

FDLE LEGAL BULLETIN - Sex Offenders
2004 Guidelines to Florida Sex Offender Laws
December 2004

Introduction

Through the public Safety Information Act of 1997, Florida became the first state to list sexual predators and offenders on the Internet and to make the same information available through a 24-hour/day hotline. This Act allowed the Florida Department of Law Enforcement to give the public access to information important to their ability to protect themselves and their families against sexual offenders. Since that time, Florida has continued to lead the nation in legislating strong registration and related sexual offender laws, and effectively implementing these laws through the dedicated efforts of criminal justice partners across the state.

At the time the Public Safety Information Act passed, Florida had 471 sexual predators and approximately 8,000 sexual offenders listed in the database. Today, eight years later, that number has grown to more than 4,900 registered predators and 28,500 registered offenders. Despite the increased volume of registrants, Florida has responded quickly and favorably to the changing demands of state and federal laws as well as the logistical requirements that come with this much larger group of registrants.

From the beginning, Florida has benefited from great support and cooperation from all of our State's criminal justice partners at the local, state, and national levels in implementing a system of sexual predator/offender registration and verification which continues to ensure that important information and updates are available to citizens and criminal justice partners as soon as possible. Indeed, it is the continuing spirit of cooperation among all criminal justice partners and the citizens of Florida that ensures that Florida's registry is as up-to-date and accurate as possible, despite the great challenges to the success of this demanding process. Our state enjoys national recognition as the leader and a model in the strength of our law and in the successful partnership that makes those laws work.

Most importantly, because of these integrated efforts, Florida's public is advised of potential predators/offenders in a timely fashion, and predators and offenders are more closely monitored and controlled. Ultimately, this information makes Florida's citizens – especially our children – much safer.

Sincerely,
Guy M. Tunnell
Commissioner
Florida Department of Law Enforcement

The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

SEXUAL PREDATORS

Section 775.21(3), Florida Statutes:

Legislative Findings, Purpose, and Intent

(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.
2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.
3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.
4. Providing for community and public notification concerning the presence of sexual predators.
5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. The

designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;
2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and
3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.



SEXUAL PREDATORS

CAUTION: Under Florida law, not all “sex offenders” are “sexual predators”. A court must make a specific finding that an offender is a sexual *predator* before that offender can be officially designated as a sexual *predator* and be subject to Florida’s sexual *predator* registration and notification requirements. See *Sexual Offenders* section in this booklet for more information. Please use caution when evaluating an offender’s criminal convictions and in determining the appropriate designation, registration, and notification requirements.

What constitutes a Sexual Predator?

There are three ways a person can be qualified and designated as a “sexual predator” in the state of Florida and, therefore, be required to comply with Florida’s sexual predator registration laws:

- 1) **“One is Enough”** - Commit one specified offense on or after October 1, 1993, in Florida or in another jurisdiction, be convicted of such offense, and have a court enter a finding that such person is a sexual predator;

OR

- 2) **“Second Strike”** – Commit one specified offense on or after October 1, 1993, in Florida or in another jurisdiction, after having previously been convicted of or found to have committed, or pled nolo contendere or guilty to, regardless of adjudication, one or more of specified sexual offenses, and have a court enter a finding that such person is a sexual predator.

OR

~~NEW~~ **New** in **2004:**

3) *An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under this section and is subject to registration and community and public notification. {Section 775.21(4)}*

In any instance, a written finding designating the qualifying individual as a "sexual predator" *must* be issued from the court to establish the designation of "Sexual Predator."

What constitutes a "conviction"?

Amended in 2004

For purposes of determining qualifying offenses for "sexual predator" designation, "**conviction**" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. {Section 775.21(2)(c)}



**"ONE IS ENOUGH"
SEXUAL PREDATOR
QUALIFYING OFFENSES**

A sexual predator is an offender who has received a **conviction** for an offense listed below that was **committed ON or AFTER October 1, 1993**. Such offender must be designated as a sexual predator by a **court finding**. {Section 775.21(4)(a), (c), and (5)}

Capital, Life, First- Degree	s. 787.01*	Kidnapping <i>Where the victim is a minor and the defendant is not the victim's parent</i>
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Felony Violation <i>or</i> Any Attempt thereof	s. 787.02*	False imprisonment <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	Chapter 794 s. 800.04	Sexual Battery Lewd/lascivious offenses committed upon or in the presence of persons less than 16 years of age
	s. 847.0145	Selling or buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct
<i>Or</i> Any violation of a similar law of another jurisdiction		

**** NOTE: Before using a Kidnapping or False Imprisonment conviction to determine if an offender is a "sexual predator", please check the current case law in Florida for applicable interpretation and application of these convictions.***

Provided that:

The offender has not received a pardon for any felony or similar law of another jurisdiction that is a qualifying offense; {Section 775.21(4)(a)2.}

AND

A conviction of a felony or similar law of another jurisdiction that is a qualifying offense has not been set-aside in any post conviction proceeding. {Section 775.21(4)(a)3}

AND

In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony. If the offender's prior enumerated felony was committed more than 10 years before the primary offense, it shall not be considered a prior felony under this subsection if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later. {Section 775.21(4)(b)}

**"SECOND STRIKE"
SEXUAL PREDATOR
QUALIFYING OFFENSES**

A sexual predator is an offender who has received a **conviction** for an offense listed below that was **committed ON or AFTER October 1, 1993**. ** Such offender must be designated as a sexual predator by a **court finding**. {Section 775.21(4)(a)-(c), (5)}

Any Felony violation <u>OR</u> Any Attempt thereof	s. 787.01*	Kidnapping <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 787.02*	False imprisonment <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 787.025	Luring or enticing a child <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	Chapter 794*	Sexual Battery <i>*Excluding subsections 794.011(10) and 794.0235</i>
	s. 796.03	Procuring a person under the age of 18 for prostitution
	s. 800.04	Lewd/lascivious offenses committed upon or in the presence of persons less than 16 years of age
	s.825.10 25 (2)(b)	Lewd/lascivious offenses committed upon or in the presence of an elderly person or disabled adult
	s. 827.071	Sexual performance by a child
s. 847.0145	Selling or buying of minors (for portrayal in a visual depiction engaging in sexually explicit conduct)	
Or A violation of a similar law of another jurisdiction		

*** NOTE: Before using a Kidnapping or False Imprisonment conviction to determine if an offender is a "sexual predator", please check the current case law in Florida for applicable interpretation and application of these convictions.**

AND

The offender has ***previously*** been convicted of or found to have committed or has pled nolo contendere or guilty to, regardless of adjudication, any violation of the below listed offenses. {Section 775.21(4)(a)1.b.}

787.01*	Kidnapping. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
787.02*	False imprisonment. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
787.025	Luring or enticing a child. <i>Where the victim is a minor and the defendant is not the victim's parent</i>
794.011 (3)	Sexual battery upon person 12 or older with threats of deadly weapon or physical force
794.011 (4)	Sexual battery on 12 year old or older (various circumstances)
794.011 (5)	Sexual battery upon 12 year old or older without physical force and violence
794.011 (8)	Solicit or engage in sexual battery by person in familial or custodial authority on a person under 18
794.05	Unlawful sexual activity with certain minors
796.03	Procuring person under age of 18 for prostitution
800.04	Lewd, lascivious, offenses committed upon or in the presence of persons less than 16 years of age
825.1025	Lewd, lascivious, offenses committed upon or in the presence of an elderly person or disabled adult.
827.071	Sexual performance by a child
847.0133	Protection of minors; prohibition of certain acts in connection with obscenity
847.0135	Computer pornography
847.0145	Selling or buying of minors (for portrayal in a visual depiction engaging in sexually explicit conduct)
Or A violation of a similar law of another jurisdiction	

****NOTE: Before using a Kidnapping or False Imprisonment conviction to determine if an offender is a "sexual predator", please check the current case law in Florida for applicable interpretation and application of these convictions.***

Provided that:

The offender has not received a pardon for any felony or similar law of another jurisdiction that is a qualifying offense; {Section 775.21(4)(a)2}

AND

A conviction of a felony or similar law of another jurisdiction that is a qualifying offense has not been set aside in any post conviction proceeding; {Section 775.21(4)(a)3}



AND

In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony. If the offender's prior enumerated felony was committed more than 10 years before the primary offense, it shall not be considered a prior felony under this subsection if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later. { *Section 775.21(4)(b)* }

SEXUAL PREDATOR REQUIREMENTS

What constitutes a “permanent residence” and a “temporary residence”?

The applicable Florida statutory provisions define these terms as follows:

“Permanent residence”:

a place where the person abides, lodges, or resides for 14 or more consecutive days. { *Section 775.21(2)(f)* }

“Temporary residence”:

a place where the person abides, lodges, or resides for a **period of 14 or more days in the aggregate during any calendar year** and which is not the person's permanent address;

for a person whose *permanent* residence is *not* in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or

a place where the person routinely abides, lodges, or resides for a **period of 4 or more consecutive or nonconsecutive days in any month** and which is not the person's permanent residence, including any out-of-state address. { *Section 775.21(2)(g)* }

Sexual predators...

- * Who have registered as required under s. 775.21 are exempt from convicted felon registration as defined by s. 775.13. *{Section 775.13(5)(e)}*
- * Are subject to community and public notification. *{Sections 775.21(6)(k)2., 775.21(7), 943.043}*
- * Must register with the Florida Department of Law Enforcement (FDLE) (through the sheriff's office, an FDLE office, the Florida Department of Corrections (FDC), the custodian of a local jail or a federal supervision office) within 48 hours after establishing permanent or temporary residence in this state. *{Section 775.21(6)}*
- * Who are enrolled, employed, or carrying on a vocation at an institution of higher education in this state, must provide FDLE with the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections if the sexual predator is in the custody or control of or under the supervision of the Department of Corrections, within 48 hours after any change in status. *{Section 775.21(6)1.b.}* For more information, see the *Campus Sex Crimes Prevention Act* section.
- * Who are not incarcerated and who reside in the community (including those under the supervision of the Department of Corrections) must - within 48 hours of initial registration - present proof of initial registration as a predator in person at the DHSMV and secure or renew a driver's license or identification card. *{Section 775.21(6)(f)}*
- * Must report in person any change in permanent or temporary residence to DHSMV within 48 hours. *{Section 775.21(6)(g)}*
- * Must renew *in person* their driver's license or identification card when subject to renewal. *{Section 775.21(6)(g)}*
- * Who are not in custody or control of, or under the supervision of FDC, or are not in the custody of a private correctional facility, must report any change in their permanent or temporary residence or name, after registering in person at an office of FDLE or at the sheriff's office, in the manner currently provided in 775.21(6). *{Section 775.21(6)(e)}*
- * Must report intent to establish residence in another state in person to the sheriff or FDLE within 48 hours before the date they intend to leave Florida. *{Section 775.21(6)(i)}*

- * Who indicate their intent to reside in another state or jurisdiction and later decide to remain in this state must, within 48 hours after the date upon which they indicated they would leave this state, notify in person the sheriff or the department, whichever agency is the agency to which they reported the intended change of residence, of their intent to remain in this state.

Failure to do so is a second-degree felony. {Section 775.21(6)(j)}

 New in 2004

- * Who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence shall, within 48 hours after vacating the permanent residence, report in person to the department or the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required. The sexual predator must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence. {Section 775.21(6)(g)}

 New in 2004

- * Who remains at a permanent residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported (see previous paragraph) for the purpose of reporting his or her address at such residence. If the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required in the previous paragraph but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Section 775.21(6)(g)}
- * Must maintain registration with the department for the duration of their life, unless they have received a full pardon or have had a conviction set

aside in a post conviction proceeding for any felony sex offense that met the criteria for the sexual predator designation. {Section 775.21(6)(l)}

* Who were designated a sexual predator by a court before October 1, 1998, and who

have been lawfully released from confinement, supervision, or sanction, *whichever is*

later, for at least 10 years and have not been arrested for any felony or misdemeanor

offense since release, may petition the criminal division of the circuit court in the

circuit in which they reside for the purpose of removing the sexual predator

designation. {Section 775.21(6)(l)}

* Who were designated a sexual predator by a court on or after October 1, 1998, who have been lawfully released from confinement, supervision, or sanction, *whichever is later*, for at least 20 years, and who have not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court in the circuit in which they reside for the purpose of removing the sexual predator designation. {Section 775.21(6)(l)}

* Who are granted relief of their predator designation, unless specified in the order, must comply with the requirements for registration as sexual offenders and other requirements provided under s. 943.0435 or s. 944.607. {Section 775.21(6)(l)}

* Who obtain an order from the court that imposed the order designating them as a sexual predator which removes such designation, shall forward a certified copy of the written findings or order to the department in order to have the sexual predator designation removed from the sexual predator registry. {Section 775.21(6)(l)}

* Sexual predators who live in another state but work or attend school in Florida must register both their in-state employment or school address as well as their out-of-state residential address. {Section 775.21(2)(g), 943.0435(1)(c)}

* Who, except as otherwise specifically provided, fail to register or who fail, after registration, to maintain, acquire, or renew a driver's license or identification card or provide required location information, or who otherwise fail, by act or omission, to comply with the requirements of the Sexual Predator Act, commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Section 775.21(10)(a)}

* Who have been convicted of or found to have committed, or have pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 794.011(2), (3), (4), (5), or (8); s. 794.023; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another

jurisdiction, when the victim of the offense was a minor, and who work, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Section 775.21(10)(b)}



RELIEF OF STATUS AS SEXUAL PREDATOR

The court may grant or deny such relief if the petitioner demonstrates to the court that he or she has not been arrested for any crime since release, the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the removal of the designation as a sexual predator or required to be met as a condition for the receipt of federal funds by the state, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual predator may again petition the court for relief, subject to the standards for relief provided in this paragraph. Unless specified in the order, a sexual predator who is granted relief under this paragraph must comply with the requirements for registration as a sexual offender and other requirements provided under s. 943.0435 or s. 944.607. If a petitioner obtains an order from the court that imposed the order designating the petitioner as a sexual predator, which removes such designation, the petitioner shall forward a certified copy of the written findings or order to the department in order to have the sexual predator designation removed from the sexual predator registry. {Section 775.21(6)(l)}



SEXUAL OFFENDERS

Section 943.0435(12), Florida Statutes:

Legislative Findings, Purpose, and Intent

The Legislature finds that sexual offenders, especially those who have committed their offenses against minors, often pose a high risk of engaging in sexual offenses, even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount government interest. Sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Releasing information concerning sexual offenders to law enforcement agencies and to persons who request such information, and the release of such information to the public by a law enforcement agency or public agency, will further the governmental interests of public safety. The designation of a person as a sexual offender is not a sentence or a punishment, but is simply the status of the offender which is the result of a conviction for having committed certain crimes.

Sexual Offender related statutes – The below chart lists primary Florida statutes for designation, registration, and notification requirements relating to sexual offenders. Please refer to the designated statutory reference for complete content.

775.21(5)(d); 943.0435(1)(a) 3.	Offenders designated as sexual offenders in another state or jurisdiction
775.24	Restrictions on court entering certain types of orders and method to address improper orders, etc.
775.25	Counties where sex offenders who violate certain registration statutes can be prosecuted
943.043	FDLE Internet site, toll-free number, public access to public records, and immunity clause
943.0435	Primary section for sexual offender definition, designation and registration requirements for qualifying offenders who are <u>not under the care, custody, control, or supervision of the Florida Department of Corrections</u> ; immunity clause
944.606	Sexual offender definition and requirements of the Florida Department of Corrections to provide information on sexual offenders <u>who are being released from incarceration</u> for any offense; immunity clause
944.607	Primary section for sexual offender definitions, designation, registration, and notification requirements for qualifying offenders who <u>are in the custody or control of, or under the supervision of the Florida Department of Corrections; in the custody of a private correctional facility or a local jail; or under federal supervision</u> ; immunity clause; clerks of court obligations
948.03	Terms and conditions of probation or community control
948.30	Additional terms and conditions of probation or community control for certain sex offenses; includes mandatory conditions for specific sex offenders/ predators, including restrictions on residency and specific activities

SEXUAL OFFENDERS

CAUTION: Under Florida law, not all “sex offenders” are “sexual predators”. A court must make a specific finding that an offender is a sexual *predator* before that offender can be officially designated as a sexual *predator* and be subject to Florida’s sexual *predator* registration and notification requirements. See *Sexual Predators* section in this booklet for more information. **Please use caution when evaluating an offender’s**

criminal convictions and in determining the appropriate designation, registration, and notification requirements.

What Constitutes a Sexual Offender?

There are several ways a person can be qualified and designated as a "sexual offender" in the state of Florida and, therefore, be required to comply with Florida's sexual offender registration laws:

1. Be convicted of committing, or attempting, soliciting, or conspiring to commit, any of the specified crimes below in this state or of similar offenses in another jurisdiction (or any similar offense committed in this state which has been redesignated from a former statute number to the one specified);

AND

- a. Be in the custody or control of, or under the supervision of, the Florida Department of Corrections, or be in the custody of a private correctional facility, on or after October 1, 1997, as a result of the above conviction(s);

OR

- b. On or after October 1, 1997, be released or have been released from the sanction(s) imposed for the above conviction(s). (*"Sanction" is defined below.*);

OR

2. Establish or maintain a residence in this state and have not been designated as a sexual predator by a court of this state but have been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and as a result of such designation, are subjected to registration or community or public notification, or both, or would be if a resident of that state or jurisdiction;

OR

3. Establish or maintain a residence in this state and be in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the specified criminal offenses listed below (or any similar offense committed in this state which has been re-designated from a former statute number to the one specified).

{ Sections 943.0435(1)(a); 944.606(1)(b); 944.607 (1)(a) }



**QUALIFYING OFFENSES
FOR SEXUAL OFFENDER DESIGNATION**

Commission of OR Attempt, Solicit, or Conspire to Commit	s. 787.01*	Kidnapping <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 787.02*	False imprisonment <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	s. 787.025	Luring or enticing a child <i>Where the victim is a minor and the defendant is not the victim's parent</i>
	Chapter 794*	Sexual Battery <i>*Excluding subsections 794.011(10) and 794.0235</i>
	s. 796.03	Procuring a person under the age of 18 for prostitution
	s. 800.04	Lewd/lascivious offenses committed upon or in the presence of persons less than 16 years of age
	s. 825.1025	Lewd/lascivious offenses committed upon or in the presence of an elderly person or disabled adult
	s. 827.071	Sexual performance by a child
	s. 847.0133	Protection of minors; prohibition of certain acts in connection with obscenity
	s. 847.0135	Computer pornography
	s. 847.0137	Transmission of child pornography by electronic device/equipment
	s. 847.0138	Transmission of material harmful to minors to a minor by electronic device/equipment
s. 847.0145	Selling or buying of minors (for portrayal in a visual depiction engaging in sexually explicit conduct)	

Or A violation of a similar law of another jurisdiction

*** NOTE: Before using a Kidnapping or False Imprisonment conviction to determine if an offender is a "sexual offender", please check the current case law in Florida for applicable interpretation and application of these convictions.**

SEXUAL OFFENDER REQUIREMENTS

What constitutes a “conviction”? For purposes of determining qualifying offenses for “sexual offender” designation, **“conviction”** means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction.

{ Sections 943.0435(1)(b), 944.606(1)(a), and 944.607(1)(b) }

What constitutes a “sanction”? For purposes of determining qualifying offenses for “sexual offender” designation, a **“sanction”** in Florida or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

{ Sections 943.0435(1)(a)2., 944.607(1)(a) }

What constitutes a “permanent residence” and a “temporary residence”? The applicable Florida statutory provisions define these terms as follows:

“Permanent residence”: a place where the person abides, lodges, or resides for 14 or more consecutive days. { Section 943.0435(1)(c) }

“Temporary residence”: a place where the person abides, lodges, or resides for a **period of 14 or more days in the aggregate during any calendar year** and which is not the person's permanent address; for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or

a place where the person routinely abides, lodges, or resides for a **period of 4 or more consecutive or nonconsecutive days in any month** and which is not the person's permanent residence, including any out-of-state address.
{ Section 943.0435(1)(c) }

Sexual Offenders...

- * Who have registered as required under s. 943.0435 or s. 944.607 are exempt from convicted felon registration as defined by s. 775.13. { *Section 775.13(5)(f)* }
- * Are subject to community and public notification. { *Sections 775.21(5)(d), 943.043, 943.0435(10), 944.606(2), (3)(d), (4), 944.607(11)* }
- * Must register with FDLE (through the sheriff's office, an FDLE office, the Department of Corrections, the custodian of a local jail or a federal supervision office) within 48 hours after establishing permanent or temporary residence in this state. { *Sections 943.0435(2), 944.607(4), (7), (8)* }
- * Who are enrolled, employed, or carrying on a vocation at an institution of higher education in this state, must provide FDLE with the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections if the sexual offender is in the custody or control of or under the supervision of the Department of Corrections, within 48 hours after any change in status. { *Sections 943.0435(2)(b)2., 944.607(4)(b)* } *For more information, see the Campus Sex Crimes Prevention Act section.*
- * Who are not incarcerated and who reside in the community (including those under the supervision of the Department of Corrections) must - within 48 hours of registration - present proof of initial registration as an offender in person at the DHSMV and secure or renew a driver's license or identification card. { *Sections 943.0435(3), 944.607(9)* }
- * Must report in person any change in permanent or temporary residence to DHSMV within 48 hours. { *Sections 943.0435(4), 944.607(9)* }
- * Renew *in person* their driver's license or identification card when subject to renewal. { *Sections 943.0435(4), 944.607(9)* }
- * Who are not in custody or control of, or under the supervision of FDC, or are not in the custody of a private correctional facility, must report any change in their permanent or temporary residence or name, after registering in person at an office of FDLE or at the

sheriff's office, in the manner currently provided in 943.0435(4), (7), and (8).

{Section 943.0435(2)(a)}

* Must report intent to establish residence in another state to the sheriff or FDLE *in person*

within 48 hours before the date they intend to leave Florida. *{Section 943.0435(7)}*

* Who indicate their intent to reside in another state or jurisdiction and later decide to remain

in this state must, within 48 hours after the date upon which they indicated they would

leave this state, notify the sheriff or the department, whichever agency is the agency to

which they reported the intended change of residence, of their intent to remain in this

state. *Failure to do so is a second-degree felony. {Section 943.0435(8)}*

* **Who also meet all qualifying criteria for sexual predator, including a court finding, must register as a sexual predator as required under s. 775.21.**

{Sections 943.0435(5), 944.607(9)}

* *Who do not comply with the requirements of offender registration laws commit a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Sections 943.0435(9)(a), 944.607(9)}*

* The failure of a sexual offender to submit to the taking of a digitized photograph, or to otherwise comply with the requirements of this section, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. *{Section 944.607(10)(a)}*

* Must maintain registration with FDLE for the duration of their life, unless they have received a full pardon or have had a conviction set aside in a post conviction proceeding for any felony sex offense that meets the criteria for classifying them as a sexual offender for purposes of registration. *{Section 943.0435(11)}* *See Relief of Status as Sexual Offender below for more information.*

* Who establishes or maintains a residence in this state and has not been designated as a sexual predator by a court in this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a results of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification requirements and penalties provided in s. 943.0435 or s. 944.607, until such offender provides FDLE with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender

designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to FDLE that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

{Sections 775.21(5)(d)}; 943.0435(1)(a)3., (11)(c)}

- * Sexual offenders who live in another state but work or attend school in Florida must register both their in-state employment or school address as well as their out-of-state residential address. {Sections 775.21(2)(g), 943.0435(1)(c)}

 ***New in 2004***

*Who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence shall, within 48 hours after vacating the permanent residence, report in person to the department or the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required. The sexual offender must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence.

{Section 943.0435(4)}

 ***New in 2004***

* Who remains at a permanent residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported (see previous paragraph) for the purpose of reporting his or her address at such residence. If the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required in the previous paragraph but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Section 943.0435(4)}

RELIEF OF STATUS AS SEXUAL OFFENDER

A SEXUAL OFFENDER....

Who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which they reside for the purpose of removing the requirement for registration as a sexual offender; {Section 943.0435(11)(a)}

OR

Who was 18 years of age or under at the time the offense was committed and the victim was 12 years of age or older and adjudication was withheld for that offense, who is released from all sanctions, who has had 10 years elapse since having been placed on probation, and who has not been arrested for any felony or misdemeanor offense since the date of conviction of the qualifying offense. {Section 943.0435(11)(b)}

In the above circumstances, the court may grant or deny such relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender. {Section 943.0435(11)(b)}

REGISTRATION & RESTRICTIONS

All qualifying sexual predators and offenders must register.

The following list of obligations appears on the back of the FDLE Sexual Predator/Sexual Offender Registration Form (FDLE/CJIS/SOPU-001, shown on previous page) to be signed by each registering predator/offender:

"NOTICE OF SEXUAL PREDATOR
AND SEXUAL OFFENDER OBLIGATIONS:

As a Sexual Predator (Florida Statute 775.21) or Sexual Offender (Florida Statute 943.0435 or 944.607), I understand that I am required by law to abide by the following:

1. You must report in person to the local Sheriff's Office or Florida Department of Law Enforcement (FDLE) office within 48 hours of release from custody and/or supervision of Department of Corrections or Department of Children and Family Services to register your temporary or permanent address. Failure to comply with this requirement is a felony of the third degree.
2. Within 48 hours after the initial report required as stated in paragraph #1, you must report in person to the driver's license office of the Department of Highway Safety and Motor Vehicles to obtain a valid Florida driver's license or identification card, unless a driver's license or identification card was previously secured or updated while under the supervision of Department of Corrections or Department of Children and Family Services and there have been no changes to your address or name. Failure to comply with this requirement is a felony of the third degree.
3. Within 48 hours, after any change of address in permanent or temporary residence, change of name due to marriage or other legal process, or when your driver's license is subject to renewal, you must report that information in person to the driver's license office of the Department of Highway Safety and Motor Vehicles to obtain and maintain a valid Florida driver's license or identification card. Failure to comply with this requirement is a felony of the third degree.
4. If you live in another state, but work or attend school in Florida, you MUST register your work or school address as a temporary address with the Florida Department of Law Enforcement. You must also obtain and maintain a valid

Florida driver's license or identification card. Failure to comply with this requirement is a felony of the third degree.

5. If you intend to establish residence in another state or jurisdiction, you must report in person to the local Sheriff's Office or FDLE office to notify of your intention to move out of the state within 48 hours prior to leaving. Failure to comply with this requirement is a felony of the third degree.
6. If you later decide to remain in this state (see #5 above), you must report in person back to the local Sheriff's Office or FDLE office to notify of your intention to remain in Florida. This report must occur within 48 hours after the date you indicated that you would leave. Failure to comply with this requirement is a felony of the second degree.
7. If you are enrolled, employed, or carrying on a vocation at an institution of higher education in this state, you shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender/predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the Sheriff's Office with 48 hours after any change in status. Failure to comply with this requirement is a felony of the third degree.
8. If you are employed, carry on a vocation, are a student, or become a resident of another state you must also register in that state.
9. You will be subject to periodic verification of your address by law enforcement, which may include a letter requiring a response.
10. If you move from a permanent residence and do not have another permanent or temporary residence you must report in person to the Sheriff's Office or FDLE office within 48 hours. Failure to comply with this requirement is a felony of the third degree.
11. If you later decide to remain at the permanent residence (see #10 above), you must report in person back to the Sheriff's Office or FDLE office to notify of your intention. This report must occur within 48 hours after the date that you indicated that you would leave the permanent residence. Failure to comply with this requirement is a felony of the second degree

**INCARCERATED / IN CUSTODY
INCARCERATED IN PRISON (FDC)**

Sexual Predators who are incarcerated must provide registration information and materials to FDC. The FDC will forward the information and materials to FDLE. *{Sections 775.21(6)(b)}*

These materials include:

Fingerprint card	Digital photo	Completed registration form supplied by FDC	Copy of the court finding designating the offender as a predator	Genetic Markers* (Blood samples for DNA database)
And "any other information determined necessary" by FDLE.				

{Section 775.21(6)(a)}

*Genetic Markers: The Department of Corrections must be prepared to take both the predator's required photograph and fingerprints. The sentencing court should order DNA blood samples at time of conviction, but these may have to be obtained later if not previously secured. **SEE BLOOD SPECIMEN REQUIREMENT later in this section.**

Registration information shall be immediately forwarded to FDLE.

Sexual Offenders who are incarcerated must provide registration information to FDC. FDC will transmit the information to FDLE. *{Section 944.606(3)(a)}*

IN CUSTODY OF LOCAL JAIL

If the sexual predator is in the custody of a local jail, the custodian of the local jail shall register the sexual predator and forward the registration information to the department. The custodian of the local jail shall also take a digitized photograph of the sexual predator while the sexual predator remains in custody and shall provide the digitized photograph to the department. The custodian shall notify the department if the sexual predator escapes from custody or dies. *{Sections 775.21(6)(c); 944.607(7)}*

**SERVING NON-INCARCERATED SANCTIONS
UNDER SUPERVISION OF THE FLORIDA DEPARTMENT OF CORRECTIONS**

*(Florida probation, community control,
control release, parole, etc.)*

1. **Sexual Predators** and **Sexual Offenders** who are not incarcerated but are under the supervision of the FDC shall register with the FDC through their supervising officer who shall forward the information to FDLE. {Sections 775.21(6)(a)-(b); 944.607(4)-(6)}

Registration Materials for SUPERVISED SEXUAL PREDATORS:

Fingerprint card	Digital photo	Completed registration form supplied by FDC	Copy of the court finding designating the offender as a predator	Genetic Markers* (Blood samples for DNA database)
And "any other information determined necessary" by FDLE.				

{Section 775.21(6)(a)-(b)}

Registration Materials for SUPERVISED SEXUAL OFFENDERS:

Digital photo	Completed registration information supplied electronically by FDC	Genetic Markers* (Blood samples for DNA database)
And "any other information determined necessary" by FDLE.		

{Section 944.607(4)-(6)}

*Genetic Markers: The Department of Corrections must be prepared to take both the predator's required photograph and fingerprints. The sentencing court should order DNA blood samples at time of conviction, but these may have to be obtained later if not previously secured. **SEE BLOOD SPECIMEN REQUIREMENT later in this section.**

AND

2. **Sexual Predators** and **Sexual Offenders** who are not incarcerated but are under the supervision of the FDC shall report to the Florida Department of

Highway Safety and Motor Vehicles (DHSMV) **within 48 hours of registration as a sexual offender/predator** to:

- o report their status as a sexual offender/predator;
- o show proof of registration as an offender/predator to DHSMV officials; and
- o obtain a driver's license or identification card.

DHSMV will flag the sexual offender's/predator's driver's license or identification card in its computer system and will forward the above information provided by the sexual offender/predator to FDLE. {Sections 775.21(6); 943.0435(4)}

3. Sexual Predators and Sexual Offenders who are not incarcerated but are under the supervision of the FDC AND who are enrolled at, employed by or carrying on a vocation at an institution of higher education must report, in person, the following information to FDC through their supervising officer:

- o name, address, and county of each institution of higher education;
- o each campus attended;
- o enrollment or employment status; and
- o any change in enrollment or employment status, to be reported in person, within 48 hours of change.

FDC will promptly notify each institution of the sexual predator's/offender's presence and any change in such person's enrollment or employment status. FDC will also provide the information from the sexual predator/offender to FDLE. {Sections 775.21(6)(a)1.b.; 944.607(4)(b)}

See Campus Sex Crime Prevention Act section for more information and requirements.

UNDER FEDERAL SUPERVISION

If the sexual offender/predator is under federal supervision, the federal agency responsible for supervising the sexual offender/predator may forward to FDLE any information regarding the sexual offender/predator which is consistent with the registration information provided by the Department of Corrections for offenders/predators, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by FDLE and law enforcement for purposes of public notification. {Sections 775.21(6)(d), 944.607(8)}



**NOT INCARCERATED OR IN CUSTODY
AND NOT SERVING OTHER SANCTION(S)**

1. PRIMARY REGISTRATION

Sexual Predator

Within 48 hours after establishing permanent or temporary residence in this state, a sexual predator shall report in person to and register with either an FDLE office or to the sheriff of the county in which the predator establishes or maintains a permanent or temporary residence. *{Section 775.21(6)(e)}*

Sexual Offender

Within 48 hours after establishing permanent or temporary residence in this state, or within 48 hours after being released from the custody, control, or supervision of FDC or from the custody of a private correctional facility, a sexual offender shall report in person to and register with either an FDLE office or to the sheriff of the county in which the offender establishes or maintains a permanent or temporary residence. *{Section 943.0435(2)}*

This registration will include the following:

Fingerprint card	Digital photograph	Completed registration form (FDLE/CJIS/SOPU-001)
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{Sections 775.21(1)(e), (6)(a); 943.0435(2)}

Registration information shall immediately be forwarded to FDLE.

2. ADDITIONAL REGISTRATION REQUIREMENT

NEW IN 2002 Sexual Predators and **Sexual Offenders** who are not incarcerated, not in custody, and not serving other sanctions **AND** who are enrolled at, employed by or carrying on a vocation at an institution of higher education must report, **in person**, the following information **to the sheriff** of the county in which the predator/offender establishes or maintains a residence:

- o name, address, and county of each institution of higher education;
- o each campus attended; and
- o enrollment or employment status.

Sexual Predators and **Sexual Offenders**: Any **change** in enrollment or employment status must be reported, **in person**, by the predator/offender, **to**

the sheriff of the county of the predator's/offender's residence, within 48 hours of the change. The sheriff will promptly notify each institution of the sexual predator's presence and any change in such person's enrollment or employment status. The sheriff will also provide the information from the sexual predator/offender to FDLE. {Sections 775.21(6)(a)1.b.; 943.0435(2)(b)2.}

See Campus Sex Crime Prevention Act (CSCPA) section for more information and requirements. CSCPA requirements can also be met by reporting to a local FDLE office.

**REQUIRED PRIMARY
REGISTRATION INFORMATION**

Name including any legal name change	Height	Date & Place of Employment
Social Security #	Weight	Fingerprints
Age	Hair Color	Date and Place of each Conviction
Race	Eye Color	Description of Crime(s)
Sex	Photograph	Tattoos or Identifying Marks
Date of Birth	Address(es) *	Occupation

*Any current or temporary address both within and out of state. ***A post office box shall not be provided in lieu of a physical residential address.***
{Sections 775.21(6)(a)1., 943.0435(2)}

If the predator or offender's place of residence is a **motor vehicle, trailer, mobile home or manufactured home** (s.320) he or she shall also provide written notice of:

Vehicle ID#	License Tag #	Registration #	Description including color scheme
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of the motor vehicle, trailer, mobile home or manufactured home.
 {Sections 775.21(6)(a)1., 943.0435(2)}

If the sexual predator or offender's place of residence is a **vessel, live-aboard vessel, or houseboat** (s.327) he or she shall also provide written notice of the

Hull ID #	Manufacturer's Serial #	Name of the vessel	Description including color scheme
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of the vessel, live-aboard vessel or houseboat.
 {Sections 775.21(6)(a)1., 943(0435(2)}

INACCURATE REGISTRATION INFORMATION

It is important that registration records be as accurate as possible. Many agencies will be routinely monitoring the predators and offenders in their communities. During the course of agency activity, it may be determined that an address or other information reflected in FDLE's records is inaccurate. This might be caused by a mistake in the registration information, failure by the offender/predator to promptly update registration records, or by an offender/predator's intentional attempt to circumvent registration requirements. **Any indications of inaccuracy or needed changes in FDLE's registration files should be reported by the agency to FDLE at 1-888-357-7332 or by utilizing the on-line access to the Sex Offender Database through the CJNet.** Should you determine that an offender/predator is no longer at the address reflected in FDLE's records, try to determine a new address, but contact FDLE even if a new address for the offender/predator is not known. If you believe the offender/predator intended to violate the registration requirements of the law, you should report the information to the state attorney having jurisdiction for consideration of prosecution.



CHANGE OF ADDRESS PROCESS

1. NOTIFICATION TO DHSMV

After initial registration, **all non-incarcerated Sexual Predators and Offenders** must notify the DHSMV within 48 hours of any change of residence. Should the predator or offender be under sanction they must also report their change of address, as required by law, to their supervisor who will in turn notify FDLE.

DHSMV will notify FDLE of the change of address information and changes will be posted to the Internet site. The Sheriff's office and all police departments within the county will be notified via FCIC AM message of all new predator and offender addresses within their county. Agencies should regularly access the FDLE sexual offender/predator site via CJNET or the Internet at www.fdle.state.fl.us to obtain current listings of all sexual offenders. Agencies may also contact FDLE's Sexual Offender/Predator Unit for offender information at 1(888) 357-7332. {Sections 775.21(6)(g), 943.0435(4), 944.607(9)}

2. MOVING OUT OF STATE

A sexual predator or offender who intends to establish residence in another state or jurisdiction shall notify the sheriff of the county of current residence or FDLE in person within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction.

The notification must include:

Address	Municipality	County	State of intended residence
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The sheriff shall *promptly* provide to FDLE the information received from the sexual predator/offender. FDLE will then notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence.

The failure of a sexual offender/predator to provide his or her intended place of residence is a *felony of the third degree*, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Sections 775.21(6)(i), (10), 943.0435(7), (9)}

A sexual predator or offender who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender/predator indicated he or she would leave this state, notify the sheriff or FDLE, whichever agency is the agency to which the sexual offender/predator reported the intended change of residence, of his or her intent to remain in this state. If the sheriff is notified by the sexual offender/predator that he or she intends to remain in this state, the sheriff shall *promptly* report this information to FDLE. **A sexual predator or offender who reports his or her intent to reside in another state or**

jurisdiction, but who remains in this state without reporting to the sheriff or FDLE in this manner, commits a *felony of the second-degree*, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Sections 775.21(6)(j), 943.0435(8)}



OUT OF STATE SEXUAL OFFENDERS / PREDATORS

Any person who resides in Florida and who has been designated a sexual predator, a violent sexual predator or another sexual offender designation in another state or jurisdiction and was subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, is required to register as a *sexual offender* in the state of Florida. {Sections 775.21(5)(d); 943.0435(1)(a)3.; 944.607(1)(a)2.}

(Note: If an offender enters Florida with out-of-state convictions that are similar to Florida's sexual predator criteria offenses, the state attorney in the jurisdiction in which the offender establishes or maintains a permanent or temporary residence shall initiate a court hearing to review the out-of-state offenses and to determine whether the offender will be classified as a sexual **predator** under Florida law.) {Section 775.21(5)(a)2.}



JUVENILE OFFENDERS

Juvenile offenders who are treated-as-adults can qualify as sexual predators or offenders based on the criteria for each classification.

Any offense for which an offender was adjudicated delinquent shall not be considered as a qualifying criteria offense for sexual predator or offender status except that, in the case of a sexual predator, a qualifying prior (predicate) offense which resulted in an adjudication of delinquency may be counted provided the current offense resulted in an adult or treat-as-adult adjudication.



FELONY 3RD DEGREE

Penalty for violations of registration and related requirements

Section 775.21(10)(a) - Sexual Predator

(Failure, by act or omission, to comply with requirements of s. 775.21, including but not limited to failure to register, or after registration, failure to maintain, acquire, or renew a driver's license or ID card; or failure to provide required location information or change-of-name information)

Section 943.0435(9) – Sexual Offender not serving any sanctions

(Failure to comply with the requirements of s. 943.0435)

Section 944.607(9)-(10) - Sexual Offender in the custody/control of, or under the supervision of FDC or in custody of a private correctional facility

(Failure to comply with the requirements of s. 944.607)

BLOOD SPECIMEN REQUIREMENT

BLOOD OR OTHER BIOLOGICAL SPECIMEN TESTING FOR DNA ANALYSIS

{Section 943.325, Florida Statutes}

{See also 949.03(10)-(11)}

This is a portion of the statutory information on this topic.

Please see the complete statutes for more information.

Any person who is

- convicted or was previously convicted in this state for any offense or attempted offense in the chart on the following page **OR**
- transferred to this state under Article VII of the Interstate Compact on Juveniles, part V of chapter 985, who has committed or attempted to commit an offense in the chart below *which is similarly defined by the transferring state,*

who is either:

- still incarcerated **OR**
- no longer incarcerated, or has never been incarcerated, yet is within Florida and is on probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision,

shall be required to submit two specimens of blood or other biological specimens approved by the Department of Law Enforcement to a Department of Law Enforcement designated testing facility as directed by the department.

"Any person" includes both juveniles and adults committed to a county jail or committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105 or s. 957.03.

"Conviction" includes a finding of guilty, or entry of a plea of nolo contendere or guilty, regardless of adjudication or, in the case of a juvenile, the finding of delinquency.

Chart of Offenses in s. 943.325 re: blood or other biological specimen		
	Chapter 794	Sexual Battery
	Chapter 800	Lewdness/Indecent Exposure
	s. 782.04	Murder
	s. 784.045	Aggravated Battery
	s. 810.02	Burglary
	s. 812.133	Carjacking
	s. 812.135	Home Invasion Robbery
	s. 812.13*	Robbery (*added July 1, 2002)
	s. 812.131*	Robbery by Sudden Snatching (*added July 1, 2002)
	Chapter 787*	Kidnapping; False Imprisonment; Luring/Enticing a Child; Custody Offenses (*added July 1, 2003)
	s. 782.07*	Manslaughter; Aggravated Manslaughter of elderly or disabled adult; child; officer; firefighter; emergency medical technician; paramedic (*added July 1, 2003)
	s. 776.08*	*Any forcible felony in this section (*added July 1, 2004)
	s. 827.03(2)*	Aggravated Child Abuse (*added July 1, 2004)
	s. 825.102(2)*	Aggravated Abuse of Elderly/Disabled Adult (*added July 1, 2004)
	Chapter 790*	Weapons/Firearms Offenses *Any felony in this chapter re: use/ possession of firearm (*added July 1, 2004)

Any **person** previously convicted of an offense specified in this section, or a crime which, if committed in this state, would be an offense specified in this section, and who is also **subject to the registration requirement imposed by s. 775.13**, shall be subject to the collection requirement of this section when the appropriate agency described in this section verifies the identification information of the person.

Any person who was previously convicted in this state for any offense or attempted offense enumerated in the chart above, except those listed in s. 776.08, s. 827.03(2), s. 825.102(2), and Chapter 790, and who is still incarcerated or in the custody of the Department of Juvenile Justice **must submit, not less than 45 days before his or her presumptive date of release** from such incarceration or commitment, **two specimens of blood** as directed by the Department of Law Enforcement to a testing facility designated by the department.

The withdrawal of blood for purposes of this section shall be performed in a medically approved manner using a collection kit provided by, or accepted by, the Department of Law Enforcement and only by or under the supervision of a physician, registered nurse, licensed practical nurse, duly licensed medical personnel, or other trained and competent personnel. The collection of other approved biological specimens shall be performed by any person using a collection kit provided by, or accepted by, the Department of Law Enforcement in a manner approved by the department, as directed in the kit, or as otherwise found to be acceptable by the department.

Upon a conviction of any person for any offense as stated above which results in the commitment of the offender to a county jail, correctional facility, or juvenile facility, the **entity responsible for the facility shall assure** that the blood **specimens** or other biological specimens required by this statute are **promptly secured and transmitted to the Department of Law Enforcement**.

If the person is not incarcerated following such conviction, the **person may not be released from the custody of the court or released pursuant to a bond or surety** until the required specimens have been taken.

The chief judge of each circuit shall, in conjunction with the sheriff or other entity that maintains the county jail, **assure implementation of a method to promptly collect and forward the required specimens** to the Department of Law Enforcement.

The Department of Law Enforcement, in conjunction with the sheriff, the courts, the Department of Corrections, and the Department of Juvenile Justice, **shall develop a statewide protocol** for securing the required specimens.

Personnel at the jail, correctional facility, or juvenile facility **shall implement the protocol** as part of the regular processing of offenders.

If any specimens submitted to the Department of Law Enforcement are found to be unacceptable for analysis and use or cannot be used by the department in the manner required, the Department of Law Enforcement may require that another set of specimens be taken.

The **results** of a DNA analysis and the comparison of analytic results is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, *except* they **may be released only to criminal justice agencies** as defined in s. 943.045(10), at the request of the agency.

The Department of Law Enforcement and the statewide criminal laboratory analysis system **shall establish, implement, and maintain a statewide automated personal identification system** capable of, but not limited to, classifying, matching, and storing **analyses of DNA** (deoxyribonucleic acid) **and other biological molecules**. The system shall be **available to all criminal justice agencies**.

The court **shall include in the judgment of conviction** for an offense specified in this section, **or a finding that a person described in the first page of this section violated a condition of probation, community control, or any other court-ordered supervision**, an order stating that the required specimens shall be drawn or collected by the appropriate agency in a manner consistent with this statute and, unless the convicted person lacks the ability to pay, the person shall reimburse the appropriate agency for the cost of drawing and transmitting the blood specimens or collecting and transmitting other approved biological specimens to the Florida Department of Law Enforcement.

If the judgment places the convicted person on probation, community control, or any other court-ordered supervision, the court **shall order the convicted person to submit to the drawing of the required specimens as a condition of the probation, community control, or other court-ordered supervision**. For the purposes of a person who is on probation, community control, or any other court-ordered supervision, the collection requirement must be based upon a court order, or as otherwise provided by the person in the absence of a court order.

If the judgment sentences the convicted person to time served, the court **shall order the convicted person to submit to the drawing of the required specimens as a condition of such sentence**.

The appropriate agency shall cause the specimens to be drawn or collected as soon as practical after conviction but, in the case of any person ordered to serve a term of incarceration as part of the sentence, the specimen shall be drawn or collected as soon as practical after the receipt of the convicted person by the custodial facility.

If necessary, the state or local law enforcement or correctional agency having authority over the person subject to the sampling under this section shall assist in the procedure. The law enforcement or correctional officer so assisting may use reasonable force if necessary to require such person to submit to the withdrawal of blood specimens or the collection of other approved biological specimens. Any such withdrawal or collection shall be performed in a reasonable manner.

IMMUNITY

A hospital, clinical laboratory, medical clinic, or similar medical institution; a physician, certified paramedic, registered nurse, licensed practical nurse, or other personnel authorized by a hospital to draw blood; a licensed clinical laboratory director, supervisor, technologist, or technician; or any other person

who assists a law enforcement officer is not civilly or criminally liable as a result of withdrawing blood specimens according to accepted medical standards when requested to do so by a law enforcement officer or any personnel of a jail, correctional facility, or juvenile detention facility, regardless of whether the convicted person resisted the drawing of blood specimens.

A person other than the subject required to provide the biological specimens who collects or assists in the collection of approved specimens other than blood is not civilly or criminally liable if a collection kit provided by, or accepted by, the Department of Law Enforcement is utilized and the collection is done in a manner approved by the department, as directed in the kit, or is performed in an otherwise reasonable manner.

Unless the convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the required/approved specimens.

If a court, a law enforcement agency, or the Department of Law Enforcement fails to strictly comply with this section or to abide by a statewide protocol for collecting blood specimens or other approved biological specimens, such failure is not grounds for challenging the validity of the collection or the use of a specimen, and evidence based upon or derived from the collected blood specimens or other approved biological specimens may not be excluded by a court.

History.--s. 1, ch. 89-335; s. 9, ch. 93-204; s. 3, ch. 94-90; s. 52, ch. 95-283; s. 19, ch. 96-322; s. 447, ch. 96-406; s. 8, ch. 98-81; s. 14, ch. 98-251; s. 7, ch. 98-417; s. 1, ch. 2000-233; s. 2, ch. 2000-328; s. 3, ch. 2001-58; s. 3, ch. 2001-97; s. 9, ch. 2001-125; s. 6, ch. 2001-127

The FDLE blood collection kits and blood submission forms or the oral swab collection kits must be utilized in the collection of offender DNA specimens. Since a majority of all agencies submitting convicted offender samples are using the oral swab kit, and automated procedures are in place for extracting and analyzing this collection method, the DNA Database has discontinued ordering blood collection kits. However, the Database will continue to accept and process DNA specimens submitted using the FDLE blood collection kit. The oral swab collection kits will be provided free of charge by FDLE along with detailed instructions on the proper use and submission of buccal swab specimens.

The FDLE DNA Database also accepts blood or other biological specimens collected for s. 847.0145 and s. 827.071 offenses per the Florida Department of Corrections, s. 948.03, Florida Statutes.

For DNA kits and further information,
please contact the
FDLE DNA Database at 1-850-410-7721



PROHIBITED ACTIVITIES

**Felony violation
if certain Sexual Predators
work or volunteer
where children congregate
{Section 775.21(10)(b), Florida Statutes}**

A **sexual predator** who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another jurisdiction, when the victim of the offense was a minor, **and who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate**, commits a **felony of the third degree**, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. {Section 775.21(10)(b)}

PROBATION & COMMUNITY CONTROL RESTRICTIONS

Note to law enforcement:

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

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

(2) If the law enforcement agency finds that the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release, the law enforcement agency shall immediately notify the person's probation officer or release supervisor of the investigation or the arrest.

History.--s. 13, ch. 97-299; s. 3, ch. 2000-246; s. 28, ch. 2004-373.

Note.--Former s. 948.06(2).



TERMS AND CONDITIONS OF PROBATION OR COMMUNITY CONTROL FOR CERTAIN SEXUAL OFFENDERS/PREDATORS {Sections 948.03 and 948.30, Florida Statutes}

948.03 Terms and conditions of probation.--

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

- (a) Report to the probation and parole supervisors as directed.
- (b) Permit such supervisors to visit him or her at his or her home or elsewhere.
- (c) Work faithfully at suitable employment insofar as may be possible.
- (d) Remain within a specified place.
- (e) Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it

determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefore.

(f) Effective July 1, 1994, and applicable for offenses committed on or after that date, make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility. The court, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the felony probationer, the present and potential future financial needs and earning ability of the probationer, and dependents, and other appropriate factors.

(g) Support his or her legal dependents to the best of his or her ability.

(h) Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.

(i) Pay any application fee assessed under s. 27.52(2)(a) and attorney's fees and costs assessed under s. 938.29, subject to modification based on change of circumstances.

(j) Not associate with persons engaged in criminal activities.

(k)1. Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).

(l) Be prohibited from possessing, carrying, or owning any firearm unless authorized by the court and consented to by the probation officer.

(m) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician. The probationer or community controllee shall not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(n) Submit to the drawing of blood or other biological specimens as prescribed in ss. 943.325 and 948.014, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

(2) The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper. However, the sentencing court may only impose a condition of supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145, to reside in another state, if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the probationer. However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of probation, the period shall not exceed 364 days, and incarceration shall be restricted to either a county facility, a probation and restitution center under the jurisdiction of the Department of Corrections, a probation program drug punishment phase I secure residential treatment institution, or a community residential facility owned or operated by any entity providing such services.

History.--s. 23, ch. 20519, 1941; s. 5, ch. 77-452; s. 1, ch. 81-198; s. 3, ch. 83-75; s. 16, ch. 83-131; s. 192, ch. 83-216; s. 3, ch. 83-256; s. 8, ch. 84-363; s. 15, ch. 85-288; s. 5, ch. 87-211; s. 11, ch. 88-96; ss. 70, 71, ch. 88-122; s. 37, ch. 89-526; s. 10, ch. 90-287; ss. 8, 17, ch. 90-337; s. 11, ch. 91-225; s. 4, ch. 91-280; s. 23, ch. 92-310; s. 10, ch. 93-37; s. 15, ch. 93-227; s. 1, ch. 94-294; s. 1, ch. 95-189; ss. 53, 59, ch. 95-283; s. 1, ch. 96-170; s. 4, ch. 96-232; s. 54, ch. 96-312; s. 6, ch. 96-409; s. 22, ch. 97-78; s. 1877, ch. 97-102; s. 11, ch. 97-107; s. 27, ch. 97-234; s. 44, ch. 97-271; s. 3, ch. 97-308; s. 14, ch. 98-81; s. 15, ch. 98-251; s. 122, ch. 99-3; s. 13, ch. 99-201; s. 3, ch. 2000-246; s. 6, ch. 2001-50; s. 1045, ch. 2002-387; s. 1, ch. 2003-18; s. 1, ch. 2003-63; s. 136, ch. 2003-402; ss. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, ch. 2004-373.

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

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

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

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

nearest boundary line of the school, day care center, park, playground, or other place where children congregate. The distance may not be measured by a pedestrian route or automobile route.

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

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

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

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

(g) Unless otherwise indicated in the treatment plan provided by 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.

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

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

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

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

(a) As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. A polygraph examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, where available, and shall be paid for by the sex offender. The results of the polygraph examination shall not be used as evidence in court to prove that a violation of community supervision has occurred.

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

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

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

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

History.--s. 59, ch. 95-283; s. 6, ch. 96-409; s. 3, ch. 97-308; s. 14, ch. 98-81; s. 13, ch. 99-201; s. 3, ch. 2000-246; s. 1, ch. 2003-18; s. 1, ch. 2003-63; s. 18, ch. 2004-373.

¹Note.--The referenced subsection was s. 948.03(5), which was redesignated as s. 948.30 by s. 18, ch. 2004-373.

Note.--Former s. 948.03(5).



**Ineligibility for
Administrative Probation
for certain Sexual Offenders/Predators
{ Section 948.013 }**

948.013 Administrative probation.--

(1) The Department of Corrections may establish procedures for transferring an offender to administrative probation. The department may collect an initial processing fee of up to \$50 for each probationer transferred to administrative probation. The offender is exempt from further payment for the cost of supervision as required in s. 948.09.

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

History.--s. 13, ch. 98-81; s. 3, ch. 2000-246; s. 12, ch. 2004-373.
Note.--Subsection (2) former s. 948.01(15).



**FEDERAL
CAMPUS SEX CRIMES PREVENTION ACT
Pub. L. No. 106-386, div.B, Sec 1601, 114 Stat.1464, 1537
42 U.S.C. § 14071(j) and 20 U.S.C. § 1092(f)(1)(I)
Effective October 28, 2002**

This Campus Sex Crimes Prevention Act (CSCPA) is a federal law that amends Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994/Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act/Megan's Law. States must comply with Wetterling Act requirements in order to maintain eligibility for full Byrne Grant funding.

The Campus Sex Crimes Prevention Act provides for the tracking of convicted sex offenders enrolled at or employed by institutions of higher education. The CSCPA's intent is to extend the protections of sex offender registries and Megan's Law to college campuses and post-secondary institutions. The CSCPA was signed into law on October 28, 2000, and became effective on October 28, 2002.

The Campus Sex Crimes Prevention Act requires sex offenders who must already register under state law and who are enrolled at, employed at, or carrying on a vocation at an institution of higher education to provide to state authorities, in a manner prescribed by state law, information about such enrollment or employment and any change in such status. In turn, this information will be made available by the state authorities to the local law enforcement agency that has jurisdiction where the institution of higher education is located, and thereafter, by local law enforcement agencies, to the respective institutions of higher education.

Under the Campus Sex Crimes Prevention Act, **“employed, carrying on a vocation”** includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during

any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. *42 U.S.C. § 14071(a)(3)(F)*.

The CSCPA also amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) to require institutions of higher education to issue a statement advising the campus community where to obtain law enforcement agency information provided by a state concerning registered sex offenders:

"A statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address." *20 U.S.C. § 1092(f)(1)(I)*.

When preparing the above notice to the campus community, institutions must remember that "the local law enforcement agency having jurisdiction over the institution" does not include the Florida Department of Corrections (FDC), the agency that will have the CSCPA information required by Florida law to be provided by sex offenders and sex predators who are under the control or supervision of FDC. In addition, at the time of this publication, referring the campus community to the Search Page of FDLE's Sexual Offenders and Predators website will not enable the campus community to obtain the CSCPA information, as this information is not available to the public on that website. Therefore, institutions should be careful to indicate a list of sources where all applicable CSCPA information can be located by the campus community. *See the below Florida law section of the CSCPA for further discussion on the sources of CSCPA information.*

The Clery Act and the above notice requirement apply to most public and private institutions of higher education, because the Act is tied to participation in federal student financial aid programs.

The Campus Sex Crimes Prevention Act also amended the Family Educational Rights and Privacy Act of 1974 (FERPA), to clarify that nothing in the FERPA may be construed to prohibit an educational institution from disclosing information provided to the institution concerning registered sex offenders. The FERPA also requires the U.S. Secretary of Education to take appropriate steps to notify educational institutions that disclosure of this information is permitted. *20 U.S.C. § 1232g(7)(A)*.

The U.S. Department of Justice issued final guidelines for the CSCPA on October 25, 2002, at 67 Fed. Reg. 65598. *Please see the Federal Law section of this book to review these guidelines.*



**2002 FLORIDA LAW
RELATED TO THE
CAMPUS SEX CRIMES PREVENTION ACT
Sections 775.21(6)(a)1.b.; 943.0435(2)(b)2.; and 944.607(4)(b)
Effective July 1, 2002**

In 2002, Florida enacted provisions into state law that comply with the requirements of the federal Campus Sex Crimes Prevention Act. The new provisions were effective as of July 1, 2002. Various sections of Florida Statutes pertaining to sexual offenders and predators who are not incarcerated, who are under the control or supervision of the Florida Department of Corrections, or who are incarcerated or in the custody of a local jail, were amended to require the offenders and predators to provide registration information and to require notifications to law enforcement and institutions of higher education.

Under these new Florida laws, sexual predators and sexual offenders who are already required to register in Florida as sexual offenders or predators **and who are enrolled, employed, or carrying on a vocation at an institution of higher education in Florida** must provide the following information:

- **Name, address, and county of each institution;**
- **Each campus attended;**
- **Enrollment and employment status; and**
- **Each change in enrollment or employment status, including a change in location of either.**

"Institution of higher education" includes a community college, college, state university, or independent post-secondary institution.
{Sections 775.21(2)(h); 943.0435(1)(d); and 944.607(1)(c).}

"Change in enrollment" means commencement or termination of enrollment or employment OR a change in the location of enrollment or employment.
{Sections 775.21(2)(l); 943.0435(1)(e); and 944.607 (1)(d).}

Florida law requires sex offenders and sex predators who are not incarcerated but who are under the supervision of the Department of Corrections (FDC) to **provide the CSCPA information to FDC, including any changes** to enrollment or employment status which must be provided *within 48 hours of the change*. FDC is required to promptly notify the applicable institution of the presence of the offender/predator, along with any changes in the offender's/predator's enrollment/ employment status. FDC is also required to provide the information received to FDLE. {Sections 775.21(6) (a)1.b.,(b); 944.607(4)(b),(5)-(6).}

Florida law requires sex offenders and sex predators who are not incarcerated and not otherwise under the supervision of the Department of Corrections to **provide the CSCPA information to the sheriff's office. All changes** to enrollment or employment status must be provided to the sheriff within 48 hours of the change. The sheriff is required to promptly notify the applicable institution of the presence of the offender/predator, along with any changes in the

offender's/predator's enrollment/employment status. The sheriff is also required to promptly provide the information received to FDLE. {Sections 775.21(6)(a)1.b., (l); 943.0435(2)(b)2.}

Upon receipt and entry of CSCPA information into the FDLE Sex Offender database, FDLE will send an automated teletype message to all law enforcement agencies in the areas where the applicable institutions are located, including the law enforcement agencies having jurisdiction over the institutions.

LOCAL LAW ENFORCEMENT COMMUNITY NOTIFICATION REGARDING SEXUAL PREDATORS

{Section 775.21(7), Florida Statutes}

FEDERAL CAMPUS SEX CRIMES PREVENTION ACT and related Florida laws:

Upon receiving the required information from a sexual predator regarding such person's enrollment or employment status at an institution of higher learning, or any change thereto, the sheriff or the Department of Corrections, shall promptly notify each institution of the sexual predator's presence and of any change in the predator's enrollment or employment status. {Section 775.21(6)(a)1.b.}

COMMUNITY NOTIFICATION REGARDING SEXUAL OFFENDERS

{Sections 943.043, 944.606(4)}

Notification of a sexual offender to the public is **authorized but not required**, as deemed appropriate by local law enforcement personnel and FDLE. {Sections 943.043, 944.606(4)}

FEDERAL CAMPUS SEX CRIMES PREVENTION ACT and related Florida laws:

Upon receiving the required information from a sexual offender regarding such person's enrollment or employment status at an institution of higher learning, or any change thereto, the sheriff or the Department of Corrections, whichever receives the information, shall promptly notify each institution of the sexual offender's presence and of any change in the offender's enrollment or employment status. {Sections 943.0435(2)(b)2.; 944.607(4)(b)}

See Campus Sex Crimes Prevention Act (CSCPA) section for more information.

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

(2) If the law enforcement agency finds that the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release, the law enforcement agency shall immediately notify the person's probation officer or release supervisor of the investigation or the arrest.

History.--s. 13, ch. 97-299; s. 3, ch. 2000-246; s. 28, ch. 2004-373.



COMMUNITY NOTIFICATION REGARDING SEXUAL PREDATORS

{Section 775.21(7), Florida Statutes}

○ **General notification to the community and the public**

Upon notification of the presence of a *sexual predator*, the **sheriff** of the county or the **chief of police** of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police.

○ **Notification to Schools and Day Care Centers**

Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides **shall notify each**

- **licensed day care center,**
- **elementary school,**
- **middle school, and**
- **high school**

within a 1-mile radius of the temporary or permanent residence of the sexual predator, of the presence of the sexual predator. *{Section 775.21(7)(a)}*

Information provided by law enforcement to the community and the public regarding a sexual predator **must include the following:**

- The **name** of the sexual predator;
- A **description** of the sexual predator, including a **photograph;**
- The sexual predator's current **address**, including the name of the county or municipality if known;

- The **circumstances of** the sexual predator's **offense** or offenses; and
- Whether the **victim** of the sexual predator's offense or offenses was, at the time of the offense, **a minor or an adult**.

These requirements do NOT authorize the release of the name of any victim of the sexual predator.

The sheriff or police chief may coordinate notification efforts with FDLE. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and FDLE.

{Section 775.21(7)}

- **Notifications to and by Institutions of Higher**

Education (Campus Sex Crimes Prevention Act)

Upon receiving the required information from a sexual predator regarding such person's enrollment or employment status at an institution of higher learning, or any change thereto, the **sheriff** and the **Department of Corrections** shall **promptly notify each institution** of higher education of the sexual predator's presence and of any change in the predator's enrollment or employment status. *{Section 775.21(6)(a)1.b.}*

Institutions of higher education in Florida that must comply with federal law under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), must **issue a statement advising the campus community where to obtain law enforcement agency information provided** by a state concerning registered sex offenders/predators, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. *20 U.S.C. § 1092(f)(1)(I).*



COMMUNITY NOTIFICATION REGARDING SEXUAL OFFENDERS

{Sections 943.043, 944.606(4)}

Notification of a sexual **offender** to the public is **authorized but not required**, as deemed appropriate by local law enforcement personnel and FDLE. *{Sections 943.043, 944.606(4)}*

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Education

**Notifications to and by Institutions of Higher
(Campus Sex Crimes Prevention Act)**

Upon receiving the required information from a sexual offender regarding such person's enrollment or employment status at an institution of higher learning, or any change thereto, the **sheriff** and the **Department of Corrections** shall **promptly notify each institution** of higher education of the sexual offender's presence and of any change in the offender's enrollment or employment status. *{Sections 943.0435(2)(b)2.; 944.607(4)(b)}*

Institutions of higher education in Florida that must comply with federal law under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), must **issue a statement advising the campus community where to obtain law enforcement agency information provided** by a state concerning registered sex offenders/predators, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. *20 U.S.C. § 1092(f)(1)(I).*

**OTHER LAW ENFORCEMENT NOTIFICATION
INFORMATION AND REQUIREMENTS**

Notification of a sexual offender/predator to the public is authorized, as deemed appropriate by local law enforcement personnel and FDLE.
{Sections 775.21(6)(k)2., (7)(b), 943.043, 944.606(4)}

Upon receiving information regarding a sexual offender from the Florida Department of Corrections, the Department of Law Enforcement, the sheriff or the chief of police shall provide the information described in subparagraph (a)1. to any individual who requests such information and may release the information to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. *{Section 944.606(3)(d)}*

If a sexual offender or predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the offender/predator and forward the photographs and fingerprints to the department, along with the other registration information that the offender/predator is required to provide.
{Sections 775.21(6)(a) and (e); 943.0435(2)}

If a sexual offender or predator notifies the sheriff of intent to establish residence in another state or the intent to remain in this state after previously reporting intent to leave, the sheriff shall promptly provide to FDLE the information received from the sexual offender/predator. FDLE shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual offender/predator's intended residence. *{Sections 775.21(6)(i), 943.0435(7)}*



IMMUNITY

FDLE, DHSMV, FDC, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of these sections or for the release of information under these sections, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the FDLE, the DHSMV, the FDC, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual predator or offender fails to report or falsely reports his or her current place of permanent or temporary residence. {Sections 775.21(9), 943.043 (4), 944.0435(10), 944.606(5), 944.607(11)}



**MISUSE OR MATERIAL ALTERATION OF
PUBLIC RECORDS INFORMATION
OR DISTRIBUTING FALSE INFORMATION**

{Section 775.21(10)(c), Florida Statutes}

Any person who

- misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender;
- knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information
- who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication,

commits a **misdemeanor of the first degree**. *{Section 775.21(10)(c), Florida Statutes}*



**INVOLUNTARY CIVIL COMMITMENT OF
SEXUALLY VIOLENT PREDATORS**

{Chapter 394, Part V, Florida Statutes}

*For more information, please contact the
Florida Department of Children and Family Services,
at (850) 921-4218 – Tallahassee, Florida.*

394.910 Legislative findings and intent.--The Legislature finds that a small but extremely dangerous number of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment under the Baker Act, part I of this chapter, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under the Baker Act, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in criminal, sexually violent behavior. The Legislature further finds that the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedures under the Baker Act for the treatment and care of mentally ill persons are inadequate to address the risk these sexually violent predators pose to society. The Legislature further finds that the prognosis for rehabilitating sexually violent

predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under the Baker Act. It is therefore the intent of the Legislature to create a civil commitment procedure for the long-term care and treatment of sexually violent predators. **History.**--ss. 2, 3, ch. 98-64; s. 3, ch. 99-222.

Note.--Former s. 916.31.

394.912 Definitions.--As used in this part, the term:
(1) "Agency with jurisdiction" means the agency that releases, upon lawful order or authority, a person who is serving a sentence in the custody of the Department of Corrections, a person who was adjudicated delinquent and is committed to the custody of the Department of Juvenile Justice, or a person who was involuntarily committed to the custody of the Department of Children and Family Services upon an adjudication of not guilty by reason of insanity.

(2) "Convicted of a sexually violent offense" means a person who has been:

(a) Adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere;

(b) Adjudicated not guilty by reason of insanity of a sexually violent offense; or

(c) Adjudicated delinquent of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere.

(3) "Department" means the Department of Children and Family Services.

(4) "Likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(5) "Mental abnormality" means a mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

(6) "Person" means an individual 18 years of age or older who is a potential or actual subject of proceedings under this part.

(7) "Secretary" means the secretary of the Department of Children and Family Services.

(8) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for sexual gratification.

(9) "Sexually violent offense" means:

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

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

1. Sexual battery; or
2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

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

1. Sexual battery; or
2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

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

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

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

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

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

(10) "Sexually violent predator" means any person who:

(a) Has been convicted of a sexually violent offense; and

(b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(11) "Total confinement" means that the person is currently being held in any physically secure facility being operated or contractually operated for the Department of Corrections, the Department of Juvenile Justice, or the Department of Children and Family Services. A person shall also be deemed to be in total confinement for applicability of provisions under this part if the person is serving an incarcerative sentence under the custody of the Department of Corrections or the Department of Juvenile Justice and is being held in any other secure facility for any reason.

History.--s. 4, ch. 98-64; s. 5, ch. 99-222; s. 3, ch. 2000-246.

Note.--Former s. 916.32.

394.917 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.--

(1) The court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the verdict must be unanimous. If the jury is unable to reach a unanimous verdict, the court must declare a mistrial and poll the jury. If a majority of the jury would find the person is a sexually violent predator, the state attorney may refile the petition and proceed according to the provisions of this part. Any retrial must occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with s. 394.916(2). The determination that a person is a sexually violent predator may be appealed.

(2) If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

(3) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. That public defender may request the public defender who handles criminal appeals for the circuit to represent the person on appeal in the manner provided in s. 27.51(4). If the public defender is unable to represent the person on appeal due to a conflict, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this act are waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds that are appropriated for such purposes.

History.--s. 9, ch. 98-64; s. 12, ch. 99-222; s. 2, ch. 2002-59; s. 43, ch. 2004-5. **Note.**--Former s. 916.37.

394.913 Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.--

(1) The agency with jurisdiction over a person who has been convicted of a sexually violent offense shall give written notice to the multidisciplinary team, and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense. If the person has never been convicted of a sexually violent offense in this state but has been convicted of a sexually

violent offense in another state or in federal court, the agency with jurisdiction shall give written notice to the multidisciplinary team and a copy to the state attorney of the circuit where the person was last convicted of any offense in this state. If the person is being confined in this state pursuant to interstate compact and has a prior or current conviction for a sexually violent offense, the agency with jurisdiction shall give written notice to the multidisciplinary team and a copy to the state attorney of the circuit where the person plans to reside upon release or, if no residence in this state is planned, the state attorney in the circuit where the facility from which the person to be released is located. Except as provided in s. 394.9135, the written notice must be given:

(a) At least 545 days prior to the anticipated release from total confinement of a person serving a sentence in the custody of the Department of Corrections, except that in the case of persons who are totally confined for a period of less than 545 days, written notice must be given as soon as practicable;

(b) At least 180 days prior to the anticipated release from residential commitment of a person committed to the custody of the Department of Juvenile Justice, except that in the case of persons who are committed to low or moderate risk, written notice must be given as soon as practicable; or

(c) At least 180 days prior to the anticipated hearing regarding possible release of a person committed to the custody of the department who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense.

(2) The agency with jurisdiction shall provide the multidisciplinary team with the following information:

(a) The person's name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person's offense history;

(b) The person's criminal history, including police reports, victim statements, presentence investigation reports, postsentence investigation reports, if available, and any other documents containing facts of the person's criminal incidents;

(c) Mental health, mental status, and medical records, including all clinical records and notes concerning the person;

(d) Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to the Department of Juvenile Justice, copies of the most recent performance plan and performance summary; and

(e) If the person was returned to custody after a period of supervision, documentation of adjustment during supervision and any treatment received.

(3)(a) The secretary or his or her designee shall establish a multidisciplinary team or teams.

(b) Each team shall include, but is not limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The multidisciplinary team shall assess and evaluate each person referred to the team. The assessment and evaluation shall include a review of the person's institutional history and treatment record, if any, the person's criminal background, and any other factor that is relevant to the determination of whether such person is a sexually violent predator.

(c) Before recommending that a person meets the definition of a sexually violent predator, the person must be offered a personal interview. If the person agrees to participate in a personal interview, at least one member of the team who is a licensed psychiatrist or psychologist must conduct a personal interview of the person. If the person refuses to fully participate in a personal interview, the multidisciplinary team may proceed with its recommendation without a personal interview of the person.

(d) The Attorney General's Office shall serve as legal counsel to the multidisciplinary team.

(e) Within 180 days after receiving notice, there shall be a written assessment as to whether the person meets the definition of a sexually violent predator and a written recommendation, which shall be provided to the state attorney. The written recommendation shall be provided by the Department of Children and Family Services and shall include the written report of the multidisciplinary team.

(4) The provisions of this section are not jurisdictional, and failure to comply with them in no way prevents the state attorney from proceeding against a person otherwise subject to the provisions of this part.

History.--s. 5, ch. 98-64; s. 6, ch. 99-222; s. 81, ch. 2000-139; s. 1, ch. 2002-59.

Note.--Former s. 916.33

QUALIFYING

OFFENSES:

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

(1)(a) The term "kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.
2. Commit or facilitate commission of any felony.

3. Inflict bodily harm upon or to terrorize the victim or another person.

4. Interfere with the performance of any governmental or political function.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

(2) A person who kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s.

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

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

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

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

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

5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151, commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

History.--s. 1, ch. 5907, 1909; RGS 5058; CGL 7160; s. 1, ch 16063, 1933; s. 784, ch. 71-136; s. 8, ch. 72-724; s. 22, ch 74-383; s. 12, ch. 75-298; s. 1, ch. 77-174; s. 1, ch. 84-238; s. 2, ch. 90-120; s. 2, ch. 93-227; s. 9, ch. 96-322; s. 1813, ch. 97-102; s. 4, ch. 99-201; s. 3, ch. 2000-246.

Note.--Former s. 805.02.

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

(1)(a) The term "false imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

(2) A person who commits the offense of false imprisonment is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

1. Aggravated child abuse, as defined in s. 827.03;
2. Sexual battery, as defined in chapter 794, against the child;
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04;
4. A violation of s. 796.03 or s. 796.04, relating to prostitution, upon the child;
or
5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151.

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

History.--s. 43, sub-ch. 3, ch. 1637, 1868; RS 2399; GS 3225; RGS 5057; CGL 7159; s. 783, ch. 71-136; s. 23, ch. 74-383; s. 13, ch. 75-298; s. 1, ch. 84-238; s. 2, ch. 90-120; s. 1, ch. 93-156; ss. 2, 18, ch. 93-227; s. 9, ch. 96-322; s. 1814, ch. 97-102; s. 5, ch. 99-201; s. 3, ch. 2000-246. **Note.**--Former s. 805.01.

787.025 Luring or enticing a child.--

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

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

(b) "Dwelling" means a building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof.

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

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

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

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

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

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

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

History.--s. 1, ch. 95-228; s. 8, ch. 99-201; s. 3, ch. 2000-246

794.005 Legislative findings and intent as to basic charge of sexual battery.--The Legislature finds that the least serious sexual battery offense, which is provided in s. 794.011(5), was intended, and remains intended, to serve as the basic charge of sexual battery and to be necessarily included in the offenses charged under subsections (3) and (4), within the meaning of s. 924.34; and that it was never intended that the sexual battery offense described in s. 794.011(5) require any force or violence beyond the force and violence that is inherent in the accomplishment of "penetration" or "union."

History.--s. 2, ch. 92-135.

794.011 Sexual battery.--

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) "Victim" means a person who has been the object of a sexual offense.

(j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(f) When the victim is physically incapacitated.

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(6) The offense described in subsection (5) is included in any sexual battery offense charged under subsection (3) or subsection (4).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) Any person who falsely accuses any person listed in paragraph (4)(g) or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(g) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 2, ch. 74-121; s. 17, ch. 75-298; s. 1, ch. 84-86; s. 1, ch. 89-216; s. 3, ch. 92-135; s. 1, ch. 92-310; s. 3, ch. 93-156; s. 2, ch. 95-348; s. 99, ch. 99-3; s. 8, ch. 99-188; s. 1, ch. 2002-211.

794.0115 Dangerous sexual felony offender; mandatory sentencing.--

(1) This section may be cited as the "Dangerous Sexual Felony Offender Act."

(2) Any person who is convicted of a violation of s. 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s. 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

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

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

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

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

(e) Has previously been convicted of a violation of s. 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s. 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph, is a dangerous sexual felony offender, who must be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment.

(3) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(4) The offense described in subsection (2) which is being charged must have been committed after the date of commission of the last prior conviction for an offense that is a prior conviction described in paragraph (2)(e).

(5) It is irrelevant that a factor listed in subsection (2) is an element of an offense described in that subsection. It is also irrelevant that such an offense was reclassified to a higher felony degree under s. 794.023 or any other law.

(6) Notwithstanding s. 775.082(3), chapter 958, any other law, or any interpretation or construction thereof, a person subject to sentencing under this section must be sentenced to the mandatory term of imprisonment provided under this section. If the mandatory minimum term of imprisonment imposed under this section exceeds the maximum sentence authorized under s. 775.082, s. 775.084, or chapter 921, the mandatory minimum term of imprisonment under this section must be imposed. If the mandatory minimum term of imprisonment under this section is less than the sentence that could be imposed under s. 775.082, s. 775.084, or chapter 921, the sentence imposed must include the mandatory minimum term of imprisonment under this section.

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, before serving the minimum sentence.

History.--s. 7, ch. 99-188; s. 1, ch. 2002-211; s. 1, ch. 2003-115.

794.02 Common-law presumption relating to age abolished.--The common-law rule "that a boy under 14 years of age is conclusively presumed to be incapable of committing the crime of rape" shall not be in force in this state.
History.--s. 1, ch. 4964, 1901; GS 3222; RGS 5052; CGL 7154; s. 2, ch. 74-121.

794.021 Ignorance or belief as to victim's age no defense.--When, in this chapter, the criminality of conduct depends upon the victim's being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.
History.--s. 2, ch. 74-121.

794.023 Sexual battery by multiple perpetrators; reclassification of offenses.--

(1) The Legislature finds that an act of sexual battery, when committed by more than one person, presents a great danger to the public and is extremely offensive to civilized society. It is therefore the intent of the Legislature to reclassify offenses for acts of sexual battery committed by more than one person.

(2) A violation of s. 794.011 shall be reclassified as provided in this subsection if it is charged and proven by the prosecution that, during the same criminal transaction or episode, more than one person committed an act of sexual battery on the same victim.

(a) A felony of the second degree is reclassified to a felony of the first degree.

(b) A felony of the first degree is reclassified to a life felony.

This subsection does not apply to life felonies or capital felonies. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

History.--s. 4, ch. 84-86; s. 17, ch. 93-156; s. 24, ch. 95-184; s. 20, ch. 97-194; s. 2, ch. 99-172.

794.0235 Administration of medroxyprogesterone acetate (MPA) to persons convicted of sexual battery.--

(1) Notwithstanding any other law, the court:

(a) May sentence a defendant to be treated with medroxyprogesterone acetate (MPA), according to a schedule of administration monitored by the Department of Corrections, if the defendant is convicted of sexual battery as described in s. 794.011.

(b) Shall sentence a defendant to be treated with medroxyprogesterone acetate (MPA), according to a schedule of administration monitored by the Department of Corrections, if the defendant is convicted of sexual battery as described in s. 794.011 and the defendant has a prior conviction of sexual battery under s. 794.011.

If the court sentences a defendant to be treated with medroxyprogesterone acetate (MPA), the penalty may not be imposed in lieu of, or reduce, any other penalty prescribed under s. 794.011. However, in lieu of treatment with medroxyprogesterone acetate (MPA), the court may order the defendant to undergo physical castration upon written motion by the defendant providing the defendant's intelligent, knowing, and voluntary consent to physical castration as an alternative penalty.

(2)(a) An order of the court sentencing a defendant to medroxyprogesterone acetate (MPA) treatment under subsection (1), shall be contingent upon a determination by a court appointed medical expert, that the defendant is an appropriate candidate for treatment. Such determination is to be made not later than 60 days from the imposition of sentence. Notwithstanding the statutory maximum periods of incarceration as provided in s. 775.082, an order of the court sentencing a defendant to medroxyprogesterone acetate (MPA) treatment shall specify the duration of treatment for a specific term of years, or in the discretion of the court, up to the life of the defendant.

(b) In all cases involving defendants sentenced to a period of incarceration, the administration of treatment with medroxyprogesterone acetate (MPA) shall commence not later than one week prior to the defendant's release from prison or other institution.

(3) The Department of Corrections shall provide the services necessary to administer medroxyprogesterone acetate (MPA) treatment. Nothing contained in this section shall be construed to require the continued administration of medroxyprogesterone acetate (MPA) treatment when it is not medically appropriate.

(4) As used in this section, the term "prior conviction" means a conviction for which sentence was imposed separately prior to the imposition of the sentence for the current offense and which was sentenced separately from any other conviction that is to be counted as a prior conviction under this section.

(5) If a defendant whom the court has sentenced to be treated with medroxyprogesterone acetate (MPA) fails or refuses to:

(a) Appear as required by the Department of Corrections for purposes of administering the medroxyprogesterone acetate (MPA); or

(b) Allow the administration of medroxyprogesterone acetate (MPA), the defendant is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 1, ch. 97-184.

794.05 Unlawful sexual activity with certain minors.--

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, "sexual activity" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.

(2) The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743.

(3) The victim's prior sexual conduct is not a relevant issue in a prosecution under this section.

(4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.

History.--RS 2598; s. 1, ch. 4965, 1901; GS 3521; s. 1, ch. 6974, 1915; s. 1, ch. 7732, 1918; RGS 5409; s. 1, ch. 8596, 1921; CGL 7552; s. 1, ch. 61-109; s. 759, ch. 71-136; s. 1, ch. 96-409.

796.03 Procuring person under age of 18 for prostitution.--A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--RS 2617; GS 3537; RGS 5435; CGL 7578; s. 765, ch. 71-136; s. 1, ch. 78-45; s. 1, ch. 93-227.

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

(1) DEFINITIONS.--As used in this section:

(a) "Sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(b) "Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

(c) "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

(d) "Victim" means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.

(2) PROHIBITED DEFENSES.--Neither the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section.

(3) IGNORANCE OR BELIEF OF VICTIM'S AGE.--The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section.

(4) LEWD OR LASCIVIOUS BATTERY.--A person who:

(a) Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or

(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) LEWD OR LASCIVIOUS MOLESTATION.--

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) LEWD OR LASCIVIOUS CONDUCT.--

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.

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

(c) An offender less than 18 years of age who commits lewd or lascivious conduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) LEWD OR LASCIVIOUS EXHIBITION.--

(a) A person who:

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

(b) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity live over a computer on-line service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim in this state who is less than 16 years of age, commits lewd or lascivious exhibition. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this paragraph shall not constitute a defense to a prosecution under this paragraph.

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

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

(8) EXCEPTION.--A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.

History.--s. 1, ch. 21974, 1943; s. 1, ch. 26580, 1951; s. 780, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 40, ch. 75-298; s. 291, ch. 79-400; s. 5, ch. 84-86; s. 1, ch. 90-120; s. 5, ch. 93-4; s. 6, ch. 99-201; s. 1, ch. 2000-246.

825.1025 Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.--

(1) As used in this section, "sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(2)(a) "Lewd or lascivious battery upon an elderly person or disabled person" occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(b) A person who commits lewd or lascivious battery upon an elderly person or disabled person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) "Lewd or lascivious molestation of an elderly person or disabled person" occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(b) A person who commits lewd or lascivious molestation of an elderly person or disabled person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) "Lewd or lascivious exhibition in the presence of an elderly person or disabled person" occurs when a person, in the presence of an elderly person or disabled person:

1. Intentionally masturbates;
2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or
3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

(b) A person who commits a lewd or lascivious exhibition in the presence of an elderly person or disabled person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 4, ch. 96-322; s. 1, ch. 2002-159.

827.071 Sexual performance by a child; penalties.--

(1) As used in this section, the following definitions shall apply:

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(c) "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.

(d) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(f) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(g) "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. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(h) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(i) "Simulated" means the explicit depiction of conduct set forth in paragraph (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any 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. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 4, ch. 83-75; s. 1, ch. 85-273; s. 1, ch. 86-38; s. 1, ch. 91-33; s. 1, ch. 92-83; s. 1283, ch. 97-102; s. 1, ch. 2001-54.

847.0133 Protection of minors; prohibition of certain acts in connection with obscenity; penalty.--

(1) It is unlawful for any person knowingly to sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. The term "obscene" shall have the same meaning as set forth in s. 847.001.

(2) As used in this section "knowingly" has the same meaning set forth in s. 847.012(1). A "minor" is any person under the age of 18 years.

(3) A violation of the provisions of this section constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 63, ch. 90-306; s. 7, ch. 93-4.

847.0135 Computer pornography; penalties.--

(1) SHORT TITLE.--This section shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act of 1986."

(2) COMPUTER PORNOGRAPHY.--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, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(3) CERTAIN USES OF COMPUTER SERVICES PROHIBITED.--Any person who knowingly utilizes a computer on-line service, Internet service, or local bulletin board service to seduce, solicit, lure, or entice, or attempt to seduce, solicit,

lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, relating to sexual battery; chapter 800, relating to lewdness and indecent exposure; or chapter 827, relating to child abuse, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE.--It is unlawful for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to commit a violation of this section. Any person who violates this section commits a misdemeanor of the first degree, punishable by a fine not exceeding \$2,000.

(5) STATE CRIMINAL JURISDICTION.--A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child residing in this state, or another person believed by the person to be a child residing in this state.

History.--s. 11, ch. 86-238; s. 213, ch. 91-224; s. 71, ch. 96-388; s. 3, ch. 2001-54.

847.0137 Transmission of pornography by electronic device or equipment prohibited; penalties.--

(1) For purposes of this section:

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

(b) "Transmit" means 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.

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

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

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

(5) A person is subject to prosecution in this state pursuant to chapter 910 for any act or conduct proscribed by this section, including a person in a jurisdiction other than this state, if the act or conduct violates subsection (3).

The provisions of this section do not apply to subscription-based transmissions such as list servers.

History.--s. 4, ch. 2001-54.

847.0138 Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties.--

(1) For purposes of this section:

(a) "Known by the defendant to be a minor" means that the defendant had actual knowledge or believed that the recipient of the communication was a minor.

(b) "Transmit" means to send to a specific individual known by the defendant to be a minor via electronic mail.

(2) Notwithstanding ss. 847.012 and 847.0133, any person in this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, as defined in s. 847.001, to a specific individual known by the defendant to be a minor in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, as defined in s. 847.001, to a specific individual known by the defendant to be a minor in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The provisions of this section do not apply to subscription-based transmissions such as list servers.

History.--s. 5, ch. 2001-54.

847.0145 Selling or buying of minors; penalties.--

(1) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

(a) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; shall be guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor, either:

(a) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 2, ch. 88-283.