

By Senator Grimsley

21-01365-16

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1                   A bill to be entitled  
2           An act relating to offenses involving minors and  
3           vulnerable persons; amending s. 92.54, F.S.;  
4           increasing the maximum age at which a victim or  
5           witness may be allowed to testify via closed circuit  
6           television rather than in a courtroom in certain  
7           circumstances; amending s. 782.04, F.S.; including  
8           human trafficking as an underlying felony offense to  
9           support a felony murder conviction; amending s.  
10          787.06, F.S.; providing increased criminal penalties  
11          for human trafficking offenses if the victim suffers  
12          great bodily harm, permanent disability, or permanent  
13          disfigurement; specifying that penalties for branding  
14          must be for the purpose of committing the offense of  
15          human trafficking; prohibiting certain defense to  
16          prosecution; amending s. 794.022, F.S.; including  
17          human trafficking and lewd and lascivious offenses in  
18          the rules of evidence applicable to sexually-related  
19          offenses; amending ss. 90.404, 775.21, 943.0435,  
20          944.606, and 944.607, F.S.; conforming provisions to  
21          changes made by the act; providing an effective date.  
22

23 Be It Enacted by the Legislature of the State of Florida:  
24

25           Section 1. Section 92.54, Florida Statutes, is amended to  
26           read:

27           92.54 Use of closed circuit television in proceedings  
28           involving a victim or witness under the age of 18 ~~16~~ or who has  
29           an intellectual disability.—

30           (1) Upon motion and hearing in camera and upon a finding  
31           that there is a substantial likelihood that a victim or witness  
32           under the age of 18 ~~16~~ or who has an intellectual disability

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33 will suffer at least moderate emotional or mental harm due to  
34 the presence of the defendant if such victim or witness is  
35 required to testify in open court, or is unavailable as defined  
36 in s. 90.804(1), the trial court may order that the testimony of  
37 the victim or witness be taken outside of the courtroom and  
38 shown by means of closed circuit television.

39 (2) The motion may be filed by the victim or witness; the  
40 attorney, parent, legal guardian, or guardian ad litem of the  
41 victim or witness; the prosecutor; the defendant or the  
42 defendant's counsel; or the trial judge on his or her own  
43 motion.

44 (3) Only the judge, the prosecutor, the defendant, the  
45 attorney for the defendant, the operators of the videotape  
46 equipment, an interpreter, and some other person who, in the  
47 opinion of the court, contributes to the well-being of the child  
48 or the person who has an intellectual disability and who will  
49 not be a witness in the case may be in the room during the  
50 recording of the testimony.

51 (4) During the victim's or witness's testimony by closed  
52 circuit television, the court may require the defendant to view  
53 the testimony from the courtroom. In such a case, the court  
54 shall permit the defendant to observe and hear the testimony of  
55 the victim or witness, but must ensure that the victim or  
56 witness cannot hear or see the defendant. The defendant's right  
57 to assistance of counsel, which includes the right to immediate  
58 and direct communication with counsel conducting cross-  
59 examination, must be protected and, upon the defendant's  
60 request, such communication must be provided by any appropriate  
61 electronic method.

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62 (5) The court shall make specific findings of fact, on the  
63 record, as to the basis for its ruling under this section.

64 Section 2. Subsections (1), (3), and (4) of section 782.04,  
65 Florida Statutes, are amended to read:

66 782.04 Murder.—

67 (1)(a) The unlawful killing of a human being:

68 1. When perpetrated from a premeditated design to effect  
69 the death of the person killed or any human being;

70 2. When committed by a person engaged in the perpetration  
71 of, or in the attempt to perpetrate, any:

72 a. Trafficking offense prohibited by s. 893.135(1),

73 b. Arson,

74 c. Sexual battery,

75 d. Robbery,

76 e. Burglary,

77 f. Kidnapping,

78 g. Escape,

79 h. Aggravated child abuse,

80 i. Aggravated abuse of an elderly person or disabled adult,

81 j. Aircraft piracy,

82 k. Unlawful throwing, placing, or discharging of a  
83 destructive device or bomb,

84 l. Carjacking,

85 m. Home-invasion robbery,

86 n. Aggravated stalking,

87 o. Murder of another human being,

88 p. Resisting an officer with violence to his or her person,

89 q. Aggravated fleeing or eluding with serious bodily injury  
90 or death,

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91 r. Felony that is an act of terrorism or is in furtherance  
92 of an act of terrorism, ~~or~~

93 s. Human trafficking; or

94 3. Which resulted from the unlawful distribution of any  
95 substance controlled under s. 893.03(1), cocaine as described in  
96 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
97 compound, derivative, or preparation of opium, or methadone by a  
98 person 18 years of age or older, when such drug is proven to be  
99 the proximate cause of the death of the user,

100  
101 is murder in the first degree and constitutes a capital felony,  
102 punishable as provided in s. 775.082.

103 (b) In all cases under this section, the procedure set  
104 forth in s. 921.141 shall be followed in order to determine  
105 sentence of death or life imprisonment.

106 (3) When a human being is killed during the perpetration  
107 of, or during the attempt to perpetrate, any:

108 (a) Trafficking offense prohibited by s. 893.135(1),

109 (b) Arson,

110 (c) Sexual battery,

111 (d) Robbery,

112 (e) Burglary,

113 (f) Kidnapping,

114 (g) Escape,

115 (h) Aggravated child abuse,

116 (i) Aggravated abuse of an elderly person or disabled  
117 adult,

118 (j) Aircraft piracy,

119 (k) Unlawful throwing, placing, or discharging of a

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120 destructive device or bomb,  
121 (l) Carjacking,  
122 (m) Home-invasion robbery,  
123 (n) Aggravated stalking,  
124 (o) Murder of another human being,  
125 (p) Aggravated fleeing or eluding with serious bodily  
126 injury or death,  
127 (q) Resisting an officer with violence to his or her  
128 person, ~~or~~  
129 (r) Felony that is an act of terrorism or is in furtherance  
130 of an act of terrorism, or  
131 (s) Human trafficking,  
132  
133 by a person other than the person engaged in the perpetration of  
134 or in the attempt to perpetrate such felony, the person  
135 perpetrating or attempting to perpetrate such felony commits  
136 murder in the second degree, which constitutes a felony of the  
137 first degree, punishable by imprisonment for a term of years not  
138 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
139 775.084.

140 (4) The unlawful killing of a human being, when perpetrated  
141 without any design to effect death, by a person engaged in the  
142 perpetration of, or in the attempt to perpetrate, any felony  
143 other than any:

144 (a) Trafficking offense prohibited by s. 893.135(1),  
145 (b) Arson,  
146 (c) Sexual battery,  
147 (d) Robbery,  
148 (e) Burglary,

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149 (f) Kidnapping,  
150 (g) Escape,  
151 (h) Aggravated child abuse,  
152 (i) Aggravated abuse of an elderly person or disabled  
153 adult,  
154 (j) Aircraft piracy,  
155 (k) Unlawful throwing, placing, or discharging of a  
156 destructive device or bomb,  
157 (l) Unlawful distribution of any substance controlled under  
158 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or  
159 opium or any synthetic or natural salt, compound, derivative, or  
160 preparation of opium by a person 18 years of age or older, when  
161 such drug is proven to be the proximate cause of the death of  
162 the user,  
163 (m) Carjacking,  
164 (n) Home-invasion robbery,  
165 (o) Aggravated stalking,  
166 (p) Murder of another human being,  
167 (q) Aggravated fleeing or eluding with serious bodily  
168 injury or death,  
169 (r) Resisting an officer with violence to his or her  
170 person, ~~or~~  
171 (s) Felony that is an act of terrorism or is in furtherance  
172 of an act of terrorism, or  
173 (t) Human trafficking,  
174  
175 is murder in the third degree and constitutes a felony of the  
176 second degree, punishable as provided in s. 775.082, s. 775.083,  
177 or s. 775.084.

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178 Section 3. Paragraph (h) is added to subsection (3) of  
179 section 787.06, Florida Statutes, paragraph (b) of subsection  
180 (4) is amended, subsections (5) through (9) are renumbered as  
181 subsections (6) through (10), respectively, and a new subsection  
182 (5) is added to that section, to read:

183 787.06 Human trafficking.—

184 (3) Any person who knowingly, or in reckless disregard of  
185 the facts, engages in human trafficking, or attempts to engage  
186 in human trafficking, or benefits financially by receiving  
187 anything of value from participation in a venture that has  
188 subjected a person to human trafficking:

189 (h) And during the commission or attempt to commit the  
190 offense of human trafficking causes great bodily harm, permanent  
191 disability, or permanent disfigurement to the victim of the  
192 human trafficking offense or attempted offense commits a felony  
193 of the first degree, punishable for a term of years not  
194 exceeding life, as provided in s. 775.082, s. 775.083, or s.  
195 775.084.

196  
197 For each instance of human trafficking of any individual under  
198 this subsection, a separate crime is committed and a separate  
199 punishment is authorized.

200 (4)

201 (b) Any person who permanently brands, or directs to be  
202 permanently branded, for the purpose of committing an offense  
203 under this section, a victim of an offense under this section  
204 commits a second degree felony, punishable as provided in s.  
205 775.082, s. 775.083, or s. 775.084. For purposes of this  
206 subsection, the term "permanently branded" means a mark on the

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207 individual's body that, if it can be removed or repaired at all,  
208 can only be removed or repaired by surgical means, laser  
209 treatment, or other medical procedure.

210 (5) A victim's lack of chastity or the willingness or  
211 consent of a victim is not a defense to prosecution under this  
212 section if the victim was under 18 years of age at the time of  
213 the offense.

214 Section 4. Section 794.022, Florida Statutes, is amended to  
215 read:

216 794.022 Rules of evidence.—

217 (1) The testimony of the victim need not be corroborated in  
218 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

219 (2) Specific instances of prior consensual sexual activity  
220 between the victim and any person other than the offender may  
221 ~~shall~~ not be admitted into evidence in a prosecution under s.  
222 787.06, s. 794.011, or s. 800.04. However, such evidence may be  
223 admitted if it is first established to the court in a proceeding  
224 in camera that such evidence may prove that the defendant was  
225 not the source of the semen, pregnancy, injury, or disease; or,  
226 when consent by the victim is at issue, such evidence may be  
227 admitted if it is first established to the court in a proceeding  
228 in camera that such evidence tends to establish a pattern of  
229 conduct or behavior on the part of the victim which is so  
230 similar to the conduct or behavior in the case that it is  
231 relevant to the issue of consent.

232 (3) Notwithstanding any other provision of law, reputation  
233 evidence relating to a victim's prior sexual conduct or evidence  
234 presented for the purpose of showing that manner of dress of the  
235 victim at the time of the offense incited the sexual battery may



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236 ~~shall~~ not be admitted into evidence in a prosecution under s.  
237 787.06, s. 794.011, or s. 800.04.

238 (4) When consent of the victim is a defense to prosecution  
239 under s. 787.06, s. 794.011, or s. 800.04, evidence of the  
240 victim's mental incapacity or defect is admissible to prove that  
241 the consent was not intelligent, knowing, or voluntary; and the  
242 court shall instruct the jury accordingly.

243 (5) An offender's use of a prophylactic device, or a  
244 victim's request that an offender use a prophylactic device, is  
245 not, by itself, relevant to either the issue of whether or not  
246 the offense was committed or the issue of whether or not the  
247 victim consented.

248 Section 5. Paragraphs (b) and (c) of subsection (2) of  
249 section 90.404, Florida Statutes, are amended to read:

250 90.404 Character evidence; when admissible.—

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

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

257 2. For the purposes of this paragraph, the term "child  
258 molestation" means conduct proscribed by s. 787.025(2)(c), s.  
259 787.06(3)(g), ~~former~~ s. 787.06(3)(h), Florida Statutes 2012, s.  
260 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,  
261 former s. 796.035, s. 800.04, s. 827.071, s. 847.0135(5), s.  
262 847.0145, or s. 985.701(1) when committed against a person 16  
263 years of age or younger.

264 (c)1. In a criminal case in which the defendant is charged

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265 with a sexual offense, evidence of the defendant's commission of  
266 other crimes, wrongs, or acts involving a sexual offense is  
267 admissible and may be considered for its bearing on any matter  
268 to which it is relevant.

269 2. For the purposes of this paragraph, the term "sexual  
270 offense" means conduct proscribed by s. 787.025(2)(c), s.  
271 787.06(3)(b), (d), (f), or (g), ~~former~~ s. 787.06(3)(h), Florida  
272 Statutes 2012, s. 794.011, excluding s. 794.011(10), s. 794.05,  
273 former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s.  
274 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

275 Section 6. Paragraph (a) of subsection (4) of section  
276 775.21, Florida Statutes, is amended to read:

277 775.21 The Florida Sexual Predators Act.—

278 (4) SEXUAL PREDATOR CRITERIA.—

279 (a) For a current offense committed on or after October 1,  
280 1993, upon conviction, an offender shall be designated as a  
281 "sexual predator" under subsection (5), and subject to  
282 registration under subsection (6) and community and public  
283 notification under subsection (7) if:

284 1. The felony is:

285 a. A capital, life, or first degree felony violation, or  
286 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
287 is a minor and the defendant is not the victim's parent or  
288 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a  
289 violation of a similar law of another jurisdiction; or

290 b. Any felony violation, or any attempt thereof, of s.  
291 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
292 787.025(2)(c), where the victim is a minor and the defendant is  
293 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),

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294 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.  
 295 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 296 former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s.  
 297 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.  
 298 916.1075(2); or s. 985.701(1); or a violation of a similar law  
 299 of another jurisdiction, and the offender has previously been  
 300 convicted of or found to have committed, or has pled nolo  
 301 contendere or guilty to, regardless of adjudication, any  
 302 violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
 303 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
 304 defendant is not the victim's parent or guardian; s.  
 305 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
 306 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
 307 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
 308 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 309 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a  
 310 similar law of another jurisdiction;

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

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

317 Section 7. Paragraph (a) of subsection (1) of section  
 318 943.0435, Florida Statutes, is amended to read:

319 943.0435 Sexual offenders required to register with the  
 320 department; penalty.—

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

322 (a)1. "Sexual offender" means a person who meets the

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323 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
324 subparagraph c., or sub-subparagraph d., as follows:

325 a.(I) Has been convicted of committing, or attempting,  
326 soliciting, or conspiring to commit, any of the criminal  
327 offenses proscribed in the following statutes in this state or  
328 similar offenses in another jurisdiction: s. 393.135(2); s.  
329 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
330 the victim is a minor and the defendant is not the victim's  
331 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); ~~former s.~~  
332 787.06(3)(h), Florida Statutes 2012; s. 794.011, excluding s.  
333 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
334 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
335 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
336 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar  
337 offense committed in this state which has been redesignated from  
338 a former statute number to one of those listed in this sub-sub-  
339 subparagraph; and

340 (II) Has been released on or after October 1, 1997, from  
341 the sanction imposed for any conviction of an offense described  
342 in sub-sub-subparagraph (I). For purposes of sub-sub-  
343 subparagraph (I), a sanction imposed in this state or in any  
344 other jurisdiction includes, but is not limited to, a fine,  
345 probation, community control, parole, conditional release,  
346 control release, or incarceration in a state prison, federal  
347 prison, private correctional facility, or local detention  
348 facility;

349 b. Establishes or maintains a residence in this state and  
350 who has not been designated as a sexual predator by a court of  
351 this state but who has been designated as a sexual predator, as

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352 a sexually violent predator, or by another sexual offender  
353 designation in another state or jurisdiction and was, as a  
354 result of such designation, subjected to registration or  
355 community or public notification, or both, or would be if the  
356 person were a resident of that state or jurisdiction, without  
357 regard to whether the person otherwise meets the criteria for  
358 registration as a sexual offender;

359 c. Establishes or maintains a residence in this state who  
360 is in the custody or control of, or under the supervision of,  
361 any other state or jurisdiction as a result of a conviction for  
362 committing, or attempting, soliciting, or conspiring to commit,  
363 any of the criminal offenses proscribed in the following  
364 statutes or similar offense in another jurisdiction: s.  
365 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
366 787.025(2)(c), where the victim is a minor and the defendant is  
367 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),  
368 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.  
369 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
370 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
371 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
372 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
373 985.701(1); or any similar offense committed in this state which  
374 has been redesignated from a former statute number to one of  
375 those listed in this sub-subparagraph; or

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

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381 older at the time of the offense:

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

383 (II) Section 800.04(4)(a)2. where the victim is under 12  
384 years of age or where the court finds sexual activity by the use  
385 of force or coercion;

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

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

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

393

394 For each violation of a qualifying offense listed in this  
395 subsection, except for a violation of s. 794.011, the court  
396 shall make a written finding of the age of the victim at the  
397 time of the offense. For a violation of s. 800.04(4), the court  
398 shall also make a written finding indicating whether the offense  
399 involved sexual activity and indicating whether the offense  
400 involved force or coercion. For a violation of s. 800.04(5), the  
401 court shall also make a written finding that the offense did or  
402 did not involve unclothed genitals or genital area and that the  
403 offense did or did not involve the use of force or coercion.

404 Section 8. Paragraph (b) of subsection (1) of section  
405 944.606, Florida Statutes, is amended to read:

406 944.606 Sexual offenders; notification upon release.—

407 (1) As used in this section:

408 (b) "Sexual offender" means a person who has been convicted  
409 of committing, or attempting, soliciting, or conspiring to

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410 commit, any of the criminal offenses proscribed in the following  
411 statutes in this state or similar offenses in another  
412 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
413 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
414 defendant is not the victim's parent or guardian; s.  
415 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
416 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
417 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
418 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
419 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
420 916.1075(2); or s. 985.701(1); or any similar offense committed  
421 in this state which has been redesignated from a former statute  
422 number to one of those listed in this subsection, when the  
423 department has received verified information regarding such  
424 conviction; an offender's computerized criminal history record  
425 is not, in and of itself, verified information.

426 Section 9. Paragraph (a) of subsection (1) of section  
427 944.607, Florida Statutes, is amended to read:

428 944.607 Notification to Department of Law Enforcement of  
429 information on sexual offenders.—

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

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

434 1. On or after October 1, 1997, as a result of a conviction  
435 for committing, or attempting, soliciting, or conspiring to  
436 commit, any of the criminal offenses proscribed in the following  
437 statutes in this state or similar offenses in another  
438 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.

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439 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
440 defendant is not the victim's parent or guardian; s.  
441 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida  
442 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;  
443 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
444 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
445 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
446 916.1075(2); or s. 985.701(1); or any similar offense committed  
447 in this state which has been redesignated from a former statute  
448 number to one of those listed in this paragraph; or

449 2. Who establishes or maintains a residence in this state  
450 and who has not been designated as a sexual predator by a court  
451 of this state but who has been designated as a sexual predator,  
452 as a sexually violent predator, or by another sexual offender  
453 designation in another state or jurisdiction and was, as a  
454 result of such designation, subjected to registration or  
455 community or public notification, or both, or would be if the  
456 person were a resident of that state or jurisdiction, without  
457 regard as to whether the person otherwise meets the criteria for  
458 registration as a sexual offender.

459 Section 10. This act shall take effect July 1, 2016.