

Victim Advocate Reference Guide

Synopsis of Florida Statutes

October 2008



Office of Attorney General Bill McCollum

Division of Victim Services and Criminal Justice Programs

Constitution of the State of Florida

Article I
Declaration of Rights

Section 16, Paragraph (b)
Rights of Victims

Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

Passed on November 8, 1988
by 90 percent of Florida voters

Enacted on January 3, 1989

Table of Contents

Victim Rights and Services	1
Guidelines for Fair Treatment of Victims and Witnesses in the Criminal Justice and Juvenile Justice Systems.....	1
Use of a Polygraph Examination or Other Truth Telling Device With Victim	2
Presence of Victim Advocates During Forensic Medical Examination	3
Depriving Crime Victims of Medical Care (Pastora Pacheco Act)	3
Victim Assistance	3
Department of Legal Affairs Crime Victims' Services Office.....	3
Parole Commission Reform Act of 2001	4
The Victim's Freedom Act	4
Citizens' Right to Know Act	4
Order of No Contact	5
Criminal Gang Enforcement and Prevention	5
Other Statutes Pertaining to Release Notification and Special Conditions	6
Child Victims and Witnesses	7
Definition of Crimes	7
▪ Sexual Battery Upon Children	7
▪ Lewd or Lascivious Offenses Committed Upon or in the Presence of Persons Less Than 16 Years of Age	7
▪ Abuse of Children	7
Children in Court	7
▪ Admission of Similar Fact Evidence	8
▪ Hearsay Exception for Child Victim Statement	8
▪ Videotaping and Use of Closed Circuit Television for Persons Under Age 16 or Persons with Mental Retardation	8
▪ Familial Authority and Sexual Battery	8
▪ Rules of Evidence for Sexual Battery	9
▪ Chastity or Consent of Child for Lewd, Lascivious, and Indecent Acts	9
▪ Limits on Interviews	9

▪ Court Appointed Advocate	9
▪ Testimony of Person Under Age 16	9
Mandatory Reporting	10
Records and Confidentiality	10
▪ Exemption from Public Records	10
▪ Confidentiality of Reports and Records in Cases of Child Abuse or Neglect	10
▪ Criminal History Records	10
Jessica Lunsford Act	10
Other Statutes Pertaining to Child Victims	11
▪ Jennifer Kesse and Tiffany Sessions Missing Persons Act	11
▪ Rilya Wilson Act	11
▪ Cybercrimes Against Children Act of 2007	12
▪ Exploited Children	12
▪ Victim of Child Abuse or Sex Offense	12
▪ Jeffery Johnston Stand Up for All Students Act	13
▪ Listing of Other Statues	13
Domestic Violence	15
Definition of Crime	15
▪ Domestic Violence	15
Responsibilities and Duties	15
▪ Law Enforcement	15
▪ State Attorneys	16
Protection	16
▪ Availability of Judge for Hearings in Chambers	16
▪ Domestic Violence Advocate – Victim Privilege	16
▪ Unfair Methods of Competition and Unfair or Deceptive Acts or Practices	17
▪ Injunction for Protection	17
▪ Unlawful Action Against Employees Seeking Protection	17
▪ Barwick-Ruschak Act	17

▪ Prohibits Offender’s Possession of Firearm or Ammunition	18
▪ Arrest by Officer Without a Warrant	18
Domestic Violence Centers	18
▪ Referral to Centers	18
▪ Confidentiality of Information	19
Relocation Assistance	19
▪ Workforce Innovation Relocation Assistance Program	19
▪ Domestic Violence Relocation Assistance Program	19
▪ Address Confidentiality Program	19
Other Statutes Pertaining to Domestic Violence	19
Sexual Battery	20
Definition of Crime	20
▪ Sexual Battery	20
▪ Dangerous Sexual Felony Offenders	20
Confidentiality	20
▪ Counselor-Victim Privilege	20
▪ Judicial Proceedings and Court Records Involving Sexual Offenses	20
▪ Testimony of Victim	21
▪ Exemption from Public Records	21
▪ Criminal Penalty for Non-Disclosure of HIV Status	21
Evidence	21
▪ Rules of Evidence for Sexual Battery	21
▪ Time Limitations for Sexual Battery Prosecutions	22
▪ Registration/Notification of Sexual Predator in a Community	22
▪ Sexual Battery Forensic Examinations	22
▪ Payment for Victim’s Initial Forensic Physical Examinations	22
Other Statutes Pertaining to Sexual Battery	23

Elderly and Disabled Adult Victims	24
Definition of Crimes	24
▪ Abuse	24
▪ Neglect	24
▪ Exploitation	24
Penalties	24
▪ Abuse and Neglect	24
▪ Exploitation	24
Other Statutes Pertaining to the Elderly and Disabled Adult	25
▪ Access to Records of Elder Abuse	25
▪ Victim Compensation to Elderly Persons or Disabled Adults for Property Loss	25
▪ Deceptive and Unfair Trade Practices	25
▪ Assault or Battery on Persons 65 Years of Age or Older	25
▪ Speedy Trial	25
Other Statutes	25
Homicide Survivors	27
Definition of Crimes	27
▪ Homicide	27
Sentencing	27
▪ Victim Impact Introduced During Sentence of Death or Life Imprisonment	27
▪ Victim Input	27
Other Statutes Pertaining to Sentencing	27
Autopsies	28
▪ When the State Deems an Autopsy as Necessary	28
Other Statutes Pertaining to Autopsies	26
DUI/DWI	28
▪ Driving Under the Influence	28
▪ Youthful Drunk Driver Visitation Program	28
Other Statutes Pertaining to DUI/DWI	29

Other Statutes Pertaining to Homicide	29
Payment for Financial Losses	30
Restitution	30
▪ Restitution	30
▪ Payment as a Condition of Parole	30
▪ Civil Restitution Liens	30
Other Statutes Pertaining to Restitution	30
Victim Compensation	31
▪ Deductible and Co-payment Exemption	31
▪ Florida Crimes Compensation Act	31
▪ State Institutions Claims	31
▪ Criminal History Record Check	31
▪ Unfair Insurance Practices	32
▪ Payment of Claims	32
▪ Subrogation	32
▪ Victim Compensation Award Constitutes Debt Owed to State	32
▪ Additional Costs	32
Other Statutes Pertaining to Victimization	33
Protection	33
▪ Stalking	33
▪ Civil Acton to Restrain Harassment of Victim or Witness	33
▪ Inmate Release	33
▪ Freedom to Worship Safely Act	34
Involvement in Judicial Proceedings	34
▪ Conditions of Pre-trial Release	34
▪ Sentencing – Victim Input	34
▪ Right to Speedy Trial	34
▪ Motor Vehicle Crash Report	35
HIV Testing	35

Other Statutes Pertaining to Tests	35
Confidentiality and Public Records	35
▪ Personal Assets	35
▪ Victim Service Documentation	36
▪ Public Records and Public Meetings Exemption	36
▪ Information Not Exempt from Public Record	36
▪ Information from Police Records	36
▪ Victim/Witness Protection	37
Hate-Crime Victims	37
▪ Evidencing Prejudice While Committing Offense	37
Florida Civil Rights Act	37
▪ Discrimination in Places of Public Accommodation	37
White Collar Crime Victims	37
▪ White Collar Crime Victim Protection Act	37
▪ Identity Theft	37
▪ Breach of Security Concerning Confidential Personnel Information in Third-party Possession	38
Sentencing Guidelines	39
▪ General	39
▪ 10-20-Life Law	39
▪ Sentencing Departures for Excessive Physical Emotional Trauma	39
▪ Victim Injury	40
Other Statutes Pertaining to Sentencing Guidelines	40

This publication is not intended to serve as exhaustive research, legal interpretation, or a complete reference of the Florida Statutes pertaining to victims of crime. The intent of this publication is to provide an overview of the statutes most frequently referenced by victim advocates, giving the location, a general explanation, and links to possible related statutes for further research. Do not rely on this summary for a(n) understanding of any statute. This publication does not contain legal advice, and it does not represent the opinion, either formal or informal, of the Office of the Attorney General. Consult your attorney prior to taking any action.

Victim Rights and Services

Guidelines for Fair Treatment of Victims and Witnesses in the Criminal Justice and Juvenile Justice Systems

Section 960.001

Requires state agencies (Corrections, Office of the Attorney General, Law Enforcement, State Attorneys, Juvenile Justice) Court Administrators, the Parole Commission, and all local law enforcement agencies to develop and implement guidelines for the use of their respective agencies to collectively achieve the following objectives, as practicable:

1. Law enforcement shall routinely inform victims about available services, victim compensation, and the role of victims during the various stages of the criminal or juvenile justice process through distribution of a victim's rights information card or brochure.
2. Law enforcement shall request the completion of a victim notification card to be used for notifying victims of specific crimes listed in this section, that the defendant is to be released on bail.
3. Law enforcement and the state attorney shall inform crime victims of available protection from intimidation. Victims of domestic violence shall also receive information about the address confidentiality program.
4. The state attorney shall notify victims, including victim's parent or guardian if victim is a minor, as quickly as possible if there are any scheduling changes that will affect their appearance in attending a judicial proceeding.
5. The state attorney shall provide to victims, their families, their lawful representatives, or if the victim is a minor, the parent, guardian, or their lawful representative advance notification of any judicial proceedings and inform them of their right to be present.
6. The Department of Corrections shall make a reasonable attempt to inform the victim, the victim's parent or guardian or their lawful representative, or the victim's next of kin in the case of a homicide of the defendant's release, including work release, from incarceration in the county jail, municipal jail, juvenile detention facility, or residential commitment facility using information listed on the victim notification card.
7. The state attorney shall consult with victims, their guardians, or their families to get their opinions about the disposition of their cases.
8. Law enforcement and the state attorney shall return property to victims as soon as possible and utilize photographs in place of the property for evidence at trial whenever there is "no substantial evidentiary issue...in dispute" regarding the victims' property.
9. Law enforcement and the state attorney shall, when requested, notify victims' or witnesses' employers that their cooperation in the prosecution of a case may necessitate absences from work and inform creditors of the reasons for a victim's or witness' financial hardship when it is a direct result of a crime or their cooperation in the prosecution of a case.
10. Law enforcement and the state attorney shall inform victims they have a right to request and collect restitution from the offender(s).

11. The state attorney shall notify victims they have a right to submit a victim impact statement to the court about how the crime affected them, their friends, and their family.
12. Victim assistance education and training courses shall be offered to law enforcement and other professionals.
13. Local witness coordinating offices shall provide other general assistance to victims (such as transportation, parking, separate pretrial waiting areas, and translator services).
14. Cards or brochures listing the rights of crime victims and services available to them shall be provided to victims at the earliest possible time.
15. The state attorney shall make every effort to notify victims and witnesses as soon as possible if an offender escapes from a correctional institution.
16. A victim advocate designated by the state attorney's office or law enforcement or a not for profit victims service organization shall be allowed to be present during any depositions of the victim if requested by the victim or the victim's parent, guardian, or lawful representative.
17. The victim of a sexual offense shall be informed of the right to have the courtroom cleared of certain persons while the victim is giving testimony about that offense.
18. The victim, the victim's parent or guardian if the victim is a minor, and the state attorney, with the consent of the victim or the victim's parent or guardian if the victim is a minor, have standing to assert the rights of a crime victim as provided by law or constitution.
19. The state attorney, upon request, shall allow a victim or their lawful representative, a victim's parent or guardian if the victim is a minor or their lawful representative, or next of kin in a homicide case, to review a copy of the presentence investigation report, which excludes any confidential information pertaining to the offender's medical history, mental health, or substance abuse, or to another victim.
20. The Department of Juvenile Justice shall request information to determine if the victim, or any sibling of the victim, attends or is eligible to attend the same school as the offender when the victim of an offense committed by a juvenile is a minor. In these cases, the victim's parent or legal guardian shall be notified of the right to attend the sentencing or deposition of the offender and request that the offender be required to attend a different school.
21. Specified agencies involved in the criminal justice system, including the Department of Juvenile Justice, are authorized to implement crime-prevention programs. Agencies may participate in and expend funds for crime prevention, public awareness, public participation and educational activities.

***Use of a Polygraph Examination or Other Truth Telling
Device with Victim***

Section 960.001

No law enforcement officer, prosecuting attorney, or other government official shall ask or require an adult, youth, or child victim of an alleged sexual battery as defined in chapter 794 or other sexual offense to submit to a polygraph examination or other truth-telling device as a

condition of proceeding with the investigation of such an offense. The refusal of a victim to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

Presence of Victim Advocates During Forensic Medical Examination ***Section 960.001***

At the request of the victim or the victim's parent, guardian, or lawful representative, a victim advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.

Depriving Crime Victim of Medical Care (Pastora Pacheco Act) ***Section 843.21***

A person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury commits:

1. If the victim's medical condition worsens as a result of the deprivation of medical care, a felony of the third degree
2. If deprivation of medical care contributes or results in the death of the victim, a felony of the second degree

Victim Assistance ***Section 960.03***

Added as a defined crime, any violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, related to online sexual exploitation and child pornography.

Also added, identified victim of child pornography" means any person who, while under the age of 18, is depicted in any image or movie of child pornography and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children's Child Victim Identification Program.

Changed as a victim a person from age 16 to a person less than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured.

Department of Legal Affairs Crime Victims' Services Office ***Section 960.05***

Establishes the Crime Victim Services Office, the Division of Victim Services and Criminal Justice Programs, within the Office of the Attorney General, which is mandated to perform the following functions:

1. Emphasize and publicize the rights and needs of crime victims.
2. Administer federal grants, one of which is the Victims of Crime Act (VOCA) Grant Program.

3. Coordinate the flow of information between all agencies and organizations which provide services for victims of crime.
4. Assist in the development and administration of crime victim programs and services statewide.
5. Identify victims of crime and inform them of their rights.
6. Serve as a clearinghouse for information relating to victims of crime.
7. Strive for a concerted effort to assist victims by enlisting services from public and voluntary health, education, welfare, and rehabilitation organizations.
8. Assist public agencies and local governments to provide services to victims.
9. Advocate for victims of crime.
10. Receive records from the state attorney or from law enforcement agencies, including confidential records, in order to determine if a crime was committed, or attempted, and to the extent, if any, which the victim or claimant was responsible for his or her own injury.
11. Administer a victim compensation program to ensure financial assistance is given to innocent persons who suffer personal physical or mental injury or death resulting from a crime.

Parole Commission Reform Act of 2001

Section 944.605

Requires the Department of Corrections to notify specified entities prior to inmate release. Also clarifies the requirement that the Parole Commission impose restrictions relating to contact with children and other rules necessary to implement the Conditional Release Program Act.

The Victim's Freedom Act

Section 784.046

Provides for victims of any act of repeat violence, sexual violence or dating violence to seek protective injunctions. Sexual violence includes sexual battery, as defined in chapter 794; a lewd or lascivious act (chapter 800); luring or enticing a child (chapter 787); sexual performance by a child (chapter 827); and any other forcible felony wherein a sexual act is committed or attempted. The law also specifies that this applies regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney. The statewide injunction verification system is redesignated as the "Domestic, Dating, Sexual, and Repeat Violence Injunction Statewide Verification System."

Citizens' Right to Know Act

Section 907.043

Creates F.S. Section 907.043, relating to pretrial release issues, that requires pretrial release programs to prepare a register that displays information relevant to the release of a defendant in order to better notify the citizenry of the release. Revises F.S. 903.011 by providing changes in the definitions of "bail" and "bond." Also amends F.S. 903.286 to require that notice must be

given that all surety bonds used to satisfy pretrial release are subject to forfeiture and withholding by the clerk of the court for payment of fees no matter who posted the funds.

Order of No Contact

Section 921.244

Provides that at the time of sentencing an offender convicted of a violation of s. 794.011, s. 800.04, s. 847.0135(5), or any offense in s. 775.084(1)(b)1.a.-o., the court shall order that the offender be prohibited from having any contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence imposed. The court may reconsider the order upon the request of the victim if the request is made at any time after the victim has attained 18 years of age. In considering the request, the court shall conduct an evidentiary hearing to determine whether a change of circumstances has occurred which warrants a change in the court order prohibiting contact and whether it is in the best interest of the victim that the court order be modified or rescinded.

Criminal Gang Enforcement and Prevention

F.S. Chapter 874

Substantially revises F.S. Chapter 874, now titled “Criminal Gang Enforcement and Prevention”, and other sections of law relating to criminal gangs. Amends F.S. 775.13 so that felons must register if convicted of gang-related offenses and provides a third-degree felony penalty for failure to comply. Creates a first-degree felony in F.S. 790.23(4) for illegal possession of a firearm by a gang-related convicted felon. Revises F.S. 775.0846, concerning possession of a bulletproof vest while committing an offense, by adding gang-related offenses and controlled substance-related offenses to the list of prohibited activities. Revises the nuisance laws in F.S. 823.05 as such relates to groups engaged in gang-related activity.

Substantially revises and creates definitions in F.S. 874.03 relating to criminal gangs, etc. Also amends the gang-related offenses in F.S. 874.04 and the violations in F.S. 874.05 for causing or soliciting, etc., criminal gang membership. New F.S. 874.045 specifies that nothing will prohibit the arrest and prosecution of a criminal gang member under other applicable sections of law unless prohibited by a statutory or constitutional provision. Revises the laws in F.S. 874.06 that permit civil causes of action against criminal gangs. Amends F.S. 874.09 regarding the duties of FDLE and powers of law enforcement agencies to compile and share crime data information relating to criminal gangs and their members. Local law enforcement agencies may also notify the State Attorney of the arrest of a criminal gang member or associate. Creates felony offenses in F.S. 874.10 for directing the activities of a criminal gang; in F.S. 874.11 for electronic communication violations relating to criminal gangs; and in F.S. 874.12 for unlawful possession or creation of identification documents relating to criminal gang activities.

Adds the offenses of fleeing/eluding or aggravated fleeing/eluding an officer, criminal gang member registration violations, accessory after the fact, and sexual battery when related to criminal gang activity to the definition of racketeering activity in F.S. 895.02(1). Revises the list of offenses and the source of funds that a court must consider when determining bail per F.S. 903.046. Extensively revises and creates new offenses in F.S. 914.22 concerning tampering with or harassing witnesses, victims, or informants. Amends the duties in F.S. 943.031 of the Florida Violent Crime and Drug Control Council to include strategy development to address criminal

gang activity. Creates F.S. 948.033 concerning conditions of probation or community control for criminal gang participants; amends F.S. 947.18 relating to parole for criminal gang participants; and creates F.S. 947.1405(11) concerning conditional release programs for such participants.

Other Statutes Pertaining to Release Notification and Special Conditions

944.606	Notification Requirements Upon Release of Sexual Offenders
947.1405(7)(a)	Conditional Release Program Requirements
Chapter 2005-28	Jessica Lunsford Act (Passed as CS/HB 1877)

Child Victims and Witnesses

Definition of Crimes

Sexual Battery Upon Children

Chapter 794

Defines sexual battery as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration by another by any other object. Specifies enhanced penalties for a person of familial or guardian authority who solicits a child under 18 to engage in sexual activity, regardless of the child's consent. Also specifies enhanced penalties for sexual battery upon a child under 12.

Lewd or Lascivious Offenses Committed Upon or in the Presence of Persons Less than 16 Years of Age

Chapter 800

More clearly defines lewd and lascivious activity and divides the offense into four different types of criminal behavior. The penalty for each offense varies according to the age of the victim and the age of the offender.

1. Lewd or Lascivious Battery:
 - a. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age.
 - b. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sexual sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.
2. Lewd or Lascivious Molestation: Intentionally touching 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 forcing or enticing a person under 16 years of age to so touch the perpetrator.
3. Lewd or Lascivious Conduct: Intentionally touching a person under the age of 16 in a lewd and lascivious manner or soliciting a person under the age of 16 to commit a lewd and lascivious act.
4. Lewd or Lascivious Exhibition: Intentionally masturbating; exposing the genitals in a lewd or lascivious manner; or intentionally committing 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.

Abuse of Children

Chapter 827

Defines what actions toward children are considered abusive or negligent and specifies appropriate penalties.

827.01	Definitions
827.03	Abuse, Aggravated Abuse, and Neglect of a Child
827.04	Contributing to the Delinquency or Dependency of a Child
827.06	Persistent Nonsupport
827.071	Sexual Performance by a Child/Pornography
827.08	Misuse of Child Support Monies
847.001	Defines Child Pornography

Children in Court

Admission of Similar Fact Evidence

Section 90.404

Provides that, in a criminal case involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter which is relevant. The state must provide notice to the defendant, no later than 10 days before trial, of the state's intent to offer evidence of other acts of child molestation.

Hearsay Exception for Child Victim Statement

Section 90.803 (23)

Allows an out-of-court statement made by a child with a physical, mental, emotional, or developmental age of 11 or less to be used as evidence of child abuse, child neglect, or any unlawful sexual act "performed in the presence of, with, by, or on the declarant child." (The declarant child is the child who made the statement out-of-court).

Videotaping and Use of Closed Circuit Television for Persons Under Age 16 or Persons with Mental Retardation

Sections 92.53 and 92.54

Authorizes the victim's testimony to be videotaped or aired on closed circuit television if there is a substantial likelihood that a victim or witness under the age of 16, or a victim with mental retardation, will suffer at least moderate emotional or mental harm if the person were to testify in open court. The defendant and the defendant's counsel shall be present during the testimony. However, the court may require the defendant to observe the testimony in such a way that the victim cannot hear or see the defendant.

Familial Authority and Sexual Battery

Section 794.011

Provides that when a perpetrator of sexual battery is in a position of familial or custodial authority to a victim under 18 years of age, a victim's willingness or consent is not a defense against prosecution.

Rules of Evidence for Sexual Battery

Section 794.022

States that the testimony of a victim of sexual battery does not need to be corroborated and the victim's reputation or manner of dress cannot be used as evidence.

Chastity or Consent of Child for Lewd, Lascivious, and Indecent Acts

Section 800.04

Provides that the issue of a child's chastity or consent cannot be used as a defense to a charge of lewd, lascivious, or indecent acts when the child is under 16.

Limits on Interviews

Section 914.16

Provides that the chief judge of each judicial circuit, after consulting with the state attorney, public defender, and other persons deemed appropriate, shall order reasonable limits on the number of interviews for law enforcement or discovery purposes that a victim of child abuse or sexual abuse who is under the age of 16, or a victim of child abuse or sexual abuse with mental retardation, must go through. The order is intended to protect the victim from psychological damage of repeated interviews while preserving the rights of the public, the victim, and the person charged with the violation.

Court Appointed Advocate

Section 914.17

Provides that a guardian ad litem or other advocate shall be appointed by the court to represent a minor in any criminal proceeding if the minor is a victim of or witness to child abuse or neglect, or if the minor is a victim of a sexual offense or a witness to a sexual offense committed against another minor.

Testimony of Person Under Age 16

Section 918.16

Provides that the courtroom shall be cleared when a child under the age of 16 is to give testimony concerning any sexual offense. However, the following people may remain in the court room:

1. Parties to the cause
2. Immediate family members or guardians
3. Attorneys and their secretaries
4. Officers of the court
5. Jurors
6. Newspaper reporters or broadcasters
7. Court reporters

8. Victim or witness advocates designated by the state attorney's office

Mandatory Reporting

Mandatory Reporting of Child Abuse or Neglect

Section 39.201

Provides that when any person, including but not limited to members of specified occupations, knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected, they must make a report immediately to the central abuse hotline (800-962-2873). Specified mandatory reporters, including law enforcement officers, must provide their names to the Central Abuse Hotline staff. The reporter's name will be held confidential and exempt from public records release.

Records and Confidentiality

Exemption from Public Records

Section 119.07(3)(s)2

Information that reveals the identity of a victim of lewd, lascivious, or indecent assault upon or in the presence of a child (Chapter 800, F.S.), or a victim of child abuse (Chapter 827, F.S.), is exempt from Florida public record laws. Also provides that the exemption applies to such records when they are held by a law enforcement agency.

Confidentiality of Reports and Records in Cases of Child Abuse or Neglect

Section 39.202

Provides that in order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records concerning reports of child abuse, abandonment, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential.

Criminal History Records

Sections 943.0585 and 943.059

Provides that an individual's criminal record may not be expunged or sealed when an individual pleads to or is found guilty of child abuse; committing a lewd, lascivious, or indecent act in a child's presence; or engaging in sexual activity with a child.

Jessica Lunsford Act (Passed as CS/HB 1877)

Establishes a new 25 year minimum mandatory term of imprisonment, followed by lifetime supervision with electronic monitoring, for individuals convicted of the molestation of a child under 12. It also enhances the penalty for the crime of lewd and lascivious molestation of a child under 12 from a first degree felony (punishable by 30 years) to a crime punishable by life in

prison. The new law created two new felonies for harboring a registered sex offender/predator and for tampering with an electronic monitoring device. This law increases the penalty for the failure of a sex offender or predator to register, and creates a new penalty for the failure of the offender/predator to report to the sheriff's office. Requires the Florida Department of Law Enforcement to provide information to local officials about sex offenders and predators who fail to register.

Amended s. 216.136, F.S.; s. 775.21, F.S.; s. 775.082, F.S.; s. 800.04, F.S.; s. 921.0022, F.S.; s. 921.141, F.S.; s. 943.043, F.S.; s. 943.0435, F.S.; s. 944.607, F.S.; s. 947.1405, F.S.; s. 948.06(4), F.S.; s. 948.012, F.S.; s. 948.11, F.S.; s. 948.15, F.S.; s. 948.30, F.S.; and s. 1012.465(1), F.S.

Created s. 943.04352, F.S.; s. 948.061, F.S.; s. 948.062, F.S.; and s. 948.063, F.S.

Other Statutes Pertaining to Child Victims

Jennifer Kesse and Tiffany Sessions Missing Persons Act

937.0201-937.022

Expands the scope of the "Missing Children Information Clearinghouse" at FDLE to include missing endangered persons and renames it as the "Missing Endangered Persons Information Clearinghouse." It also revises the law in F.S. 937.022 concerning the duties of law enforcement agencies in reporting missing endangered persons. Creates definitions of terms such as "missing adult", "missing child", and "missing endangered person" in F.S. 937.0201.

Requires law enforcement agencies to adopt written policies that include specified criteria in their procedures used to investigate reports of missing children and adults. A missing child/adult report must be filed by the law enforcement agency with jurisdiction in the locale where the person was last seen, and that the law enforcement agency must transmit any report of a missing child/adult to the state and federal criminal databases within two hours of receipt of the report.

There is an immunity provision for agencies, personnel and persons, acting in good faith, who release information and photographs pertaining to missing adults. Also provides that if a missing child/adult is not located within 90 days, the law enforcement agency having jurisdiction must attempt to obtain, and submit to the Florida Department of Law Enforcement, a biological specimen for DNA analysis from the missing person or from appropriate family members.

Rilya Wilson Act

Section 39.604

Requires that children from age 3 years until school entry age, who are in state care as a result of having been abused, neglected or abandoned, and who are enrolled in early education or child care programs, participate in an age-appropriate education program to help reduce the negative consequences of the abuse, neglect or abandonment. If the child receives two consecutive unexcused or seven excused absences from the program, either the Department of Children and Family Services or a community-based lead agency must make a home visit to check on the child. After visiting the home, if it is determined that the child is missing, the investigating agency must notify a law enforcement agency so that missing children procedures can be initiated.

Designates act "Cybercrimes Against Children Act of 2007"; provides for jurisdiction of Office of Statewide Prosecutor over certain offenses; provides for reclassification of certain child pornography offenses; revises prohibitions on use of certain computer services to facilitate certain sexual conduct; provides for charging each conversation in which specified conduct occurs as separate offense; prohibits traveling to meet minors for certain purposes; revises provision relating to state criminal jurisdiction; provides additional subject matter jurisdiction for statewide grand jury; revises provisions relating to offenses facilitated by communications systems; requires sexual predators & offenders to include certain information during registration & reregistration processes; requires reporting changes in certain information; requires DOC to provide certain information regarding sexual offenders who are being released after serving period of incarceration to certain entities; permits FDLE to provide electronic mail address & instant message information in sexual offender registry to commercial social networking websites; provides that certain provisions do not impose civil liability on such websites for specified actions.

Exploited Children

Chapter 2008-172 and Section 960.197

Permits use of pseudonym for victim of crime involving child pornography; extends provisions to use of victim pseudonyms to civil & criminal proceedings; provides additional prohibition on selling minors; relocates specified provisions relating to online lewd & lascivious exhibitions; requires law enforcement officers to provide certain information to specified center; requires law enforcement officers submitting child pornography case to provide specified information; requires prosecutors to pursue prosecutions regarding images or movies of child pornography when identified victim is in state; requires prosecutors to enter specified information in database; provides civil remedy for certain victims of certain sexual abuse crimes when portion of abuse was used in production of child pornography; specifies damages; provides for limitation of actions; provides for pseudonyms for specified claimants; precludes defense to certain civil actions; permits Attorney General to pursue cases on behalf of victims; includes certain child pornography victims in crime victim compensation provisions; authorizes victim compensation awards to certain persons suffering psychiatric or psychological injury from specified crimes; conforms provisions.

Victim of Child Abuse or Sex Offense

Chapter 2008-234

Expands exemption from public records requirements for certain information regarding victims of child abuse or sex crimes by making such information confidential & exempt & by including prohibited sexual offenses related to prostitution & obscenity within exemption; provides exceptions to exemption; reorganizes exemption & provides for future review & repeal thereof; provides statement of public necessity; eliminates scheduled repeal of exemption under Open Government Sunset Review Act; requires that confidential & exempt status of specified victim information be maintained in court records & court proceedings; provides specified criteria for

maintaining confidential & exempt status of such information upon filing of petition for access thereto with trial court; permits defendant charged with specified offenses to apply for order of disclosure of certain confidential & exempt information to prepare defense; conforms provisions to changes made by act.

Jeffrey Johnston Stand Up for All Students Act

Section 1006.147

Creates statute to prohibit the “bullying” and “harassment” of any student or employee of a public Kindergarten through Twelfth Grade educational institution, program, or activity on a school bus or through a school computer system. Requires school districts to adopt policies prohibiting bullying and harassment and local law enforcement agencies are included in the list of parties who are to assist in developing such policies.

Other Statutes

39.01(2)	Child Abuse Defined
39.301(9)	Mandatory Training for Child Protective Service Investigators on Removing Perpetrators From Homes Using Injunctions
39.303	Child Protection Teams
39.802	Termination of Parental Rights
39.8296	Statewide Guardian Ad Litem Office
63.212	Sale of Children
90.404(2)	Character Evidence in Child Molestation Cases
383.402	Child Abuse Death Review; State Child Abuse Death Review Committee; Local Child Abuse Death Review Committees
383.410	Confidentiality of State Child Abuse Death Review Committee Records
562.11	Providing Alcoholic Beverages to Persons Under 21
775.15(7)	Statute of Limitations for Sexual Battery of Child Under 18
787.01	Kidnapping of Child Under Age 13
787.02	False Imprisonment of Child Under Age 13
782.07	Manslaughter, Aggravated Manslaughter of a Child
794.021	Ignorance or Belief as to Victim’s Age No Defense
796.03	Procuring a Person Under Age 18 for Prostitution
847.0134	Proximity of Adult Entertainment Establishments to Schools
893.03(1)(c)	Increased penalties applied for sale, manufacture, delivery, or possession of controlled substance in proximity of minors.

- 947.1405(7)(a)5 Special Guidelines of Conditional Release Related to Child Victims
- 948.03(5)(a)2 Mandatory Terms and Conditions of Probation and Community Control for Specified Sexual Offenses
- 960.001(1)(s) School Attendance
- 960.03(13)(b) Minor Secondary Witness (Not Injured)

Domestic Violence

Definition of Crime

Domestic Violence

Sections 741.28-741.283

Defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit. A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family, or who have a child in common regardless of whether they have been married or have resided together at any time. In addition to other penalties, when the perpetrator in a domestic violence offense has intentionally caused bodily harm to another person, a minimum 5-day jail term is required. A person convicted of domestic violence, as a condition of probation, community control, or other court-ordered community supervision must complete a batterers' intervention program, unless the person does not qualify for such.

Responsibilities and Duties

Law Enforcement

Section 741.29

Provides that law enforcement officers **must**:

1. Assist the victim in obtaining any needed medical treatment.
2. Inform the victim of the availability of a domestic violence center.
3. Provide the victim with a simple English or Spanish copy of the "Legal Rights and Remedies Notice to Victims," which includes:
 - a. a telephone number for the local domestic violence center;
 - b. information about the right to file a criminal complaint with the state attorney's office;
 - c. information about injunctions for protection; and
 - d. information about the address confidentiality program.
4. Prepare and file a complete and clearly written report regardless of whether or not an arrest has been made. If the officer does not make an arrest or arrests two or more parties,

she/he must explain why in the report. The report shall include a description of any observed injuries and the reason(s) no arrest was made. A copy of the report shall be sent to the nearest domestic violence center within 24 hours free of charge.

5. If a law enforcement officer determines there is probable cause that an act of domestic violence has been committed, the officer may arrest the suspected offender, regardless of the victim's consent or relationship to the suspected offender.
6. The preferred arrest policy in domestic violence cases is to identify and arrest the primary aggressor and not a person acting in self defense or in the defense of another family or household member.

State Attorneys

Section 741.2901

Provides that state attorneys **must**:

1. Develop special units or assign prosecutors to specialize in the prosecution of domestic violence cases. The decision to file criminal charges shall be determined by these specialized prosecutors regardless of any objections by the victim.
2. Investigate for a history of violent behavior prior to a defendant making a first appearance in court on a charge of domestic violence. When a defendant is arrested for an act of domestic violence, the defendant shall be held in custody until brought before the court for admittance to bail. In determining bail, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released.
3. Adopt a pro-prosecution policy for acts of domestic violence and establish an intake policy and procedures coordinated with the clerk of the court for violations of injunctions.

Protection

Availability of Judge for Hearings in Chambers

Section 26.20

Requires each circuit to provide a judge for after hours, weekend, and holiday filings for emergency temporary injunctions in domestic violence cases, so that a hearing for an injunction may be conducted at the time it is needed.

Domestic Violence Advocate - Victim Privilege

Section 90.5036

Defines domestic violence advocate and provides that conversations between a domestic violence advocate and a victim are confidential if they relate to the incident for which the victim is seeking assistance and the advocate is registered under s. 39.905, F.S., at the time of the communication.

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Section 626.9541

Includes in the definition of “Unfair Discrimination” a health insurer, life insurer, or managed care provider that refuses to issue, reissue a policy, refuses to pay, cancels, or otherwise terminates a policy or increases rates based solely on the fact that an applicant has made a claim, or sought or should have sought medical or psychological treatment in the past for abuse, shelter from abuse, battery, or sexual assault by a family member.

Injunction for Protection

Sections 741.30–741.31

Provides for the filing and enforcement of an injunction for protection of any family or household member who is a victim of domestic violence or in imminent danger of becoming a victim. The court cannot issue mutual orders for protection. This does not preclude the court from issuing separate injunctions for protection against domestic violence where each party has complied with the provisions of this section. Compliance with these provisions cannot be waived. The clerk of the court shall assist petitioners seeking injunctions and enforcement for a violation. Filing fees may be waived if the victim cannot afford to pay them.

An injunction for protection against domestic violence may order the respondent to attend a batterers’ intervention program unless the court makes written findings on why the program would be inappropriate. The court must give respondents a list of certified batterers’ intervention programs. The court shall order the respondent to attend an intervention program if the respondent willfully violated the injunction or if they have been convicted, had adjudication withheld, or pled no contest to a crime involving violence, or had at any time, a prior injunction for protection entered against them. Within 24 hours after the court issues an injunction, the clerk must forward a certified copy to the sheriff with jurisdiction. Within 24 hours after the sheriff receives the certified copy of injunction, the sheriff must make information about the injunction available to other law enforcement officers by electronically transmitting the information.

Unlawful action against Employees Seeking Protection

Section 741.313

Provides that an employer shall permit an employee to request and take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence. This leave may be with or without pay, at the discretion of the employer.

Barwick-Ruschak Act

Section 784.046 (11-16)

Revises provisions relating to dating violence incidents to provide requirements for investigations, notice to victims, & reporting similar to those for incidents of domestic violence & to apply certain immunity provisions thereto; prohibits certain willful violations of pretrial release conditions; provides for warrantless arrest of violators.

Prohibits Offender's Possession of Firearm or Ammunition

Section 790.233

Provides that a person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence. There is an exception for law enforcement officers, including correctional probation officers, who are “on-duty” and if a firearm is allowed by their agency.

Arrest by Officer Without a Warrant

Section 901.15

Provides that a law enforcement officer may arrest a person without a warrant when there is probable cause:

1. to believe the person has committed a criminal act violating an injunction for protection; or
2. to believe the person committed an act of domestic violence, child abuse, or battery; or
3. that a person has violated a condition of pretrial release if the original arrest was for domestic violence.

Domestic Violence Centers

Domestic Violence Centers

Section 39.905

Authorizes domestic violence centers certified by the Department of Children and Family Services to provide the following minimum services: information/referral; counseling; temporary emergency shelter; community education; and training for law enforcement and other professionals. Centers also must file with the Department of Children and Family Services a list of names of domestic violence advocates who are employed at the center and who can claim a privilege under s. 90.5036, F.S., to refuse to disclose a confidential communication between a victim of domestic violence and the advocate regarding the domestic violence incident. The list must include the advocate's position title and a description of their duties.

Referral to Centers

Section 741.29

Provides that law enforcement officers investigating alleged incidents of domestic violence shall advise victims that there is a domestic violence center from which they may receive services and shall give the victim immediate notice of the legal rights and remedies available.

Makes information about clients of a domestic violence center and the location of a domestic violence center confidential.

Relocation Assistance

Provides for relocation benefits to be given in a lump sum to domestic violence victims who are eligible Workforce Innovation participants if such payment will help the victim move to a new area to obtain employment and become more self-sufficient.

Provides financial assistance to victims of domestic violence who seek relocation to escape a domestic violence environment. The need for immediate assistance must be affirmed by a certified domestic violence center. Applications for assistance must be received within 30 days of the domestic violence incident to be approved.

Provides services to domestic violence victims who are attempting to relocate to escape actual or threatened violence; provides participants with a substitute mailing address, and enables state and local agencies to respond to public records requests without disclosing the victim's location.

Other Statutes Pertaining to Domestic Violence

414.157	Diversion Program for Victims of Domestic Violence
420.624(I)10	Victims of Domestic Violence Within the Homeless Population
741.01	Marriage License Fee Trust Fund
741.465	Address Confidentiality Program Public Records Exemption
784.046–47	Repeat Violence Injunctions
921.0014	Sentencing Guidelines
943.171	Law Enforcement Training

Sexual Battery

Definition of Crime

Sexual Battery

Chapter 794

Defines sexual battery as oral, anal, or vaginal penetration with a sexual organ; or anal or vaginal penetration with any other object, except as performed for bona fide medical purposes. “Consent” as used in this chapter shall not be construed to mean the failure of the victim to offer physical resistance to the offender.

Dangerous Sexual Felony Offenders

Section 794.0115

Lists the offenses and circumstances under which a person may be classified as a “dangerous sexual felony offender.” Provides for a 25-year to life mandatory minimum sentence for certain recidivist sexual offenders who committed the offense when the offender was over 18 years of age and also committed specified acts including: (1) causing serious personal injury to the victim as a result of the offense; (2) using or threatening to use a deadly weapon during the commission of the offense; (3) victimizing more than one person during the course of the criminal episode applicable to the offense; (4) committing the offense while under the jurisdiction of a court for a felony offense in Florida or another jurisdiction or for an offense that would be a felony if that offense were committed in Florida; or (5) having previously been convicted of any of the same designated sexual offenses.

Confidentiality

Counselor-Victim Privilege

Section 90.5035

Provides for confidentiality of communications between a victim and a sexual assault counselor. States that conversations between a sexual assault counselor and victim can only be disclosed with prior written consent of the victim.

Judicial Proceedings and Court Records Involving Sexual Offenses

Section 92.56

Provides that court records, including testimony from witnesses that identify the photograph, name, or address of the victim of an alleged sexual offense, are confidential and exempt from disclosure when certain findings are made by the court. An exception applies to the defendant when the information is necessary for their defense. This section also provides that a pseudonym may be used instead of the victim’s name. It does not prohibit the publication or broadcast of the substance of the trial testimony, but the broadcast or publication may not include information that would identify the victim.

Testimony of Victim

Section 918.16(2)

Provides that when the victim of a sexual offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon request of the victim, regardless of the victim's age or mental capacity. However, the following people may remain in the court room:

1. Parties to the cause
2. Immediate family members or guardians
3. Attorneys and their secretaries
4. Officers of the court
5. Jurors
6. Newspaper reporters or broadcasters
7. Court reporters
8. Victim or witness advocates designated by the state attorney's office

Exemption from Public Records

Sections 119.07(3)(f)

Exempts from Florida public record laws information that reveals the identity of a victim of a sexual offense, including court proceedings.

Criminal Penalty for Non-Disclosure of HIV Status

Section 384.34

Provides that it is a third degree felony when a person who knows he or she is infected with HIV, and also knows it can be communicated by sexual intercourse, has intercourse with another person without first obtaining the person's consent.

Evidence

Rules of Evidence for Sexual Battery

Section 794.022

Lists five rules for presenting evidence:

1. The testimony of a victim of sexual battery need not be corroborated by the testimony of witnesses.
2. The victim's reputation or manner of dress cannot be used as evidence.
3. Specific instances of consensual sexual activity may be used if one of the following is established beforehand in the judge's chambers:
 - a. Such evidence may prove that the semen, pregnancy, injury, or disease are from another source.

- b. Such evidence may establish a trend of conduct so similar to the behavior in the case, that it is relevant to the issue of consent.
4. When consent of the victim is a defense, evidence of the victim's mental incapacity or defect is admissible to prove the consent was not intelligent, knowing, or voluntary.
5. The offender's use of a prophylactic device, or the victim's request that an offender use a prophylactic device, cannot be used as evidence to establish consent.

Time Limitations for Sexual Battery Prosecutions

Section 775.15(1)(b)

Provides that prosecution for a sexual battery may be commenced at any time, provided the crime was reported to a law enforcement agency within 72 hours.

Registration/Notification of Sexual Predator in a Community

Sections 775.21–775.23

A sexual predator who was designated as a sexual predator by a court on or after September 1, 2005, who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 30 years, and who has 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 the sexual predator resides for the purpose of removing the sexual predator designation.

The sheriff or chief of police is required to notify the community where the sexual predator resides if, after a hearing, the circuit court finds that a sexual predator poses a threat to the public.

Sexual Battery Forensic Examinations

Section 960.28(1)

Stipulates that a medical provider who performs an initial forensic physical examination may not bill the victim or the victim's parent or guardian if the victim is a minor for that examination, either directly or indirectly.

Payment for Victim's Initial Forensic Physical Examinations

Section 960.28(2)

The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim of sexual battery as defined in chapter 794 or a lewd or lascivious offense as defined in chapter 800. Such payment shall be made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed \$500 with respect to any violation. The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical

provider using an examiner qualified under part I of chapter 464, excluding s. 464.003(5); chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Other Statutes Pertaining to Sexual Battery

92.565	Admissibility of Offender's Confession in Sexual Abuse Cases
394.910- 394.931	Involuntary Civil Commitment of Sexually Violent Predators
400.147(6)	Internal Risk Management Responsibilities in Long-Term-Care Facilities Regarding Allegations of Sexual Misconduct Toward Patients
415.111	Civil Action Remedies Against Long-Term-Care Facilities
775.15(7)	Statute of Limitations for Sexual Battery of Child Under 18
775.21	Required Registration and Statewide Tracking of Sexual Predators
784.046	Injunction for Protection for Victims of Sexual Violence
794.011	Penalties for Violations
794.0235	Chemical Castration
794.026	Civil Right of Action for Communicating Identity of Sexual Crime Victim
794.027	Duty to Report Sexual Battery
794.03	Unlawful to Publish or Broadcast Information Identifying Sexual Offense Victim
872.06	Abuse of a Dead Human Body
893.03	Controlled Substances/Roomies
921.0011	Definitions
921.0012	Sentencing Guidelines for Victim Injury from Sexual Battery
943.0585	Inability to Expunge Criminal History Records Concerning Sexual Battery
943.059	Inability to Seal Criminal History Records Concerning Sexual Battery
944.35	Sexual Assault Identification and Prevention Methods Training Development for Correctional Officers
947.1405	Sex Offenders
948.04	Maximum Supervision of Sexual Battery Offenders During Probation

Elderly and Disabled Adult Victims

Definition of Crimes

Abuse, Neglect and Exploitation of the Elderly Persons and Disabled Adults

Sections 825.101-825.103

Abuse: Defines abuse as the non accidental infliction of physical or psychological injury to an elderly person age 60 or older or disabled adult age 18 or older by a caregiver, or the failure of a caregiver to take reasonable measures to prevent the occurrence of physical or psychological injury to an elderly person or disabled adult.

Neglect: Defines neglect as the failure or omission on the part of the caregiver to provide the care and services necessary to maintain the person's physical and mental health including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. If such negligence, whether repetitive or just a single incident of carelessness, produces or could reasonably be expected to result in a serious physical or psychological injury or a substantial risk of death, it is deemed neglect.

Exploitation: Defines exploitation of an elderly person or disabled adult as a situation where a person who stands in a position of trust and confidence or has a business relationship with the elderly person or disabled adult knowingly obtains or uses, or endeavors to obtain or use, the person's funds, assets, or property with the intent of temporarily or permanently depriving the person of the use, benefit, or possession of his/her property, for the benefit of someone other than the elderly or disabled adult.

Penalties

Abuse and Neglect

Section 825.102

Provides that a person who abuses or neglects an elderly person or disabled adult without causing great bodily harm, permanent disability or permanent disfigurement commits a third degree felony. A person who abuses or, by culpable negligence, neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disfigurement, or permanent disability to the person commits a second degree felony.

Exploitation

Section 825.103

Provides that if funds, assets, or property are exploited, the offense is considered a felony with the degree of the felony based upon the dollar value of the funds, assets, or property in question. Racketeering activity has been redefined as to be deemed exploitive when dealing with the elderly and disabled adult.

Other Statutes Pertaining to the Elderly and Disabled Adult

Access to Records of Elder Abuse

Sections 119.07 and 415.107

States that all records concerning reports of abuse, neglect, or exploitation of an elderly person are considered confidential. However, in a case where a death occurred, the presumption is that the deceased and the public are best served by disclosing the circumstances of the death to the public as long as the information is disclosed after an investigation is completed and does not identify the victim.

Victim Compensation to Elderly Persons or Disabled Adults for Property Loss

Section 960.195

Allows elderly persons and disabled adults to apply for up to \$500 for property loss that causes a substantial diminution in their quality of life.

Deceptive and Unfair Trade Practices

Section 501.2077

Enhances civil penalties for any person who victimizes or attempts to victimize a senior citizen or a handicapped person in relation to the Florida Deceptive and Unfair Trade Practices Act (501.201).

Assault or Battery on Persons 65 Years of Age or Older

Section 784.08

Establishes a 3-year minimum sentence for a person convicted of aggravated assault or aggravated battery upon a person 65 years or older; creates enhanced penalties for assault or battery against elderly persons regardless of whether the persons charged with the assault or battery knew the age of the victim.

Speedy Trial

Section 825.106

Provides that in criminal actions in which an elderly person or disabled adult is a victim, the state may move the court to advance the trial on the docket.

Other Statutes

92.53	Videotaping of Testimony
92.54	Use of Closed Circuit Television
415.1034	Mandatory Reporting of Abuse, Neglect, or Exploitation of Disabled Adults or Elderly Persons

415.1102	Multidisciplinary Adult Protection Teams
782.07	Manslaughter, Aggravated Manslaughter of an Elderly Person or a Disabled Adult
825.101	Definitions
825.1025	Lewd and Lascivious Offense Committed on or in the Presence of an Elderly or Disabled Adult
825.104	Knowledge of Victim's Age
825.105	Good Faith Assistance
825.106	Criminal Actions Involving Elderly Persons or Disabled Adults

Homicide Survivors

Definition of Crimes

Homicide

Chapter 782

Cites the definitions of the different types of homicide and specifies the penalties for each type.

782.03	Excusable Homicide
782.04	Murder
782.07	Manslaughter; Aggravated Manslaughter of an Elderly Person or Disabled Adult; Aggravated Manslaughter of a Child
782.071	Vehicular Homicide
782.072	Vessel Homicide
782.08	Assisting Self-murder
782.09	Killing of Unborn Child by Injury to Mother
782.11	Unnecessary Killing to Prevent Unlawful Act

Sentencing

Victim Impact Introduced During Sentence of Death or Life Imprisonment

Section 921.141

Provides that during sentencing, the prosecution may introduce and argue victim impact evidence that demonstrates the victim's uniqueness as an individual and the losses to the community's members as a result of the victim's death. Opinions about the crime, the defendant, and the appropriate sentence are not permitted to be part of the victim impact evidence.

Victim Input

Section 921.143

Provides for the appearance of the victim or next of kin to make a verbal or written statement to the sentencing court about the facts of the case and the extent of any harm including social, psychological, physical, and financial losses (including loss of earnings) as a result of the crime; also states that a victim impact statement may be presented in sentencing proceedings to determine death or life imprisonment.

Other Statutes Pertaining to Sentencing

921.142	Sentence of Death or Life Imprisonment When Drug Trafficking is Involved
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921.187 Disposition and Sentencing Alternatives for Non-capital Felonies
Ch. 2005-28 Jessica Lunsford Act (Passed as CS/HB 1877)

Autopsies

When the State Deems an Autopsy as Necessary

Section 406.11

Provides that any time a person dies suddenly, or by means of criminal violence, or due to any suspicious or unusual circumstances, the state will deem an autopsy as necessary and will not require consent from the next of kin. The next of kin are to be notified by the medical examiner's office that an investigation is being conducted.

Other Statutes Pertaining to Autopsies

406.135 Autopsies; Confidentiality of Photographs and Video and Audio Recordings; Exemption
872.04 Autopsies, Consent Required When Not Deemed Necessary Under Section 406.11
925.09 Authority of State Attorney to Order Autopsies

DUI/DWI

Driving Under the Influence

Section 316.193

Defines driving under the influence as operating a vehicle with a blood alcohol level of .08, more grams of alcohol per 100 milliliters of blood, or a breath alcohol of .08 or more grams of alcohol per 210 liters of breath, or operating a vehicle while under the influence of recreational drugs. Penalties vary according to the number of previous violations and the extent of damage or injury. Death resulting from a DUI/DWI incident is classified as DUI manslaughter, which is a felony.

Youthful Drunk Driver Visitation Program

Section 322.062

Establishes a court-ordered program intended to teach youthful offenders about the consequences of driving under the influence by visiting victims of drunk drivers. Victims are to give their expressed consent to participate in the program. This may include getting consent from the next of kin before offenders view a deceased victim.

Other Statutes Pertaining to DUI/DWI

316.027	Failure to Remain at the Scene of an Accident Involving Personal Injury or Death
316.1932	Blood, Breath, and Urine Tests, Implied Consent and the Right to Refuse
316.1933	Blood Tests in Cases of Death or Serious Bodily Injury and the Right to Use Reasonable Force
327.35	Boating Under the Influence

Other Statutes Pertaining to Homicide

16.56	Jurisdiction of Statewide Prosecution
27.7001	Appeals for the Death Sentence
768.73	Wrongful Death Punitive Damages
782.02	Justifiable Use of Deadly Force
905.34	Jurisdiction of Statewide Grand Jury

Payment For Financial Losses

Restitution

Restitution

Section 775.089

Provides that in addition to any other punishments, the court must order a defendant to make restitution to the victim for any damage or loss caused by or related to the defendant's criminal offense or criminal episode, unless the court finds clear and convincing reasons not to order such restitution. If a monetary amount is ordered, the amount ordered will accrue interest, it will not be subject to discharge by bankruptcy, and its collection may be enforced as a lien placed on real estate. If civil enforcement is necessary, the defendant shall be liable for cost and attorney's fees incurred by the victim. The court must state, on the record, the reason restitution is not ordered or only partially ordered and shall consider the financial resources of the defendant at the time of enforcement.

Payment as Condition of Parole

Section 947.181

Requires the offender to pay restitution for the benefit of the victim and reimburse the state for payments made to the victim from the Crimes Compensation Trust Fund. Specifies conditions under which failure to pay restitution can be considered a violation of parole.

Civil Restitution Liens

Section 960.29

Requires convicted offenders to be liable to the crime victim and the state for various liquidated damage amounts listed in this statute. The civil restitution lien shall exist against any real or personal property of the offender. Such orders are enforced by the crime victim or the state in the same manner as a judgment in a civil action.

Other Statutes Pertaining to Restitution

679.4061(8)(c)	Uniform Commercial Code Exemptions
679.4081(6)(c)	Uniform Commercial Code Exemptions
775.089(12)(a)	Issuance of Income Deduction with an Order for Restitution
945.091	Restitution by Employed Inmates
960.29	Restitution for Cost of Inmate Damages

Victim Compensation

Deductible and Co-payment Exemption

Section 624.128

States that the co-payment or deductible provision of any insurance policy written by an insurer regulated by the Florida Department of Insurance is not applicable to an insured person determined eligible for benefits under the victim compensation program, excluding s. 960.28, F.S.

Florida Crimes Compensation Act

Sections 960.01-960.298

Establishes a victim compensation program that provides financial assistance to innocent persons who suffer personal physical injury or death as a result of a criminal act. In 1999, victim compensation benefits were expanded for victims who suffer a catastrophic injury; suffer injuries as a result of boating under the influence or operating an aircraft under the influence; victims who suffer a psychiatric or psychological injury as a result of a forcible felony, but do not otherwise sustain a physical injury. Limits on emergency awards and economic loss were increased.

Monies from the program may be used to reimburse eligible claimants for medical expenses, psychological services, lost wages, funeral and burial expenses, or loss of support. Programs are administered by the Office of the Attorney General, Division of Victim Services and Criminal Justice Programs, and are funded by the Crimes Compensation Trust Fund. Monies for the Fund are obtained by court costs, surcharges on criminal fines, restitution payments and subrogation.

The statute establishes a sexual battery program which provides payment for the initial forensic physical exam. The medical provider who performs the examination is prohibited from billing the victim or the victim's parent or guardian if the victim is a minor.

State Institutions Claims

Section 402.181

Persons who suffer direct physical injury or property damage as a result of the actions of foster children are eligible to receive restitution of up to \$1,500. Physical injury or property damage caused by shelter children, escapees, or inmates of state institutions may be reimbursed up to \$1,000. Funding for the program comes from the Departments of Children and Families, Juvenile Justice and Corrections. Claim processing and determination of eligibility is accomplished through the Bureau of Victim Compensation.

Criminal History Record Check

Section 960.045(3)

Requires a criminal history record check through the Florida Crime Information Center (FCIC) on any victim or claimant seeking assistance under Chapter 960, F.S.

Stipulates that it is unlawful for a health insurer, life insurer or managed care provider to refuse to issue, reissue, or renew a policy, refuse to pay a claim, cancel a policy, or increase rates based past claims that have been or should have been made for medical or psychological treatment as the result of abuse or any form of domestic violence.

Payment of Claims

Section 960.14(4)

Provides that payment made to and accepted by a service provider is considered payment in full for the services rendered to the victim. In the event a provider does not accept the payment as payment in full, then the payment will be made to the claimant.

Subrogation

Section 960.16

Provides that persons awarded victim compensation benefits shall reimburse the Crimes Compensation Trust Fund when that person receives compensation or payment as a result of the same criminal incident from any source other than life insurance.

Victim Compensation Award Constitutes Debt Owed to State

Section 960.17

Provides that any award made from the victim compensation program on behalf of a victim or other claimant creates a debt due and owed the state by any person found in a court proceeding to have committed the criminal act. Unless the judge finds good cause that the defendant is unable to pay, it shall be a condition of probation or parole that the offender pay restitution to the Crimes Compensation Trust Fund. Any order of restitution to the Fund may be enforced in the same manner as a judgment in a civil matter. The unpaid amount of the order shall bear interest and may be recorded as a lien on real estate owned by the offender.

Additional Costs

Section 938.03

Provides that any person who pleads guilty or nolo contendere to, or is convicted of or adjudicated delinquent for, any felony, misdemeanor, or criminal traffic offense under the laws of the state, or any misdemeanor violation of municipal or county ordinances, shall pay an additional cost of \$50. The clerk of the court shall collect and forward \$49 of each \$50 to be deposited in the Crimes Compensation Trust Fund.

****Some victim compensation benefit payments are exempt as income for IRS tax purposes.**

Other Statutes Pertaining To Victimization

Protection

Stalking

Section 784.048

Authorizes law enforcement to arrest a stalker without a warrant; provides definitions:

1. Stalking is committed when a person willfully, maliciously, and repeatedly follows or harasses another person.
2. Aggravated stalking, which is a felony, may be committed in one of three ways:
 - a. When the stalker makes a credible threat to cause physical harm or death; or
 - b. When the stalker continues stalking after an injunction for protection or any other court imposed prohibition has been filed for protection.
 - c. When the stalker's victim is under 16 years of age.

Civil Action to Restrain Harassment of Victim or Witness

Sections 914.22–24

Provides a mechanism by which the court may issue a temporary restraining order to prohibit, prevent, or restrain the harassment of a victim or witness. A temporary restraining order may be issued for a short duration (up to 10 days) until a hearing can be conducted if the court finds there are reasonable grounds to believe that a victim or witness is being harassed or that measures are necessary to prevent harassment. At the hearing, the adverse party is given the opportunity to present evidence and cross-examine witnesses. If the court finds “by a preponderance of the evidence that harassment of an identified victim or witness in a criminal case exists or that such order is necessary,” a protective order may be issued for up to three years. However, a new protective order may be issued prior to its expiration and the court may enter any other order or remedy along with it.

Inmate Release

Section 944.605

Provides that, unless otherwise requested, victims or their representatives shall be notified of an inmate's release from the custody of the Department of Corrections six months before the release, or as soon as is possible.

Section 960.001

States that for the victims of homicide, sexual offenses, attempted murder, sexual battery, stalking, or domestic violence who have completed a victim notification card and the card is on file with the county jail, municipal jail, or residential commitment facility, the Department of Corrections shall make a reasonable attempt to notify these victims, their next of kin, or the lawful representative within four hours following the release of the defendant. If the defendant is

released from sentencing, disposition, or furlough, the facility shall also make an attempt to notify the victim within four hours of the defendant's release.

Freedom to Worship Safely Act

Section 775.0861

Provides for increased penalties for crimes of violence committed on the property of a religious institution where the victim is on the property for the purpose of attending or participating in a religious service.

Such offenses are increased one classification level. That is, a crime that is normally a second degree misdemeanor becomes a first degree misdemeanor, a first degree misdemeanor becomes a third degree felony, a third degree felony becomes a second degree felony, a second degree felony becomes a first degree felony, and a first degree felony becomes a life felony.

Involvement in Judicial Proceedings

Conditions of Pre-trial Release

Section 903.047

Allows for court to require, as a condition of pretrial release, that a defendant refrain from contact with the victim and that the state attorney shall notify victims of the proceedings so they may be present and heard.

Sentencing - Victim Input

Section 921.143

Provides for the appearance of the victim or next of kin to make a verbal or written statement to the sentencing court about any matter which is relevant to an appropriate sentence for the offender including but limited to extent of any harm including social, psychological, physical, and financial losses (including loss of earnings) as a result of the crime. Also, a victim impact statement may be presented in sentencing proceedings to help the trier of fact determine whether a death or life imprisonment sentence is appropriate.

Right to Speedy Trial

Section 960.0015

Provides that the state attorney may file a demand for speedy trial if a certain period of time has elapsed since the defendant was charged with a criminal offense and arrested. Upon the filing of a demand for speedy trial, the judge is required to schedule a calendar call within 5 days at which time the judge must schedule the trial to commence no sooner than 5 days or later than 45 days following the date of the calendar call. The bill allows the judge to postpone the trial date under specific circumstances. The bill gives judicial discretion to the court to grant a continuance when necessary to prevent a defendant from being deprived of his or her right to due process.

This committee substitute for SB 1118 (CS) allows victim services programs to obtain motor vehicle crash reports immediately rather than having to wait 60 days. The CS defines victim services programs as “any community-based organization whose primary purpose is to act as an advocate for the victims and survivors of traffic crashes and for their families. The victim services offered by these programs may include grief and crisis counseling, assistance with preparing victims compensation claims excluding third-party legal action, or connecting persons with other service providers, and providing emergency financial assistance.”

This bill substantially amends section 316.066 and creates section 316.003(85), Florida Statutes.

HIV Testing

HIV Testing When a Crime Involves the Transmission of Body Fluids

Section 960.003

In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo HIV testing within 48 hours of the court order.

Other Statutes Pertaining to Tests

381.004(3)(h)6	Allows Sexual Battery Victim Access to HIV Test Results
775.0877	Criminal Transmission of HIV; Procedures; Penalties; and List of Offenses Requiring HIV Testing
943.325	DNA Testing of Convicted Sex Offenders for Genetic Identification
960.28	Payment for Victims' Initial Forensic Physical Examinations

Confidentiality and Public Records

Personal Assets

Section 119.07(3)(g)

Provides that any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is considered exempt from Florida public records laws.

Victim Service Documentation

Section 119.07(3)(s)

States that any document received by a victim service agency or any other agency that routinely receives information from or concerning a crime victim, that reveals the identity, home or employment telephone number, home or employment address, or personal assets of a crime victim is exempt from all Florida public record laws. Any information not otherwise held confidential or exempt by law which reveals the home or employment telephone number, home or employment address, or personal assets of a victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from all Florida public record laws for five years upon written request from the victim.

Public Records and Public Meetings Exemption

Section 383.412

Creates public records and public meetings exemptions for the State Child Abuse Death Review Committee, as well as the local committees. It creates a public records exemption for information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of committee review. In addition, confidential or exempt information obtained by the state or local committees retains its status as such. The bill authorizes the committees to share confidential and exempt information with each other.

The bill creates an exemption from public meetings requirements for portions of meetings wherein confidential and exempt information is discussed.

The bill provides for future review and repeal of the exemptions on October 2, 2010, provides a statement of public necessity, and provides penalty provisions for violating the exemption.

Information Not Exempt from Public Record

Section 119.07(5)

Provides that unless a case involves a sexual or child abuse offense or the court specifically closes information by court order, information available from the court file, such as the identity of the victim or the victim's family, is considered public record.

Information Exempt from Public Record

Section 914.27

Provides that any information held by state agencies and the attorneys involved regarding the identification, location, or relocation of victims, witnesses, or their immediate family members is a confidential matter and exempt from public document requirements.

Information from Police Records

Section 119.105

States that the news media are not prohibited from publishing information obtained from police reports. However, the information disclosed in such reports shall be limited so that it may not be used to solicit business from victims.

Requires law enforcement agencies to provide protective services, including temporary relocation to a victim or witness at risk of harm (one who is cooperating with a case of a serious felony offense and is subject to a threat of violence). A Victim and Witness Protection Review Committee oversees reimbursement to law enforcement agencies for costs associated with the program.

Hate-Crime Victims

Evidencing Prejudice While Committing Offense

Section 775.085

Reclassifies the penalty for any felony or misdemeanor if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of a victim.

Florida Civil Rights Act

Discrimination in Places of Public Accommodation

Section 760.08

Prohibits discrimination in places of public accommodation, as defined in s. 760.02(11), F.S., noting that all persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, without discrimination or segregation on the grounds of race, color, national origin, sex, handicap, familial status, or religion.

White Collar Crime Victims

White Collar Crime Victim Protection Act

Section 775.0844

Creates the “White Collar Crime Victim Protection Act,” which protects victims, particularly elderly victims, who are cheated and deceived by criminals committing nonviolent swindles and frauds through the use of the Internet and other electronic technology. Also creates the definition for “aggravated white collar crime” offenses which applies in cases involving 10 or more elderly persons, a total of 20 or more persons, or the State of Florida, any of its political subdivisions, or any agency of the state or political subdivision.

Identity Theft

Section 817.568

Relates to identity theft and prevention of internet fraud activities. Bank account and credit card number information are included in the definition of “personal identification information.”

Prohibits willful or fraudulent use of personal identification information. Includes first and second-degree felonies and mandatory minimum sentences for specified offenses.

***Breach of Security Concerning Confidential Personal
Information in Third-party Possession***

Section 817.5681

This bill amends Fla. Stat. § 817.568, related to criminal use of personal identification information (i.e., identity theft), by broadening the scope of the statute's reach and heightening penalties for violation thereof. Specifically, the bill provides that any person who willfully and fraudulently uses, or possesses with intent to use, personal identification information concerning a deceased individual, commits a third degree felony, and imposes three, five, and ten year minimum mandatory sentences depending on the value of the pecuniary benefit or injury or the number of deceased individuals whose personal identification information is used.

Further, the bill creates a third degree felony offense for willfully and fraudulently creating or using, or possessing with the intent to use, counterfeit or fictitious personal identification information for the purpose of committing a fraud upon another person. The bill also provides for the reclassification of an identity theft offense committed by a person who misrepresents themselves as a law enforcement officer; employee of a bank, credit card company, credit counseling company, or credit reporting agency; or any person who wrongfully represents that he or she is seeking to assist a victim with a problem with the victim's credit history. This will have the effect of increasing the maximum sentence that can be imposed for these offenses.

Finally, the bill creates Fla. Stat. §817.5681, entitled "breach of security concerning confidential personal information in third-party possession." This section requires a person who conducts business in Florida and maintains personal information in a computerized data system to disclose a breach in the security of the data to any resident of this State subject to certain exceptions. When a disclosure is required, it must be made without unreasonable delay, and no later than forty-five days following the determination that unencrypted personal information was acquired, or reasonably believed to have been acquired, by an unauthorized person and the acquired information materially compromises the security, confidentiality, or integrity of personal information. Any person who fails to make the required disclosure is subject to an administrative fine.

Sentencing Guidelines

General

Section 921.001(4)

Provides that the purpose of sentencing guidelines is to establish a uniform set of standards to guide a judge in the sentence decision-making process. The following principles are embodied:

1. Sentencing should be neutral with respect to race, gender, and social and economic status.
2. The primary purpose of sentencing is to punish the offender.
3. The penalty imposed should be commensurate with the severity of the primary offense and the circumstances surrounding it. In a case involving multiple offenses pending sentencing, the primary offense is the offense bearing the highest level of seriousness, all other offenses are considered additional offenses.
4. The severity of the sentence increases with the length and nature of the offender's prior record.
5. The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time.
6. Departures from recommended sentences are articulated in writing and only made when circumstances or factors reasonably justify the aggravation or mitigation of the sentence.
7. Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.

10-20-Life Law

Section 775.087

Increases the minimum mandatory sentences for serious felonies that are committed with a firearm. If a person commits one of the listed offenses while simply possessing a regular firearm, the person must serve a minimum mandatory sentence of 10 years. If a person commits one of the listed offenses while possessing a more dangerous firearm, the person must serve a minimum mandatory sentence of 15 years. If a person commits one of the listed offenses and during the offense discharges any firearm, the person must serve a minimum mandatory sentence of 20 years. If a person commits one of the listed offenses and, during the offense the person discharges any firearm and actually shoots someone inflicting great bodily harm or death, the person must serve a minimum mandatory sentence of 25 years up to life.

Sentencing Departures for Excessive Physical Emotional Trauma

Section 921.001(7)

Provides that a sentence may be imposed outside the guidelines based on credible facts, which may include an oral or written statement submitted by the victim or next of kin pursuant to s. 921.143, F.S. (Sentencing Victim-Input), proven by a preponderance of the evidence, which demonstrates that the victim suffered excessive physical or emotional trauma at the hands of the

defendant. This departure is not barred because victim injury has been utilized in the calculation of the guidelines sentence.

Victim Injury

Section 921.0011

Defines victim injury as the physical injury or death suffered by a person as a direct result of any convicted offenses (primary or additional) that are pending before the court for sentencing. If the conviction is for an offense involving sexual contact which includes sexual penetration, the sexual penetration must be scored in accordance with the sentence points provided under s. 921.0014, F.S., for sexual contact regardless of whether there is evidence of any other physical injury. If the conviction is for an offense involving sexual contact which does not include sexual penetration, the sexual contact must be scored in accordance with the sentence points provided under s. 921.0014, F.S., for sexual contact regardless of whether there is evidence of any other physical injury. If the victim of an offense involving sexual contact suffers any physical injury as a direct result of any offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

Other Statutes Pertaining To Sentencing Guidelines

921.0012	Offense Severity Ranking Chart
921.0024	Worksheet Computations: Score Sheets
943.325	Offender Categories Required to Provide DNA Specimens for FDLE Database
Ch. 2005-28	Jessica Lunsford Act (Passed as CS/HB 1877)