteria for
 4363 designation as a sexual predator or classification as a sexual
 4364 offender from such designation or classification, or exempts
 4365 such person from the requirements for registration or community
 4366 and public notification imposed upon sexual predators and sexual
 4367 offenders;

4368 (b) Restricts the compiling, reporting, or release of

4369 public records information that relates to sexual predators or
 4370 sexual offenders; or

4371 (c) Prevents any person or entity from performing its
 4372 duties or operating within its statutorily conferred authority
 4373 as such duty or authority relates to sexual predators or sexual
 4374 offenders.

4375 Section 89. For the purpose of incorporating the
 4376 amendments made by this act to sections 775.21, 943.0435,
 4377 944.606, and 944.607, Florida Statutes, in references thereto,
 4378 section 775.25, Florida Statutes, is reenacted to read:

4379 775.25 Prosecutions for acts or omissions.—A sexual
 4380 predator or sexual offender who commits any act or omission in
 4381 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.
 4382 944.607, or former s. 947.177 may be prosecuted for the act or
 4383 omission in the county in which the act or omission was
 4384 committed, in the county of the last registered address of the
 4385 sexual predator or sexual offender, in the county in which the
 4386 conviction occurred for the offense or offenses that meet the
 4387 criteria for designating a person as a sexual predator or sexual
 4388 offender, in the county where the sexual predator or sexual
 4389 offender was released from incarceration, or in the county of
 4390 the intended address of the sexual predator or sexual offender
 4391 as reported by the predator or offender prior to his or her
 4392 release from incarceration. In addition, a sexual predator may
 4393 be prosecuted for any such act or omission in the county in

4394 | which he or she was designated a sexual predator.

4395 | Section 90. For the purpose of incorporating the
4396 | amendments made by this act to sections 775.21, 943.0435, and
4397 | 944.607, Florida Statutes, in references thereto, paragraph (b)
4398 | of subsection (3) of section 775.261, Florida Statutes, is
4399 | reenacted to read:

4400 | 775.261 The Florida Career Offender Registration Act.—

4401 | (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

4402 | (b) This section does not apply to any person who has been
4403 | designated as a sexual predator and required to register under
4404 | s. 775.21 or who is required to register as a sexual offender
4405 | under s. 943.0435 or s. 944.607. However, if a person is no
4406 | longer required to register as a sexual predator under s. 775.21
4407 | or as a sexual offender under s. 943.0435 or s. 944.607, the
4408 | person must register as a career offender under this section if
4409 | the person is otherwise designated as a career offender as
4410 | provided in this section.

4411 | Section 91. For the purpose of incorporating the amendment
4412 | made by this act to section 847.001, Florida Statutes, in a
4413 | reference thereto, paragraph (d) of subsection (2) of section
4414 | 784.049, Florida Statutes, is reenacted to read:

4415 | 784.049 Sexual cyberharassment.—

4416 | (2) As used in this section, the term:

4417 | (d) "Sexually explicit image" means any image depicting
4418 | nudity, as defined in s. 847.001, or depicting a person engaging

4419 | in sexual conduct, as defined in s. 847.001.

4420 | Section 92. For the purpose of incorporating the amendment
4421 | made by this act to section 794.0115, Florida Statutes, in
4422 | references thereto, paragraph (a) of subsection (2) and
4423 | subsections (3), (4), and (5) of section 794.011, Florida
4424 | Statutes, are reenacted to read:

4425 | 794.011 Sexual battery.—

4426 | (2)(a) A person 18 years of age or older who commits
4427 | sexual battery upon, or in an attempt to commit sexual battery
4428 | injures the sexual organs of, a person less than 12 years of age
4429 | commits a capital felony, punishable as provided in ss. 775.082
4430 | and 921.141.

4431 | (3) A person who commits sexual battery upon a person 12
4432 | years of age or older, without that person's consent, and in the
4433 | process thereof uses or threatens to use a deadly weapon or uses
4434 | actual physical force likely to cause serious personal injury
4435 | commits a life felony, punishable as provided in s. 775.082, s.
4436 | 775.083, s. 775.084, or s. 794.0115.

4437 | (4)(a) A person 18 years of age or older who commits
4438 | sexual battery upon a person 12 years of age or older but
4439 | younger than 18 years of age without that person's consent,
4440 | under any of the circumstances listed in paragraph (e), commits
4441 | a felony of the first degree, punishable by a term of years not
4442 | exceeding life or as provided in s. 775.082, s. 775.083, s.
4443 | 775.084, or s. 794.0115.

4444 (b) A person 18 years of age or older who commits sexual
 4445 battery upon a person 18 years of age or older without that
 4446 person's consent, under any of the circumstances listed in
 4447 paragraph (e), commits a felony of the first degree, punishable
 4448 as provided in s. 775.082, s. 775.083, s. 775.084, or s.
 4449 794.0115.

4450 (c) A person younger than 18 years of age who commits
 4451 sexual battery upon a person 12 years of age or older without
 4452 that person's consent, under any of the circumstances listed in
 4453 paragraph (e), commits a felony of the first degree, punishable
 4454 as provided in s. 775.082, s. 775.083, s. 775.084, or s.
 4455 794.0115.

4456 (d) A person commits a felony of the first degree,
 4457 punishable by a term of years not exceeding life or as provided
 4458 in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the
 4459 person commits sexual battery upon a person 12 years of age or
 4460 older without that person's consent, under any of the
 4461 circumstances listed in paragraph (e), and such person was
 4462 previously convicted of a violation of:

4463 1. Section 787.01(2) or s. 787.02(2) when the violation
 4464 involved a victim who was a minor and, in the course of
 4465 committing that violation, the defendant committed against the
 4466 minor a sexual battery under this chapter or a lewd act under s.
 4467 800.04 or s. 847.0135(5);

4468 2. Section 787.01(3)(a)2. or 3.;

- 4469 3. Section 787.02(3)(a)2. or 3.;
- 4470 4. Section 800.04;
- 4471 5. Section 825.1025;
- 4472 6. Section 847.0135(5); or
- 4473 7. This chapter, excluding subsection (10) of this
- 4474 section.
- 4475 (e) The following circumstances apply to paragraphs (a)-
- 4476 (d):
- 4477 1. The victim is physically helpless to resist.
- 4478 2. The offender coerces the victim to submit by
- 4479 threatening to use force or violence likely to cause serious
- 4480 personal injury on the victim, and the victim reasonably
- 4481 believes that the offender has the present ability to execute
- 4482 the threat.
- 4483 3. The offender coerces the victim to submit by
- 4484 threatening to retaliate against the victim, or any other
- 4485 person, and the victim reasonably believes that the offender has
- 4486 the ability to execute the threat in the future.
- 4487 4. The offender, without the prior knowledge or consent of
- 4488 the victim, administers or has knowledge of someone else
- 4489 administering to the victim any narcotic, anesthetic, or other
- 4490 intoxicating substance that mentally or physically incapacitates
- 4491 the victim.
- 4492 5. The victim is mentally defective, and the offender has
- 4493 reason to believe this or has actual knowledge of this fact.

4494 6. The victim is physically incapacitated.

4495 7. The offender is a law enforcement officer, correctional
 4496 officer, or correctional probation officer as defined in s.
 4497 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified
 4498 under s. 943.1395 or is an elected official exempt from such
 4499 certification by virtue of s. 943.253, or any other person in a
 4500 position of control or authority in a probation, community
 4501 control, controlled release, detention, custodial, or similar
 4502 setting, and such officer, official, or person is acting in such
 4503 a manner as to lead the victim to reasonably believe that the
 4504 offender is in a position of control or authority as an agent or
 4505 employee of government.

4506 (5)(a) A person 18 years of age or older who commits
 4507 sexual battery upon a person 12 years of age or older but
 4508 younger than 18 years of age, without that person's consent, and
 4509 in the process does not use physical force and violence likely
 4510 to cause serious personal injury commits a felony of the first
 4511 degree, punishable as provided in s. 775.082, s. 775.083, s.
 4512 775.084, or s. 794.0115.

4513 (b) A person 18 years of age or older who commits sexual
 4514 battery upon a person 18 years of age or older, without that
 4515 person's consent, and in the process does not use physical force
 4516 and violence likely to cause serious personal injury commits a
 4517 felony of the second degree, punishable as provided in s.
 4518 775.082, s. 775.083, s. 775.084, or s. 794.0115.

4519 (c) A person younger than 18 years of age who commits
 4520 sexual battery upon a person 12 years of age or older, without
 4521 that person's consent, and in the process does not use physical
 4522 force and violence likely to cause serious personal injury
 4523 commits a felony of the second degree, punishable as provided in
 4524 s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

4525 (d) A person commits a felony of the first degree,
 4526 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 4527 s. 794.0115 if the person commits sexual battery upon a person
 4528 12 years of age or older, without that person's consent, and in
 4529 the process does not use physical force and violence likely to
 4530 cause serious personal injury and the person was previously
 4531 convicted of a violation of:

4532 1. Section 787.01(2) or s. 787.02(2) when the violation
 4533 involved a victim who was a minor and, in the course of
 4534 committing that violation, the defendant committed against the
 4535 minor a sexual battery under this chapter or a lewd act under s.
 4536 800.04 or s. 847.0135(5);

4537 2. Section 787.01(3)(a)2. or 3.;

4538 3. Section 787.02(3)(a)2. or 3.;

4539 4. Section 800.04;

4540 5. Section 825.1025;

4541 6. Section 847.0135(5); or

4542 7. This chapter, excluding subsection (10) of this
 4543 section.

4544 Section 93. For the purpose of incorporating the amendment
 4545 made by this act to section 92.56, Florida Statutes, in a
 4546 reference thereto, section 794.03, Florida Statutes, is
 4547 reenacted to read:

4548 794.03 Unlawful to publish or broadcast information
 4549 identifying sexual offense victim.—No person shall print,
 4550 publish, or broadcast, or cause or allow to be printed,
 4551 published, or broadcast, in any instrument of mass communication
 4552 the name, address, or other identifying fact or information of
 4553 the victim of any sexual offense within this chapter, except as
 4554 provided in s. 119.071(2)(h) or unless the court determines that
 4555 such information is no longer confidential and exempt pursuant
 4556 to s. 92.56. An offense under this section shall constitute a
 4557 misdemeanor of the second degree, punishable as provided in s.
 4558 775.082 or s. 775.083.

4559 Section 94. For the purpose of incorporating the amendment
 4560 made by this act to section 775.21, Florida Statutes, in a
 4561 reference thereto, subsection (1) of section 794.075, Florida
 4562 Statutes, is reenacted to read:

4563 794.075 Sexual predators; erectile dysfunction drugs.—

4564 (1) A person may not possess a prescription drug, as
 4565 defined in s. 499.003(40), for the purpose of treating erectile
 4566 dysfunction if the person is designated as a sexual predator
 4567 under s. 775.21.

4568 Section 95. For the purpose of incorporating the amendment

4569 made by this act to section 960.03, Florida Statutes, in
 4570 references thereto, paragraph (b) of subsection (1) and
 4571 subsections (2) and (3) of section 847.002, Florida Statutes,
 4572 are reenacted to read:

4573 847.002 Child pornography prosecutions.—

4574 (1) Any law enforcement officer who, pursuant to a
 4575 criminal investigation, recovers images or movies of child
 4576 pornography shall:

4577 (b) Request the law enforcement agency contact information
 4578 from the Child Victim Identification Program for any images or
 4579 movies recovered which contain an identified victim of child
 4580 pornography as defined in s. 960.03.

4581 (2) Any law enforcement officer submitting a case for
 4582 prosecution which involves the production, promotion, or
 4583 possession of child pornography shall submit to the designated
 4584 prosecutor the law enforcement agency contact information
 4585 provided by the Child Victim Identification Program at the
 4586 National Center for Missing and Exploited Children, for any
 4587 images or movies involved in the case which contain the
 4588 depiction of an identified victim of child pornography as
 4589 defined in s. 960.03.

4590 (3) In every filed case involving an identified victim of
 4591 child pornography, as defined in s. 960.03, the prosecuting
 4592 agency shall enter the following information into the Victims in
 4593 Child Pornography Tracking Repeat Exploitation database

4594 maintained by the Office of the Attorney General:

4595 (a) The case number and agency file number.

4596 (b) The named defendant.

4597 (c) The circuit court division and county.

4598 (d) Current court dates and the status of the case.

4599 (e) Contact information for the prosecutor assigned.

4600 (f) Verification that the prosecutor is or is not in

4601 possession of a victim impact statement and will use the

4602 statement in sentencing.

4603 Section 96. For the purpose of incorporating the amendment

4604 made by this act to section 847.001, Florida Statutes, in a

4605 reference thereto, paragraph (b) of subsection (3) of section

4606 847.012, Florida Statutes, is reenacted to read:

4607 847.012 Harmful materials; sale or distribution to minors

4608 or using minors in production prohibited; penalty.—

4609 (3) A person may not knowingly sell, rent, or loan for

4610 monetary consideration to a minor:

4611 (b) Any book, pamphlet, magazine, printed matter however

4612 reproduced, or sound recording that contains any matter defined

4613 in s. 847.001, explicit and detailed verbal descriptions or

4614 narrative accounts of sexual excitement, or sexual conduct and

4615 that is harmful to minors.

4616 Section 97. For the purpose of incorporating the amendment

4617 made by this act to section 92.56, Florida Statutes, in a

4618 reference thereto, subsection (3) of section 847.01357, Florida

4619 Statutes, is reenacted to read:

4620 847.01357 Exploited children's civil remedy.—

4621 (3) Any victim who has a bona fide claim under this
 4622 section shall, upon request, be provided a pseudonym, pursuant
 4623 to s. 92.56(3), which shall be issued and maintained by the
 4624 Department of Legal Affairs for use in all legal pleadings. This
 4625 identifier shall be fully recognized in all courts in this state
 4626 as a valid legal identity.

4627 Section 98. For the purpose of incorporating the amendment
 4628 made by this act to section 847.001, Florida Statutes, in a
 4629 reference thereto, subsections (2) and (3) of section 847.0138,
 4630 Florida Statutes, are reenacted to read:

4631 847.0138 Transmission of material harmful to minors to a
 4632 minor by electronic device or equipment prohibited; penalties.—

4633 (2) Notwithstanding ss. 847.012 and 847.0133, any person
 4634 who knew or believed that he or she was transmitting an image,
 4635 information, or data that is harmful to minors, as defined in s.
 4636 847.001, to a specific individual known by the defendant to be a
 4637 minor commits a felony of the third degree, punishable as
 4638 provided in s. 775.082, s. 775.083, or s. 775.084.

4639 (3) Notwithstanding ss. 847.012 and 847.0133, any person
 4640 in any jurisdiction other than this state who knew or believed
 4641 that he or she was transmitting an image, information, or data
 4642 that is harmful to minors, as defined in s. 847.001, to a
 4643 specific individual known by the defendant to be a minor commits

4644 a felony of the third degree, punishable as provided in s.
 4645 775.082, s. 775.083, or s. 775.084.

4646
 4647 The provisions of this section do not apply to subscription-
 4648 based transmissions such as list servers.

4649 Section 99. For the purpose of incorporating the
 4650 amendments made by this act to sections 16.56 and 895.02,
 4651 Florida Statutes, in references thereto, paragraph (h) of
 4652 subsection (2) and subsection (10) of section 896.101, Florida
 4653 Statutes, are reenacted to read:

4654 896.101 Florida Money Laundering Act; definitions;
 4655 penalties; injunctions; seizure warrants; immunity.-

4656 (2) As used in this section, the term:

4657 (h) "Specified unlawful activity" means any "racketeering
 4658 activity" as defined in s. 895.02.

4659 (10) Any financial institution, licensed money services
 4660 business, or other person served with and complying with the
 4661 terms of a warrant, temporary injunction, or other court order,
 4662 including any subpoena issued under s. 16.56 or s. 27.04,
 4663 obtained in furtherance of an investigation of any crime in this
 4664 section, including any crime listed as specified unlawful
 4665 activity under this section or any felony violation of chapter
 4666 560, has immunity from criminal liability and is not liable to
 4667 any person for any lawful action taken in complying with the
 4668 warrant, temporary injunction, or other court order, including

4669 | any subpoena issued under s. 16.56 or s. 27.04. If any subpoena
 4670 | issued under s. 16.56 or s. 27.04 contains a nondisclosure
 4671 | provision, any financial institution, licensed money services
 4672 | business, employee or officer of a financial institution or
 4673 | licensed money services business, or any other person may not
 4674 | notify, directly or indirectly, any customer of that financial
 4675 | institution or money services business whose records are being
 4676 | sought by the subpoena, or any other person named in the
 4677 | subpoena, about the existence or the contents of that subpoena
 4678 | or about information that has been furnished to the state
 4679 | attorney or statewide prosecutor who issued the subpoena or
 4680 | other law enforcement officer named in the subpoena in response
 4681 | to the subpoena.

4682 | Section 100. For the purpose of incorporating the
 4683 | amendments made by this act to sections 775.21 and 948.06,
 4684 | Florida Statutes, in references thereto, paragraphs (b) and (c)
 4685 | of subsection (1) of section 903.0351, Florida Statutes, are
 4686 | reenacted to read:

4687 | 903.0351 Restrictions on pretrial release pending
 4688 | probation-violation hearing or community-control-violation
 4689 | hearing.—

4690 | (1) In the instance of an alleged violation of felony
 4691 | probation or community control, bail or any other form of
 4692 | pretrial release shall not be granted prior to the resolution of
 4693 | the probation-violation hearing or the community-control-

4694 violation hearing to:

4695 (b) A person who is on felony probation or community
 4696 control for any offense committed on or after the effective date
 4697 of this act and who is arrested for a qualifying offense as
 4698 defined in s. 948.06(8)(c); or

4699 (c) A person who is on felony probation or community
 4700 control and has previously been found by a court to be a
 4701 habitual violent felony offender as defined in s. 775.084(1)(b),
 4702 a three-time violent felony offender as defined in s.
 4703 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 4704 arrested for committing a qualifying offense as defined in s.
 4705 948.06(8)(c) on or after the effective date of this act.

4706 Section 101. For the purpose of incorporating the
 4707 amendments made by this act to sections 775.21 and 943.0435,
 4708 Florida Statutes, in references thereto, paragraph (m) of
 4709 subsection (2) of section 903.046, Florida Statutes, is
 4710 reenacted to read:

4711 903.046 Purpose of and criteria for bail determination.—

4712 (2) When determining whether to release a defendant on
 4713 bail or other conditions, and what that bail or those conditions
 4714 may be, the court shall consider:

4715 (m) Whether the defendant, other than a defendant whose
 4716 only criminal charge is a misdemeanor offense under chapter 316,
 4717 is required to register as a sexual offender under s. 943.0435
 4718 or a sexual predator under s. 775.21; and, if so, he or she is

4719 | not eligible for release on bail or surety bond until the first
 4720 | appearance on the case in order to ensure the full participation
 4721 | of the prosecutor and the protection of the public.

4722 | Section 102. For the purpose of incorporating the
 4723 | amendment made by this act to section 895.02, Florida Statutes,
 4724 | in a reference thereto, subsection (3) of section 905.34,
 4725 | Florida Statutes, is reenacted to read:

4726 | 905.34 Powers and duties; law applicable.—The jurisdiction
 4727 | of a statewide grand jury impaneled under this chapter shall
 4728 | extend throughout the state. The subject matter jurisdiction of
 4729 | the statewide grand jury shall be limited to the offenses of:

4730 | (3) Any violation of the provisions of the Florida RICO
 4731 | (Racketeer Influenced and Corrupt Organization) Act, including
 4732 | any offense listed in the definition of racketeering activity in
 4733 | s. 895.02(8)(a), providing such listed offense is investigated
 4734 | in connection with a violation of s. 895.03 and is charged in a
 4735 | separate count of an information or indictment containing a
 4736 | count charging a violation of s. 895.03, the prosecution of
 4737 | which listed offense may continue independently if the
 4738 | prosecution of the violation of s. 895.03 is terminated for any
 4739 | reason;

4740 |
 4741 | or any attempt, solicitation, or conspiracy to commit any
 4742 | violation of the crimes specifically enumerated above, when any
 4743 | such offense is occurring, or has occurred, in two or more

4744 | judicial circuits as part of a related transaction or when any
 4745 | such offense is connected with an organized criminal conspiracy
 4746 | affecting two or more judicial circuits. The statewide grand
 4747 | jury may return indictments and presentments irrespective of the
 4748 | county or judicial circuit where the offense is committed or
 4749 | triable. If an indictment is returned, it shall be certified and
 4750 | transferred for trial to the county where the offense was
 4751 | committed. The powers and duties of, and law applicable to,
 4752 | county grand juries shall apply to a statewide grand jury except
 4753 | when such powers, duties, and law are inconsistent with the
 4754 | provisions of ss. 905.31-905.40.

4755 | Section 103. For the purpose of incorporating the
 4756 | amendments made by this act to sections 775.21 and 847.0135,
 4757 | Florida Statutes, in references thereto, paragraph (g) of
 4758 | subsection (3) of section 921.0022, Florida Statutes, is
 4759 | reenacted to read:

4760 | 921.0022 Criminal Punishment Code; offense severity
 4761 | ranking chart.—

4762 | (3) OFFENSE SEVERITY RANKING CHART

4763 | (g) LEVEL 7

4764 |

Florida	Felony	Description
Statute	Degree	
316.027(2)(c)	1st	Accident involving death,

4765 |

PCB CRJ 18-01

ORIGINAL

2018

4766			failure to stop; leaving scene.
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
4767			
	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; 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.
4768			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
4769			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
4770			
	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.

PCB CRJ 18-01

ORIGINAL

2018

4771	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
4772	456.065 (2)	3rd	Practicing a health care profession without a license.
4773	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
4774	458.327 (1)	3rd	Practicing medicine without a license.
4775	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
4776	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
4777	461.012 (1)	3rd	Practicing podiatric medicine without a license.
4778			

PCB CRJ 18-01

ORIGINAL

2018

4779	462.17	3rd	Practicing naturopathy without a license.
4780	463.015 (1)	3rd	Practicing optometry without a license.
4781	464.016 (1)	3rd	Practicing nursing without a license.
4782	465.015 (2)	3rd	Practicing pharmacy without a license.
4783	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
4784	467.201	3rd	Practicing midwifery without a license.
4785	468.366	3rd	Delivering respiratory care services without a license.
4786	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.

PCB CRJ 18-01

ORIGINAL

2018

4787	483.901(7)	3rd	Practicing medical physics without a license.
4788	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
4789	484.053	3rd	Dispensing hearing aids without a license.
4790	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
4791	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than

PCB CRJ 18-01

ORIGINAL

2018

4792			\$20,000.
	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
4793			
	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
4794			
	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
4795			
	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
4796			
	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted

PCB CRJ 18-01

ORIGINAL

2018

4797			felony.
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
4798			
	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
4799			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
4800			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
4801			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
4802			

PCB CRJ 18-01

ORIGINAL

2018

4803	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
4804	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
4805	784.048 (7)	3rd	Aggravated stalking; violation of court order.
4806	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
4807	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
4808	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
4809	784.081 (1)	1st	Aggravated battery on specified official or employee.
	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

4810	784.083(1)	1st	Aggravated battery on code inspector.
4811	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
4812	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
4813	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
4814	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
4815	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
4816			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

4817	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
4818	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
4819	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
4820	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

PCB CRJ 18-01

ORIGINAL

2018

4821	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
4822	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
4823	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
4824	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
4825	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

4826	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
4827	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
4828	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
4829	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
4830	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
4831	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

PCB CRJ 18-01

ORIGINAL

2018

4832	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
4833	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
4834	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
4835	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
4836	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
4837	812.131 (2) (a)	2nd	Robbery by sudden snatching.
4838	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.

PCB CRJ 18-01

ORIGINAL

2018

4839	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
4840	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
4841	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
4842	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
4843	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
4844	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.

PCB CRJ 18-01

ORIGINAL

2018

4845	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
4846	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
4847	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
4848	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
4849	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
4850	837.05(2)	3rd	Giving false information about alleged capital felony to a law

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

4851			enforcement officer.
4852	838.015	2nd	Bribery.
4853	838.016	2nd	Unlawful compensation or reward for official behavior.
4854	838.021(3)(a)	2nd	Unlawful harm to a public servant.
4855	838.22	2nd	Bid tampering.
4856	843.0855(2)	3rd	Impersonation of a public officer or employee.
4857	843.0855(3)	3rd	Unlawful simulation of legal process.
4858	843.0855(4)	3rd	Intimidation of a public officer or employee.
4859	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

PCB CRJ 18-01

ORIGINAL

2018

4860	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
4861	872.06	2nd	Abuse of a dead human body.
4862	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
4863	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

4864	893.13(1)(e)1.	1st	<p>community center.</p> <p>Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.</p>
4865	893.13(4)(a)	1st	<p>Use or hire of minor; deliver to minor other controlled substance.</p>
4866	893.135(1)(a)1.	1st	<p>Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.</p>
4867	893.135 (1)(b)1.a.	1st	<p>Trafficking in cocaine, more than 28 grams, less than 200 grams.</p>
4868	893.135 (1)(c)1.a.	1st	<p>Trafficking in illegal drugs, more than 4 grams, less than 14</p>

PCB CRJ 18-01

ORIGINAL

2018

4869			grams.
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
4870			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
4871			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
4872			
	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
4873			
	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
4874			
	893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.

PCB CRJ 18-01

ORIGINAL

2018

4875	893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
4876	893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
4877	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
4878	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
4879	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
4880	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

PCB CRJ 18-01

ORIGINAL

2018

4881	893.135 (1) (m) 2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
4882	893.135 (1) (m) 2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
4883	893.135 (1) (n) 2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
4884	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
4885	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
4886	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but

PCB CRJ 18-01

ORIGINAL

2018

4887	943.0435(4)(c)	2nd	less than \$20,000. Sexual offender vacating permanent residence; failure to comply with reporting requirements.
4888	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
4889	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
4890	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
4891	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false

PCB CRJ 18-01

ORIGINAL

2018

4892			registration information.
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
4893			
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
4894			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
4895			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
4896			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
4897			

4898 985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

4899
4900 Section 104. For the purpose of incorporating the
4901 amendment made by this act to section 775.21, Florida Statutes,
4902 in a reference thereto, paragraph (o) of subsection (6) of
4903 section 921.141, Florida Statutes, is reenacted to read:

4904 921.141 Sentence of death or life imprisonment for capital
4905 felonies; further proceedings to determine sentence.—

4906 (6) AGGRAVATING FACTORS.—Aggravating factors shall be
4907 limited to the following:

4908 (o) The capital felony was committed by a person
4909 designated as a sexual predator pursuant to s. 775.21 or a
4910 person previously designated as a sexual predator who had the
4911 sexual predator designation removed.

4912 Section 105. For the purpose of incorporating the
4913 amendments made by this act to sections 775.21, 944.606, and

4914 944.607, Florida Statutes, in references thereto, subsection
4915 (3), paragraph (a) of subsection (4), and subsection (5) of
4916 section 943.0435, Florida Statutes, are reenacted to read:

4917 943.0435 Sexual offenders required to register with the
4918 department; penalty.—

4919 (3) Within 48 hours after the report required under
4920 subsection (2), a sexual offender shall report in person at a
4921 driver license office of the Department of Highway Safety and
4922 Motor Vehicles, unless a driver license or identification card
4923 that complies with the requirements of s. 322.141(3) was
4924 previously secured or updated under s. 944.607. At the driver
4925 license office the sexual offender shall:

4926 (a) If otherwise qualified, secure a Florida driver
4927 license, renew a Florida driver license, or secure an
4928 identification card. The sexual offender shall identify himself
4929 or herself as a sexual offender who is required to comply with
4930 this section and shall provide proof that the sexual offender
4931 reported as required in subsection (2). The sexual offender
4932 shall provide any of the information specified in subsection
4933 (2), if requested. The sexual offender shall submit to the
4934 taking of a photograph for use in issuing a driver license,
4935 renewed license, or identification card, and for use by the
4936 department in maintaining current records of sexual offenders.

4937 (b) Pay the costs assessed by the Department of Highway
4938 Safety and Motor Vehicles for issuing or renewing a driver

4939 | license or identification card as required by this section. The
 4940 | driver license or identification card issued must be in
 4941 | compliance with s. 322.141(3).

4942 | (c) Provide, upon request, any additional information
 4943 | necessary to confirm the identity of the sexual offender,
 4944 | including a set of fingerprints.

4945 | (4)(a) Each time a sexual offender's driver license or
 4946 | identification card is subject to renewal, and, without regard
 4947 | to the status of the offender's driver license or identification
 4948 | card, within 48 hours after any change in the offender's
 4949 | permanent, temporary, or transient residence or change in the
 4950 | offender's name by reason of marriage or other legal process,
 4951 | the offender shall report in person to a driver license office,
 4952 | and is subject to the requirements specified in subsection (3).
 4953 | The Department of Highway Safety and Motor Vehicles shall
 4954 | forward to the department all photographs and information
 4955 | provided by sexual offenders. Notwithstanding the restrictions
 4956 | set forth in s. 322.142, the Department of Highway Safety and
 4957 | Motor Vehicles may release a reproduction of a color-photograph
 4958 | or digital-image license to the Department of Law Enforcement
 4959 | for purposes of public notification of sexual offenders as
 4960 | provided in this section and ss. 943.043 and 944.606. A sexual
 4961 | offender who is unable to secure or update a driver license or
 4962 | an identification card with the Department of Highway Safety and
 4963 | Motor Vehicles as provided in subsection (3) and this subsection

4964 shall also report any change in the sexual offender's permanent,
 4965 temporary, or transient residence or change in the offender's
 4966 name by reason of marriage or other legal process within 48
 4967 hours after the change to the sheriff's office in the county
 4968 where the offender resides or is located and provide
 4969 confirmation that he or she reported such information to the
 4970 Department of Highway Safety and Motor Vehicles. The reporting
 4971 requirements under this paragraph do not negate the requirement
 4972 for a sexual offender to obtain a Florida driver license or an
 4973 identification card as required in this section.

4974 (5) This section does not apply to a sexual offender who
 4975 is also a sexual predator, as defined in s. 775.21. A sexual
 4976 predator must register as required under s. 775.21.

4977 Section 106. For the purpose of incorporating the
 4978 amendments made by this act to sections 943.0435, 944.606, and
 4979 944.607, Florida Statutes, in references thereto, subsection (2)
 4980 of section 943.0436, Florida Statutes, is reenacted to read:

4981 943.0436 Duty of the court to uphold laws governing sexual
 4982 predators and sexual offenders.—

4983 (2) If a person meets the criteria in chapter 775 for
 4984 designation as a sexual predator or meets the criteria in s.
 4985 943.0435, s. 944.606, s. 944.607, or any other law for
 4986 classification as a sexual offender, the court may not enter an
 4987 order, for the purpose of approving a plea agreement or for any
 4988 other reason, which:

4989 (a) Exempts a person who meets the criteria for
 4990 designation as a sexual predator or classification as a sexual
 4991 offender from such designation or classification, or exempts
 4992 such person from the requirements for registration or community
 4993 and public notification imposed upon sexual predators and sexual
 4994 offenders;

4995 (b) Restricts the compiling, reporting, or release of
 4996 public records information that relates to sexual predators or
 4997 sexual offenders; or

4998 (c) Prevents any person or entity from performing its
 4999 duties or operating within its statutorily conferred authority
 5000 as such duty or authority relates to sexual predators or sexual
 5001 offenders.

5002 Section 107. For the purpose of incorporating the
 5003 amendment made by this act to section 847.0135, Florida
 5004 Statutes, in a reference thereto, paragraph (g) of subsection
 5005 (2) of section 943.325, Florida Statutes, is reenacted to read:

5006 943.325 DNA database.—

5007 (2) DEFINITIONS.—As used in this section, the term:

5008 (g) "Qualifying offender" means any person, including
 5009 juveniles and adults, who is:

5010 1.a. Committed to a county jail;

5011 b. Committed to or under the supervision of the Department
 5012 of Corrections, including persons incarcerated in a private
 5013 correctional institution operated under contract pursuant to s.

5014 944.105;

5015 c. Committed to or under the supervision of the Department

5016 of Juvenile Justice;

5017 d. Transferred to this state under the Interstate Compact

5018 on Juveniles, part XIII of chapter 985; or

5019 e. Accepted under Article IV of the Interstate Corrections

5020 Compact, part III of chapter 941; and who is:

5021 2.a. Convicted of any felony offense or attempted felony

5022 offense in this state or of a similar offense in another

5023 jurisdiction;

5024 b. Convicted of a misdemeanor violation of s. 784.048, s.

5025 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an

5026 offense that was found, pursuant to s. 874.04, to have been

5027 committed for the purpose of benefiting, promoting, or

5028 furthering the interests of a criminal gang as defined in s.

5029 874.03; or

5030 c. Arrested for any felony offense or attempted felony

5031 offense in this state.

5032 Section 108. For the purpose of incorporating the

5033 amendment made by this act to section 847.001, Florida Statutes,

5034 in a reference thereto, subsection (2) of section 944.11,

5035 Florida Statutes, is reenacted to read:

5036 944.11 Department to regulate admission of books.-

5037 (2) The department shall have the authority to prohibit

5038 admission of reading materials or publications with content

5039 | which depicts sexual conduct as defined by s. 847.001 or
 5040 | presents nudity in such a way as to create the appearance that
 5041 | sexual conduct is imminent. The department shall have the
 5042 | authority to prohibit admission of such materials at a
 5043 | particular state correctional facility upon a determination by
 5044 | the department that such material or publications would be
 5045 | detrimental to the safety, security, order or rehabilitative
 5046 | interests of a particular state correctional facility or would
 5047 | create a risk of disorder at a particular state correctional
 5048 | facility.

5049 | Section 109. For the purpose of incorporating the
 5050 | amendments made by this act to sections 775.21 and 943.0435,
 5051 | Florida Statutes, in references thereto, paragraph (a) of
 5052 | subsection (4) and subsection (9) of section 944.607, Florida
 5053 | Statutes, are reenacted to read:

5054 | 944.607 Notification to Department of Law Enforcement of
 5055 | information on sexual offenders.-

5056 | (4) A sexual offender, as described in this section, who
 5057 | is under the supervision of the Department of Corrections but is
 5058 | not incarcerated shall register with the Department of
 5059 | Corrections within 3 business days after sentencing for a
 5060 | registrable offense and otherwise provide information as
 5061 | required by this subsection.

5062 | (a) The sexual offender shall provide his or her name;
 5063 | date of birth; social security number; race; sex; height;

5064 weight; hair and eye color; tattoos or other identifying marks;
 5065 all electronic mail addresses and Internet identifiers required
 5066 to be provided pursuant to s. 943.0435(4)(e); employment
 5067 information required to be provided pursuant to s.
 5068 943.0435(4)(e); all home telephone numbers and cellular
 5069 telephone numbers required to be provided pursuant to s.
 5070 943.0435(4)(e); the make, model, color, vehicle identification
 5071 number (VIN), and license tag number of all vehicles owned;
 5072 permanent or legal residence and address of temporary residence
 5073 within the state or out of state while the sexual offender is
 5074 under supervision in this state, including any rural route
 5075 address or post office box; if no permanent or temporary
 5076 address, any transient residence within the state; and address,
 5077 location or description, and dates of any current or known
 5078 future temporary residence within the state or out of state. The
 5079 sexual offender shall also produce his or her passport, if he or
 5080 she has a passport, and, if he or she is an alien, shall produce
 5081 or provide information about documents establishing his or her
 5082 immigration status. The sexual offender shall also provide
 5083 information about any professional licenses he or she has. The
 5084 Department of Corrections shall verify the address of each
 5085 sexual offender in the manner described in ss. 775.21 and
 5086 943.0435. The department shall report to the Department of Law
 5087 Enforcement any failure by a sexual predator or sexual offender
 5088 to comply with registration requirements.

5089 (9) A sexual offender, as described in this section, who
 5090 is under the supervision of the Department of Corrections but
 5091 who is not incarcerated shall, in addition to the registration
 5092 requirements provided in subsection (4), register and obtain a
 5093 distinctive driver license or identification card in the manner
 5094 provided in s. 943.0435(3), (4), and (5), unless the sexual
 5095 offender is a sexual predator, in which case he or she shall
 5096 register and obtain a distinctive driver license or
 5097 identification card as required under s. 775.21. A sexual
 5098 offender who fails to comply with the requirements of s.
 5099 943.0435 is subject to the penalties provided in s. 943.0435(9).

5100 Section 110. For the purpose of incorporating the
 5101 amendments made by this act to sections 775.21 and 944.607,
 5102 Florida Statutes, in references thereto, subsection (7) of
 5103 section 944.608, Florida Statutes, is reenacted to read:

5104 944.608 Notification to Department of Law Enforcement of
 5105 information on career offenders.—

5106 (7) A career offender who is under the supervision of the
 5107 department but who is not incarcerated shall, in addition to the
 5108 registration requirements provided in subsection (3), register
 5109 in the manner provided in s. 775.261(4)(c), unless the career
 5110 offender is a sexual predator, in which case he or she shall
 5111 register as required under s. 775.21, or is a sexual offender,
 5112 in which case he or she shall register as required in s.
 5113 944.607. A career offender who fails to comply with the

5114 requirements of s. 775.261(4) is subject to the penalties
 5115 provided in s. 775.261(8).

5116 Section 111. For the purpose of incorporating the
 5117 amendment made by this act to section 775.21, Florida Statutes,
 5118 in a reference thereto, subsection (4) of section 944.609,
 5119 Florida Statutes, is reenacted to read:

5120 944.609 Career offenders; notification upon release.—

5121 (4) The department or any law enforcement agency may
 5122 notify the community and the public of a career offender's
 5123 presence in the community. However, with respect to a career
 5124 offender who has been found to be a sexual predator under s.
 5125 775.21, the Department of Law Enforcement or any other law
 5126 enforcement agency must inform the community and the public of
 5127 the career offender's presence in the community, as provided in
 5128 s. 775.21.

5129 Section 112. For the purpose of incorporating the
 5130 amendment made by this act to section 947.1405, Florida
 5131 Statutes, in a reference thereto, subsection (1) of section
 5132 944.70, Florida Statutes, is reenacted to read:

5133 944.70 Conditions for release from incarceration.—

5134 (1)(a) A person who is convicted of a crime committed on
 5135 or after October 1, 1983, but before January 1, 1994, may be
 5136 released from incarceration only:

- 5137 1. Upon expiration of the person's sentence;
- 5138 2. Upon expiration of the person's sentence as reduced by

5139 accumulated gain-time;

5140 3. As directed by an executive order granting clemency;

5141 4. Upon attaining the provisional release date;

5142 5. Upon placement in a conditional release program

5143 pursuant to s. 947.1405; or

5144 6. Upon the granting of control release pursuant to s.

5145 947.146.

5146 (b) A person who is convicted of a crime committed on or

5147 after January 1, 1994, may be released from incarceration only:

5148 1. Upon expiration of the person's sentence;

5149 2. Upon expiration of the person's sentence as reduced by

5150 accumulated meritorious or incentive gain-time;

5151 3. As directed by an executive order granting clemency;

5152 4. Upon placement in a conditional release program

5153 pursuant to s. 947.1405 or a conditional medical release program

5154 pursuant to s. 947.149; or

5155 5. Upon the granting of control release, including

5156 emergency control release, pursuant to s. 947.146.

5157 Section 113. For the purpose of incorporating the

5158 amendment made by this act to section 947.1405, Florida

5159 Statutes, in a reference thereto, paragraph (f) of subsection

5160 (1) of section 947.13, Florida Statutes, is reenacted to read:

5161 947.13 Powers and duties of commission.—

5162 (1) The commission shall have the powers and perform the

5163 duties of:

5164 (f) Establishing the terms and conditions of persons
 5165 released on conditional release under s. 947.1405, and
 5166 determining subsequent ineligibility for conditional release due
 5167 to a violation of the terms or conditions of conditional release
 5168 and taking action with respect to such a violation.

5169 Section 114. For the purpose of incorporating the
 5170 amendments made by this act to sections 775.21, 943.0435, and
 5171 943.4354, Florida Statutes, in references thereto, paragraph (c)
 5172 of subsection (2) and subsection (12) of section 947.1405,
 5173 Florida Statutes, are reenacted to read:

5174 947.1405 Conditional release program.—

5175 (2) Any inmate who:

5176 (c) Is found to be a sexual predator under s. 775.21 or
 5177 former s. 775.23,

5178
 5179 shall, upon reaching the tentative release date or provisional
 5180 release date, whichever is earlier, as established by the
 5181 Department of Corrections, be released under supervision subject
 5182 to specified terms and conditions, including payment of the cost
 5183 of supervision pursuant to s. 948.09. Such supervision shall be
 5184 applicable to all sentences within the overall term of sentences
 5185 if an inmate's overall term of sentences includes one or more
 5186 sentences that are eligible for conditional release supervision
 5187 as provided herein. Effective July 1, 1994, and applicable for
 5188 offenses committed on or after that date, the commission may

5189 require, as a condition of conditional release, that the
 5190 releasee make payment of the debt due and owing to a county or
 5191 municipal detention facility under s. 951.032 for medical care,
 5192 treatment, hospitalization, or transportation received by the
 5193 releasee while in that detention facility. The commission, in
 5194 determining whether to order such repayment and the amount of
 5195 such repayment, shall consider the amount of the debt, whether
 5196 there was any fault of the institution for the medical expenses
 5197 incurred, the financial resources of the releasee, the present
 5198 and potential future financial needs and earning ability of the
 5199 releasee, and dependents, and other appropriate factors. If any
 5200 inmate placed on conditional release supervision is also subject
 5201 to probation or community control, resulting from a probationary
 5202 or community control split sentence within the overall term of
 5203 sentences, the Department of Corrections shall supervise such
 5204 person according to the conditions imposed by the court and the
 5205 commission shall defer to such supervision. If the court revokes
 5206 probation or community control and resentences the offender to a
 5207 term of incarceration, such revocation also constitutes a
 5208 sufficient basis for the revocation of the conditional release
 5209 supervision on any nonprobationary or noncommunity control
 5210 sentence without further hearing by the commission. If any such
 5211 supervision on any nonprobationary or noncommunity control
 5212 sentence is revoked, such revocation may result in a forfeiture
 5213 of all gain-time, and the commission may revoke the resulting

5214 deferred conditional release supervision or take other action it
 5215 considers appropriate. If the term of conditional release
 5216 supervision exceeds that of the probation or community control,
 5217 then, upon expiration of the probation or community control,
 5218 authority for the supervision shall revert to the commission and
 5219 the supervision shall be subject to the conditions imposed by
 5220 the commission. A panel of no fewer than two commissioners shall
 5221 establish the terms and conditions of any such release. If the
 5222 offense was a controlled substance violation, the conditions
 5223 shall include a requirement that the offender submit to random
 5224 substance abuse testing intermittently throughout the term of
 5225 conditional release supervision, upon the direction of the
 5226 correctional probation officer as defined in s. 943.10(3). The
 5227 commission shall also determine whether the terms and conditions
 5228 of such release have been violated and whether such violation
 5229 warrants revocation of the conditional release.

5230 (12) In addition to all other conditions imposed, for a
 5231 releasee who is subject to conditional release for a crime that
 5232 was committed on or after May 26, 2010, and who has been
 5233 convicted at any time of committing, or attempting, soliciting,
 5234 or conspiring to commit, any of the criminal offenses listed in
 5235 s. 943.0435(1)(h)1.a.(I), or a similar offense in another
 5236 jurisdiction against a victim who was under 18 years of age at
 5237 the time of the offense, if the releasee has not received a
 5238 pardon for any felony or similar law of another jurisdiction

5239 necessary for the operation of this subsection, if a conviction
 5240 of a felony or similar law of another jurisdiction necessary for
 5241 the operation of this subsection has not been set aside in any
 5242 postconviction proceeding, or if the releasee has not been
 5243 removed from the requirement to register as a sexual offender or
 5244 sexual predator pursuant to s. 943.04354, the commission must
 5245 impose the following conditions:

5246 (a) A prohibition on visiting schools, child care
 5247 facilities, parks, and playgrounds without prior approval from
 5248 the releasee's supervising officer. The commission may also
 5249 designate additional prohibited locations to protect a victim.
 5250 The prohibition ordered under this paragraph does not prohibit
 5251 the releasee from visiting a school, child care facility, park,
 5252 or playground for the sole purpose of attending a religious
 5253 service as defined in s. 775.0861 or picking up or dropping off
 5254 the releasee's child or grandchild at a child care facility or
 5255 school.

5256 (b) A prohibition on distributing candy or other items to
 5257 children on Halloween; wearing a Santa Claus costume, or other
 5258 costume to appeal to children, on or preceding Christmas;
 5259 wearing an Easter Bunny costume, or other costume to appeal to
 5260 children, on or preceding Easter; entertaining at children's
 5261 parties; or wearing a clown costume without prior approval from
 5262 the commission.

5263

5264 Section 115. For the purpose of incorporating the
 5265 amendment made by this act to section 947.1405, Florida
 5266 Statutes, in references thereto, subsections (1), (2), and (7)
 5267 of section 947.141, Florida Statutes, are reenacted to read:

5268 947.141 Violations of conditional release, control
 5269 release, or conditional medical release or addiction-recovery
 5270 supervision.—

5271 (1) If a member of the commission or a duly authorized
 5272 representative of the commission has reasonable grounds to
 5273 believe that an offender who is on release supervision under s.
 5274 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
 5275 the terms and conditions of the release in a material respect,
 5276 such member or representative may cause a warrant to be issued
 5277 for the arrest of the releasee; if the offender was found to be
 5278 a sexual predator, the warrant must be issued.

5279 (2) Upon the arrest on a felony charge of an offender who
 5280 is on release supervision under s. 947.1405, s. 947.146, s.
 5281 947.149, or s. 944.4731, the offender must be detained without
 5282 bond until the initial appearance of the offender at which a
 5283 judicial determination of probable cause is made. If the trial
 5284 court judge determines that there was no probable cause for the
 5285 arrest, the offender may be released. If the trial court judge
 5286 determines that there was probable cause for the arrest, such
 5287 determination also constitutes reasonable grounds to believe
 5288 that the offender violated the conditions of the release. Within

5289 | 24 hours after the trial court judge's finding of probable
 5290 | cause, the detention facility administrator or designee shall
 5291 | notify the commission and the department of the finding and
 5292 | transmit to each a facsimile copy of the probable cause
 5293 | affidavit or the sworn offense report upon which the trial court
 5294 | judge's probable cause determination is based. The offender must
 5295 | continue to be detained without bond for a period not exceeding
 5296 | 72 hours excluding weekends and holidays after the date of the
 5297 | probable cause determination, pending a decision by the
 5298 | commission whether to issue a warrant charging the offender with
 5299 | violation of the conditions of release. Upon the issuance of the
 5300 | commission's warrant, the offender must continue to be held in
 5301 | custody pending a revocation hearing held in accordance with
 5302 | this section.

5303 | (7) If a law enforcement officer has probable cause to
 5304 | believe that an offender who is on release supervision under s.
 5305 | 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
 5306 | the terms and conditions of his or her release by committing a
 5307 | felony offense, the officer shall arrest the offender without a
 5308 | warrant, and a warrant need not be issued in the case.

5309 | Section 116. For the purpose of incorporating the
 5310 | amendments made by this act to ss. 775.21 and 943.0435, Florida
 5311 | Statutes, in references thereto, paragraph (b) of subsection (2)
 5312 | of section 948.013, Florida Statutes, is reenacted to read:

5313 | 948.013 Administrative probation.—

5314 (2)
 5315 (b) Effective for an offense committed on or after October
 5316 1, 2017, a person is ineligible for placement on administrative
 5317 probation if the person is sentenced to or is serving a term of
 5318 probation or community control, regardless of the conviction or
 5319 adjudication, for committing, or attempting, conspiring, or
 5320 soliciting to commit, any of the felony offenses described in s.
 5321 775.21(4)(a)1.a. or b. or s. 943.0435(1)(h)1.a.

5322 Section 117. For the purpose of incorporating the
 5323 amendment made by this act to section 775.21, Florida Statutes,
 5324 in references thereto, paragraphs (b) and (d) of subsection (8)
 5325 of section 948.06, Florida Statutes, are reenacted to read:

5326 948.06 Violation of probation or community control;
 5327 revocation; modification; continuance; failure to pay
 5328 restitution or cost of supervision.—

5329 (8)
 5330 (b) For purposes of this section and ss. 903.0351,
 5331 948.064, and 921.0024, the term "violent felony offender of
 5332 special concern" means a person who is on:

5333 1. Felony probation or community control related to the
 5334 commission of a qualifying offense committed on or after the
 5335 effective date of this act;

5336 2. Felony probation or community control for any offense
 5337 committed on or after the effective date of this act, and has
 5338 previously been convicted of a qualifying offense;

5339 3. Felony probation or community control for any offense
 5340 committed on or after the effective date of this act, and is
 5341 found to have violated that probation or community control by
 5342 committing a qualifying offense;

5343 4. Felony probation or community control and has
 5344 previously been found by a court to be a habitual violent felony
 5345 offender as defined in s. 775.084(1)(b) and has committed a
 5346 qualifying offense on or after the effective date of this act;

5347 5. Felony probation or community control and has
 5348 previously been found by a court to be a three-time violent
 5349 felony offender as defined in s. 775.084(1)(c) and has committed
 5350 a qualifying offense on or after the effective date of this act;
 5351 or

5352 6. Felony probation or community control and has
 5353 previously been found by a court to be a sexual predator under
 5354 s. 775.21 and has committed a qualifying offense on or after the
 5355 effective date of this act.

5356 (d) In the case of an alleged violation of probation or
 5357 community control other than a failure to pay costs, fines, or
 5358 restitution, the following individuals shall remain in custody
 5359 pending the resolution of the probation or community control
 5360 violation:

5361 1. A violent felony offender of special concern, as
 5362 defined in this section;

5363 2. A person who is on felony probation or community

5364 control for any offense committed on or after the effective date
 5365 of this act and who is arrested for a qualifying offense as
 5366 defined in this section; or

5367 3. A person who is on felony probation or community
 5368 control and has previously been found by a court to be a
 5369 habitual violent felony offender as defined in s. 775.084(1)(b),
 5370 a three-time violent felony offender as defined in s.
 5371 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 5372 arrested for committing a qualifying offense as defined in this
 5373 section on or after the effective date of this act.

5374
 5375 The court shall not dismiss the probation or community control
 5376 violation warrant pending against an offender enumerated in this
 5377 paragraph without holding a recorded violation-of-probation
 5378 hearing at which both the state and the offender are
 5379 represented.

5380 Section 118. For the purpose of incorporating the
 5381 amendments made by this act to sections 775.21, 943.0435, and
 5382 944.607, Florida Statutes, in references thereto, section
 5383 948.063, Florida Statutes, is reenacted to read:

5384 948.063 Violations of probation or community control by
 5385 designated sexual offenders and sexual predators.—

5386 (1) If probation or community control for any felony
 5387 offense is revoked by the court pursuant to s. 948.06(2)(e) and
 5388 the offender is designated as a sexual offender pursuant to s.

5389 943.0435 or s. 944.607 or as a sexual predator pursuant to s.
 5390 775.21 for unlawful sexual activity involving a victim 15 years
 5391 of age or younger and the offender is 18 years of age or older,
 5392 and if the court imposes a subsequent term of supervision
 5393 following the revocation of probation or community control, the
 5394 court must order electronic monitoring as a condition of the
 5395 subsequent term of probation or community control.

5396 (2) If the probationer or offender is required to register
 5397 as a sexual predator under s. 775.21 or as a sexual offender
 5398 under s. 943.0435 or s. 944.607 for unlawful sexual activity
 5399 involving a victim 15 years of age or younger and the
 5400 probationer or offender is 18 years of age or older and has
 5401 violated the conditions of his or her probation or community
 5402 control, but the court does not revoke the probation or
 5403 community control, the court shall nevertheless modify the
 5404 probation or community control to include electronic monitoring
 5405 for any probationer or offender not then subject to electronic
 5406 monitoring.

5407 Section 119. For the purpose of incorporating the
 5408 amendment made by this act to section 775.21, Florida Statutes,
 5409 in a reference thereto, subsection (4) of section 948.064,
 5410 Florida Statutes, is reenacted to read:

5411 948.064 Notification of status as a violent felony
 5412 offender of special concern.-

5413 (4) The state attorney, or the statewide prosecutor if

5414 applicable, shall advise the court at each critical stage in the
 5415 judicial process, at which the state attorney or statewide
 5416 prosecutor is represented, whether an alleged or convicted
 5417 offender is a violent felony offender of special concern; a
 5418 person who is on felony probation or community control for any
 5419 offense committed on or after the effective date of this act and
 5420 who is arrested for a qualifying offense; or a person who is on
 5421 felony probation or community control and has previously been
 5422 found by a court to be a habitual violent felony offender as
 5423 defined in s. 775.084(1)(b), a three-time violent felony
 5424 offender as defined in s. 775.084(1)(c), or a sexual predator
 5425 under s. 775.21, and who is arrested for committing a qualifying
 5426 offense on or after the effective date of this act.

5427 Section 120. For the purpose of incorporating the
 5428 amendment made by this act to section 948.06, Florida Statutes,
 5429 in a reference thereto, paragraph (a) of subsection (7) of
 5430 section 948.08, Florida Statutes, is reenacted to read:

5431 948.08 Pretrial intervention program.—

5432 (7)(a) Notwithstanding any provision of this section, a
 5433 person who is charged with a felony, other than a felony listed
 5434 in s. 948.06(8)(c), and identified as a veteran, as defined in
 5435 s. 1.01, including a veteran who is discharged or released under
 5436 a general discharge, or servicemember, as defined in s. 250.01,
 5437 who suffers from a military service-related mental illness,
 5438 traumatic brain injury, substance abuse disorder, or

5439 | psychological problem, is eligible for voluntary admission into
 5440 | a pretrial veterans' treatment intervention program approved by
 5441 | the chief judge of the circuit, upon motion of either party or
 5442 | the court's own motion, except:

5443 | 1. If a defendant was previously offered admission to a
 5444 | pretrial veterans' treatment intervention program at any time
 5445 | before trial and the defendant rejected that offer on the
 5446 | record, the court may deny the defendant's admission to such a
 5447 | program.

5448 | 2. If a defendant previously entered a court-ordered
 5449 | veterans' treatment program, the court may deny the defendant's
 5450 | admission into the pretrial veterans' treatment program.

5451 | Section 121. For the purpose of incorporating the
 5452 | amendment made by this act to section 775.21, Florida Statutes,
 5453 | in a reference thereto, subsection (3) of section 948.12,
 5454 | Florida Statutes, is reenacted to read:

5455 | 948.12 Intensive supervision for postprison release of
 5456 | violent offenders.—It is the finding of the Legislature that the
 5457 | population of violent offenders released from state prison into
 5458 | the community poses the greatest threat to the public safety of
 5459 | the groups of offenders under community supervision. Therefore,
 5460 | for the purpose of enhanced public safety, any offender released
 5461 | from state prison who:

5462 | (3) Has been found to be a sexual predator pursuant to s.
 5463 | 775.21,

5464
 5465 and who has a term of probation to follow the period of
 5466 incarceration shall be provided intensive supervision by
 5467 experienced correctional probation officers. Subject to specific
 5468 appropriation by the Legislature, caseloads may be restricted to
 5469 a maximum of 40 offenders per officer to provide for enhanced
 5470 public safety as well as to effectively monitor conditions of
 5471 electronic monitoring or curfews, if such was ordered by the
 5472 court.

5473 Section 122. For the purpose of incorporating the
 5474 amendments made by this act to sections 775.21 and 943.0435,
 5475 Florida Statutes, in references thereto, paragraph (b) of
 5476 subsection (3) and subsection (4) of section 948.30, Florida
 5477 Statutes, are reenacted to read:

5478 948.30 Additional terms and conditions of probation or
 5479 community control for certain sex offenses.—Conditions imposed
 5480 pursuant to this section do not require oral pronouncement at
 5481 the time of sentencing and shall be considered standard
 5482 conditions of probation or community control for offenders
 5483 specified in this section.

5484 (3) Effective for a probationer or community controllee
 5485 whose crime was committed on or after September 1, 2005, and
 5486 who:

5487 (a) Is placed on probation or community control for a
 5488 violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,

5489 or s. 847.0145 and the unlawful sexual activity involved a
 5490 victim 15 years of age or younger and the offender is 18 years
 5491 of age or older;

5492 (b) Is designated a sexual predator pursuant to s. 775.21;
 5493 or

5494 (c) Has previously been convicted of a violation of
 5495 chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s.
 5496 847.0145 and the unlawful sexual activity involved a victim 15
 5497 years of age or younger and the offender is 18 years of age or
 5498 older,

5499
 5500 the court must order, in addition to any other provision of this
 5501 section, mandatory electronic monitoring as a condition of the
 5502 probation or community control supervision.

5503 (4) In addition to all other conditions imposed, for a
 5504 probationer or community controllee who is subject to
 5505 supervision for a crime that was committed on or after May 26,
 5506 2010, and who has been convicted at any time of committing, or
 5507 attempting, soliciting, or conspiring to commit, any of the
 5508 criminal offenses listed in s. 943.0435(1)(h)1.a.(I), or a
 5509 similar offense in another jurisdiction, against a victim who
 5510 was under the age of 18 at the time of the offense; if the
 5511 offender has not received a pardon for any felony or similar law
 5512 of another jurisdiction necessary for the operation of this
 5513 subsection, if a conviction of a felony or similar law of

5514 another jurisdiction necessary for the operation of this
 5515 subsection has not been set aside in any postconviction
 5516 proceeding, or if the offender has not been removed from the
 5517 requirement to register as a sexual offender or sexual predator
 5518 pursuant to s. 943.04354, the court must impose the following
 5519 conditions:

5520 (a) A prohibition on visiting schools, child care
 5521 facilities, parks, and playgrounds, without prior approval from
 5522 the offender's supervising officer. The court may also designate
 5523 additional locations to protect a victim. The prohibition
 5524 ordered under this paragraph does not prohibit the offender from
 5525 visiting a school, child care facility, park, or playground for
 5526 the sole purpose of attending a religious service as defined in
 5527 s. 775.0861 or picking up or dropping off the offender's
 5528 children or grandchildren at a child care facility or school.

5529 (b) A prohibition on distributing candy or other items to
 5530 children on Halloween; wearing a Santa Claus costume, or other
 5531 costume to appeal to children, on or preceding Christmas;
 5532 wearing an Easter Bunny costume, or other costume to appeal to
 5533 children, on or preceding Easter; entertaining at children's
 5534 parties; or wearing a clown costume; without prior approval from
 5535 the court.

5536 Section 123. For the purpose of incorporating the
 5537 amendments made by this act to sections 775.21, 943.0435,
 5538 944.606, and 944.607, Florida Statutes, in references thereto,

5539 section 948.31, Florida Statutes, is reenacted to read:

5540 948.31 Evaluation and treatment of sexual predators and
 5541 offenders on probation or community control.—The court may
 5542 require any probationer or community controllee who is required
 5543 to register as a sexual predator under s. 775.21 or sexual
 5544 offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo
 5545 an evaluation, at the probationer or community controllee's
 5546 expense, by a qualified practitioner to determine whether such
 5547 probationer or community controllee needs sexual offender
 5548 treatment. If the qualified practitioner determines that sexual
 5549 offender treatment is needed and recommends treatment, the
 5550 probationer or community controllee must successfully complete
 5551 and pay for the treatment. Such treatment must be obtained from
 5552 a qualified practitioner as defined in s. 948.001. Treatment may
 5553 not be administered by a qualified practitioner who has been
 5554 convicted or adjudicated delinquent of committing, or
 5555 attempting, soliciting, or conspiring to commit, any offense
 5556 that is listed in s. 943.0435(1)(h)1.a.(I).

5557 Section 124. For the purpose of incorporating the
 5558 amendment made by this act to section 775.0877, Florida
 5559 Statutes, in a reference thereto, section 951.27, Florida
 5560 Statutes, is reenacted to read:

5561 951.27 Blood tests of inmates.—

5562 (1) Each county and each municipal detention facility
 5563 shall have a written procedure developed, in consultation with

5564 | the facility medical provider, establishing conditions under
 5565 | which an inmate will be tested for infectious disease, including
 5566 | human immunodeficiency virus pursuant to s. 775.0877, which
 5567 | procedure is consistent with guidelines of the Centers for
 5568 | Disease Control and Prevention and recommendations of the
 5569 | Correctional Medical Authority. It is not unlawful for the
 5570 | person receiving the test results to divulge the test results to
 5571 | the sheriff or chief correctional officer.

5572 | (2) Except as otherwise provided in this subsection,
 5573 | serologic blood test results obtained pursuant to subsection (1)
 5574 | are confidential and exempt from the provisions of s. 119.07(1)
 5575 | and s. 24(a), Art. I of the State Constitution. However, such
 5576 | results may be provided to employees or officers of the sheriff
 5577 | or chief correctional officer who are responsible for the
 5578 | custody and care of the affected inmate and have a need to know
 5579 | such information, and as provided in ss. 775.0877 and 960.003.
 5580 | In addition, upon request of the victim or the victim's legal
 5581 | guardian, or the parent or legal guardian of the victim if the
 5582 | victim is a minor, the results of any HIV test performed on an
 5583 | inmate who has been arrested for any sexual offense involving
 5584 | oral, anal, or vaginal penetration by, or union with, the sexual
 5585 | organ of another, shall be disclosed to the victim or the
 5586 | victim's legal guardian, or to the parent or legal guardian of
 5587 | the victim if the victim is a minor. In such cases, the county
 5588 | or municipal detention facility shall furnish the test results

5589 to the Department of Health, which is responsible for disclosing
 5590 the results to public health agencies as provided in s. 775.0877
 5591 and to the victim or the victim's legal guardian, or the parent
 5592 or legal guardian of the victim if the victim is a minor, as
 5593 provided in s. 960.003(3).

5594 (3) The results of any serologic blood test on an inmate
 5595 are a part of that inmate's permanent medical file. Upon
 5596 transfer of the inmate to any other correctional facility, such
 5597 file is also transferred, and all relevant authorized persons
 5598 must be notified of positive HIV test results, as required in s.
 5599 775.0877.

5600 Section 125. For the purpose of incorporating the
 5601 amendment made by this act to section 775.0877, Florida
 5602 Statutes, in references thereto, paragraphs (a) and (b) of
 5603 subsection (2) and paragraph (a) of subsection (3) of section
 5604 960.003, Florida Statutes, are reenacted to read:

5605 960.003 Hepatitis and HIV testing for persons charged with
 5606 or alleged by petition for delinquency to have committed certain
 5607 offenses; disclosure of results to victims.—

5608 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION
 5609 FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

5610 (a) In any case in which a person has been charged by
 5611 information or indictment with or alleged by petition for
 5612 delinquency to have committed any offense enumerated in s.
 5613 775.0877(1)(a)-(n), which involves the transmission of body

5614 fluids from one person to another, upon request of the victim or
 5615 the victim's legal guardian, or of the parent or legal guardian
 5616 of the victim if the victim is a minor, the court shall order
 5617 such person to undergo hepatitis and HIV testing within 48 hours
 5618 after the information, indictment, or petition for delinquency
 5619 is filed. In the event the victim or, if the victim is a minor,
 5620 the victim's parent or legal guardian requests hepatitis and HIV
 5621 testing after 48 hours have elapsed from the filing of the
 5622 indictment, information, or petition for delinquency, the
 5623 testing shall be done within 48 hours after the request.

5624 (b) However, when a victim of any sexual offense
 5625 enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at
 5626 the time the offense was committed or when a victim of any
 5627 sexual offense enumerated in s. 775.0877(1)(a)-(n) or s.
 5628 825.1025 is a disabled adult or elderly person as defined in s.
 5629 825.1025 regardless of whether the offense involves the
 5630 transmission of bodily fluids from one person to another, then
 5631 upon the request of the victim or the victim's legal guardian,
 5632 or of the parent or legal guardian, the court shall order such
 5633 person to undergo hepatitis and HIV testing within 48 hours
 5634 after the information, indictment, or petition for delinquency
 5635 is filed. In the event the victim or, if the victim is a minor,
 5636 the victim's parent or legal guardian requests hepatitis and HIV
 5637 testing after 48 hours have elapsed from the filing of the
 5638 indictment, information, or petition for delinquency, the

5639 testing shall be done within 48 hours after the request. The
 5640 testing shall be performed under the direction of the Department
 5641 of Health in accordance with s. 381.004. The results of a
 5642 hepatitis and HIV test performed on a defendant or juvenile
 5643 offender pursuant to this subsection shall not be admissible in
 5644 any criminal or juvenile proceeding arising out of the alleged
 5645 offense.

5646 (3) DISCLOSURE OF RESULTS.—

5647 (a) The results of the test shall be disclosed no later
 5648 than 2 weeks after the court receives such results, under the
 5649 direction of the Department of Health, to the person charged
 5650 with or alleged by petition for delinquency to have committed or
 5651 to the person convicted of or adjudicated delinquent for any
 5652 offense enumerated in s. 775.0877(1)(a)-(n), which involves the
 5653 transmission of body fluids from one person to another, and,
 5654 upon request, to the victim or the victim's legal guardian, or
 5655 the parent or legal guardian of the victim if the victim is a
 5656 minor, and to public health agencies pursuant to s. 775.0877. If
 5657 the alleged offender is a juvenile, the test results shall also
 5658 be disclosed to the parent or guardian. When the victim is a
 5659 victim as described in paragraph (2)(b), the test results must
 5660 also be disclosed no later than 2 weeks after the court receives
 5661 such results, to the person charged with or alleged by petition
 5662 for delinquency to have committed or to the person convicted of
 5663 or adjudicated delinquent for any offense enumerated in s.

5664 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the
 5665 offense involves the transmission of bodily fluids from one
 5666 person to another, and, upon request, to the victim or the
 5667 victim's legal guardian, or the parent or legal guardian of the
 5668 victim, and to public health agencies pursuant to s. 775.0877.
 5669 Otherwise, hepatitis and HIV test results obtained pursuant to
 5670 this section are confidential and exempt from the provisions of
 5671 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
 5672 shall not be disclosed to any other person except as expressly
 5673 authorized by law or court order.

5674 Section 126. For the purpose of incorporating the
 5675 amendment made by this act to section 39.01, Florida Statutes,
 5676 in a reference thereto, subsection (5) of section 960.065,
 5677 Florida Statutes, is reenacted to read:

5678 960.065 Eligibility for awards.—

5679 (5) A person is not ineligible for an award pursuant to
 5680 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that
 5681 person is a victim of sexual exploitation of a child as defined
 5682 in s. 39.01(71)(g).

5683 Section 127. For the purpose of incorporating the
 5684 amendment made by this act to section 39.01, Florida Statutes,
 5685 in a reference thereto, subsection (2) of section 984.03,
 5686 Florida Statutes, is reenacted to read:

5687 984.03 Definitions.—When used in this chapter, the term:

5688 (2) "Abuse" means any willful act that results in any

5689 physical, mental, or sexual injury that causes or is likely to
 5690 cause the child's physical, mental, or emotional health to be
 5691 significantly impaired. Corporal discipline of a child by a
 5692 parent or guardian for disciplinary purposes does not in itself
 5693 constitute abuse when it does not result in harm to the child as
 5694 defined in s. 39.01.

5695 Section 128. For the purpose of incorporating the
 5696 amendment made by this act to section 985.475, Florida Statutes,
 5697 in a reference thereto, paragraph (c) of subsection (5) of
 5698 section 985.0301, Florida Statutes, is reenacted to read:

5699 985.0301 Jurisdiction.—

5700 (5)

5701 (c) The court shall retain jurisdiction over a juvenile
 5702 sexual offender, as defined in s. 985.475, who has been placed
 5703 on community-based treatment alternative with supervision or who
 5704 has been placed in a program or facility for juvenile sexual
 5705 offenders, pursuant to s. 985.48, until the juvenile sexual
 5706 offender reaches 21 years of age, specifically for the purpose
 5707 of allowing the juvenile to complete the program.

5708 Section 129. For the purpose of incorporating the
 5709 amendments made by this act to sections 775.21, 943.0435,
 5710 944.606 and 944.607, Florida Statutes, in references thereto,
 5711 paragraph (b) of subsection (6) of section 985.04, Florida
 5712 Statutes, is reenacted to read:

5713 985.04 Oaths; records; confidential information.—

5714 (6)
 5715 (b) Sexual offender and predator registration information
 5716 as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481,
 5717 and 985.4815 is a public record pursuant to s. 119.07(1) and as
 5718 otherwise provided by law.

5719 Section 130. For the purpose of incorporating the
 5720 amendment made by this act to section 985.475, Florida Statutes,
 5721 in a reference thereto, paragraph (c) of subsection (1) of
 5722 section 985.441, Florida Statutes, is reenacted to read:

5723 985.441 Commitment.—

5724 (1) The court that has jurisdiction of an adjudicated
 5725 delinquent child may, by an order stating the facts upon which a
 5726 determination of a sanction and rehabilitative program was made
 5727 at the disposition hearing:

5728 (c) Commit the child to the department for placement in a
 5729 program or facility for juvenile sexual offenders in accordance
 5730 with s. 985.48, subject to specific appropriation for such a
 5731 program or facility.

5732 1. The child may only be committed for such placement
 5733 pursuant to determination that the child is a juvenile sexual
 5734 offender under the criteria specified in s. 985.475.

5735 2. Any commitment of a juvenile sexual offender to a
 5736 program or facility for juvenile sexual offenders must be for an
 5737 indeterminate period of time, but the time may not exceed the
 5738 maximum term of imprisonment that an adult may serve for the

5739 same offense.

5740 Section 131. For the purpose of incorporating the
 5741 amendments made by this act to sections 775.21 and 943.0435
 5742 Florida Statutes, in references thereto, subsection (9) of
 5743 section 985.4815, Florida Statutes, is reenacted to read:

5744 985.4815 Notification to Department of Law Enforcement of
 5745 information on juvenile sexual offenders.-

5746 (9) A sexual offender, as described in this section, who
 5747 is under the care, jurisdiction, or supervision of the
 5748 department but who is not incarcerated shall, in addition to the
 5749 registration requirements provided in subsection (4), register
 5750 in the manner provided in s. 943.0435(3), (4), and (5), unless
 5751 the sexual offender is a sexual predator, in which case he or
 5752 she shall register as required under s. 775.21. A sexual
 5753 offender who fails to comply with the requirements of s.
 5754 943.0435 is subject to the penalties provided in s. 943.0435(9).

5755 Section 132. For the purpose of incorporating the
 5756 amendment made by this act to section 943.0435, Florida
 5757 Statutes, in a reference thereto, paragraph (g) of subsection
 5758 (2) of section 1012.467, Florida Statutes, is reenacted to read:

5759 1012.467 Noninstructional contractors who are permitted
 5760 access to school grounds when students are present; background
 5761 screening requirements.-

5762 (2)

5763 (g) A noninstructional contractor for whom a criminal

5764 history check is required under this section may not have been
 5765 convicted of any of the following offenses designated in the
 5766 Florida Statutes, any similar offense in another jurisdiction,
 5767 or any similar offense committed in this state which has been
 5768 redesignated from a former provision of the Florida Statutes to
 5769 one of the following offenses:

5770 1. Any offense listed in s. 943.0435(1)(h)1., relating to
 5771 the registration of an individual as a sexual offender.

5772 2. Section 393.135, relating to sexual misconduct with
 5773 certain developmentally disabled clients and the reporting of
 5774 such sexual misconduct.

5775 3. Section 394.4593, relating to sexual misconduct with
 5776 certain mental health patients and the reporting of such sexual
 5777 misconduct.

5778 4. Section 775.30, relating to terrorism.

5779 5. Section 782.04, relating to murder.

5780 6. Section 787.01, relating to kidnapping.

5781 7. Any offense under chapter 800, relating to lewdness and
 5782 indecent exposure.

5783 8. Section 826.04, relating to incest.

5784 9. Section 827.03, relating to child abuse, aggravated
 5785 child abuse, or neglect of a child.

5786 Section 133. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJ 18-02 Public Records/Minor Victims of Sexual Offenses
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: PCB CRJ 18-01 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Bruno <i>JB</i>	Sumner <i>S</i>

SUMMARY ANALYSIS

Florida law provides a public records exemption for information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011, 827.071, 847.012, 847.0125, 847.013, 847.0133, or 847.0145, F.S.

PCB CRJ 18-01, which is tied to this PCB, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

PCB CRJ 18-02 amends the public records exemption for the videotaped statement of a minor to remove references to s. 827.071, F.S., and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the provisions of PCB CRJ 18-02. The PCB provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement for the exemption as required by the Florida Constitution.

The PCB does not appear to have a fiscal impact on state or local governments.

The PCB takes effect on the same date that PCB CRJ 18-01 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. PCB CRJ 18-01 provides an effective date of October 1, 2018.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide for the exemption of records from the requirements of Article I, section 24(a), by general law,¹ which must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ (the Act) provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Public Records Exemptions for Certain Victim Information

Current law provides a public records exemption for the following criminal intelligence information⁸ and criminal investigative information:⁹

- Information that reveals the identity of the victim of child abuse or that reveals the identity of a victim of human trafficking who is under the age of 18;
- Information that may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794,¹⁰ 796,¹¹ 800,¹² 827,¹³ or 847,¹⁴ F.S.; and

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁹ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹⁰ Relating to sexual battery.

¹¹ Relating to prostitution.

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offense prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145,¹⁵ F.S., regardless of whether it identifies the victim.¹⁶

Current law also provides that any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011,¹⁷ 827.071,¹⁸ 847.012,¹⁹ 847.0125,²⁰ 847.013,²¹ 847.0133,²² or 847.0145,²³ F.S., is confidential and exempt²⁴ from public records requirements.²⁵

PCB CRJ 18-01

PCB CRJ 18-01, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S. PCB CRJ 18-01 takes effect October 1, 2018.

Effect of Proposed Changes

PCB CRJ 18-02 amends the public records exemption of any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct to remove references to s. 827.071, F.S.,²⁶ and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by PCB CRJ 18-01.

Florida's Second District Court of Appeal has held that an amendment eliminating a public records exemption applies prospectively from the effective date of the amendment.²⁷ Further, s. 119.15(7), F.S., provides that records created before the date of the repeal of an exemption may not be made public unless otherwise provided by law. This bill does not provide that the confidential and exempt records relating to a victim of certain sexual acts as proscribed in s. 827.071, F.S., will be made publicly available upon repeal of that cross-reference. As such, any records containing such information that were created prior to the repeal of the reference to s. 827.071, F.S., remain confidential and exempt from public records requirements.

The PCB provides for repeal of the revised exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement for the exemption as required by the Florida Constitution.

¹² Relating to lewdness and indecent exposure.

¹³ Relating to abuse of children.

¹⁴ Relating to obscenity.

¹⁵ Relating to video voyeurism.

¹⁶ S. 119.071(2)(h)1., F.S.

¹⁷ Relating to sexual battery.

¹⁸ Relating to sexual performance by a child.

¹⁹ Relating to harmful materials and sale of distribution to minors or using minors in production prohibited.

²⁰ Relating to retail display of materials harmful to minors prohibited.

²¹ Relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

²² Relating to protection of minors and prohibition of certain acts in connection with obscenity.

²³ Relating to selling or buying of minors.

²⁴ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

²⁴ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

²⁵ S. 119.071(2)(j)2.a., F.S.

²⁶ Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.

²⁷ *Baker v. Eckerd Corporation*, 697 So.2d 970 (Fla. 2d DCA 1997).

Finally, the PCB provides an effective date that is contingent upon the passage of PCB CRJ 18-01 or similar legislation. PCB CRJ 18-01 provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Provides that the act takes effect on the same date that PCB CRJ 18-01 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A bill to be entitled
An act relating to public records; amending s.
119.071, F.S.; expanding the exemption from public
records requirements for any information in a
videotaped statement of a minor who is alleged to be
or who is a victim of sexual battery, lewd acts, or
other sexual misconduct; providing for future review
and repeal of the exemption; providing a statement of
public necessity; providing a contingent effective
date.

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

Section 1. Paragraph (j) of subsection (2) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.—

(2) AGENCY INVESTIGATIONS.—

(j)1. Any document that reveals the identity, home or
employment telephone number, home or employment address, or
personal assets of the victim of a crime and identifies that
person as the victim of a crime, which document is received by
any agency that regularly receives information from or
concerning the victims of crime, is exempt from s. 119.07(1) and
s. 24(a), Art. I of the State Constitution. Any information not

26 otherwise held confidential or exempt from s. 119.07(1) which
 27 reveals the home or employment telephone number, home or
 28 employment address, or personal assets of a person who has been
 29 the victim of sexual battery, aggravated child abuse, aggravated
 30 stalking, harassment, aggravated battery, or domestic violence
 31 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 32 Constitution, upon written request by the victim, which must
 33 include official verification that an applicable crime has
 34 occurred. Such information shall cease to be exempt 5 years
 35 after the receipt of the written request. Any state or federal
 36 agency that is authorized to have access to such documents by
 37 any provision of law shall be granted such access in the
 38 furtherance of such agency's statutory duties, notwithstanding
 39 this section.

40 2.a. Any information in a videotaped statement of a minor
 41 who is alleged to be or who is a victim of sexual battery, lewd
 42 acts, or other sexual misconduct proscribed in chapter 800 or in
 43 s. 794.011, s. 847.003, ~~s. 827.071~~, s. 847.012, s. 847.0125, s.
 44 847.013, s. 847.0133, s. 847.0137, or s. 847.0145, which reveals
 45 that minor's identity, including, but not limited to, the
 46 minor's face; the minor's home, school, church, or employment
 47 telephone number; the minor's home, school, church, or
 48 employment address; the name of the minor's school, church, or
 49 place of employment; or the personal assets of the minor; and
 50 which identifies that minor as the victim of a crime described

51 | in this subparagraph, held by a law enforcement agency, is
 52 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 53 | of the State Constitution. Any governmental agency that is
 54 | authorized to have access to such statements by any provision of
 55 | law shall be granted such access in the furtherance of the
 56 | agency's statutory duties, notwithstanding the provisions of
 57 | this section.

58 | b. A public employee or officer who has access to a
 59 | videotaped statement of a minor who is alleged to be or who is a
 60 | victim of sexual battery, lewd acts, or other sexual misconduct
 61 | proscribed in chapter 800 or in s. 794.011, s. 847.003, ~~s.~~
 62 | ~~827.071~~, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, s.
 63 | 847.0137, or s. 847.0145 may not willfully and knowingly
 64 | disclose videotaped information that reveals the minor's
 65 | identity to a person who is not assisting in the investigation
 66 | or prosecution of the alleged offense or to any person other
 67 | than the defendant, the defendant's attorney, or a person
 68 | specified in an order entered by the court having jurisdiction
 69 | of the alleged offense. A person who violates this provision
 70 | commits a misdemeanor of the first degree, punishable as
 71 | provided in s. 775.082 or s. 775.083.

72 | c. This subparagraph is subject to the Open Government
 73 | Sunset Review Act in accordance with s. 119.15 and shall stand
 74 | repealed on October 2, 2023, unless reviewed and saved from
 75 | repeal through reenactment by the Legislature.

76 Section 2. The Legislature finds that it is a public
 77 necessity that any information in a videotaped statement of a
 78 minor who is alleged to be or who is a victim of sexual battery,
 79 lewd acts, or other sexual misconduct as proscribed by s.
 80 847.003 or s. 847.0137, Florida Statutes, be made confidential
 81 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 82 Article I of the State Constitution. The Legislature finds that
 83 such information is highly sensitive and shows the minor victim
 84 describing in graphic detail sexual acts for which the minor is
 85 alleged to be or is a victim. If such information regarding a
 86 minor victim of sex crimes were viewed, copied, or publicized,
 87 it could result in trauma, sorrow, humiliation, or emotional
 88 injury to the minor victim and the victim's family. The
 89 Legislature finds that it is important to strengthen the
 90 protections afforded minor victims of sex crimes in order to
 91 ensure their privacy and to prevent their revictimization. This
 92 exemption serves to minimize the trauma to those minor victims
 93 because the release of such information would compound the
 94 tragedy already visited upon their lives. For these reasons, the
 95 Legislature finds that it is a public necessity to make
 96 confidential and exempt any information in a videotaped
 97 statement of a minor who is alleged to be or who is a victim of
 98 sexual battery, lewd acts, or other sexual misconduct as
 99 proscribed by s. 847.003 or s. 847.0137, Florida Statutes.

100 Section 3. This act shall take effect on the same date

PCB CRJ 18-02

ORIGINAL

2018

101 | that HB ____ or similar legislation takes effect, if such
102 | legislation is adopted in the same legislative session or an
103 | extension thereof and becomes a law.