

By Representatives Crist, Futch, Thrasher, Ball, Arnall,
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1 A bill to be entitled
2 An act relating to sexual offenders; creating
3 the "Sex Offender Punishment and Supervision
4 Act"; amending s. 775.084, F.S.; providing
5 definitions; providing for a separate
6 proceeding for court determination of whether a
7 defendant is a "repeat sex offender" or
8 "habitual sex offender," as defined; providing
9 penalties for such offenders, including
10 mandatory minimum imprisonment, under specified
11 circumstances; providing for appeal; providing
12 legislative intent; providing an exception for
13 capital felonies; creating s. 775.0871, F.S.;
14 providing a mandatory minimum term of
15 imprisonment of 10 years for commission of
16 sexual battery upon a person 12 years of age or
17 older, without that person's consent, and in
18 the process thereof using or threatening to use
19 a deadly weapon or uses actual physical force
20 likely to cause serious personal injury;
21 providing a mandatory minimum term of
22 imprisonment of 10 years for commission of
23 lewd, lascivious, or indecent assault by
24 committing a sexual battery upon a victim under
25 14 years of age, when the defendant was over 24
26 years of age; precluding claim of victim's
27 consent; amending s. 921.001, F.S., relating to
28 the Sentencing Commission and sentencing
29 guidelines, generally; prohibiting downward
30 departure sentences for specified sexual
31 battery offenses or offenses involving lewd,

1 lascivious, or indecent assault or act upon or
2 in presence of a child; providing legislative
3 finding; amending s. 948.001, F.S.; defining
4 "sex offender probation"; amending s. 948.03,
5 F.S.; revising terms and conditions of
6 probation or community control; providing terms
7 and conditions of sex offender probation or sex
8 offender community control; providing an
9 effective date.

10

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

12

13 Section 1. This act may be known and shall be cited as
14 the "Sex Offender Punishment and Supervision Act."

15 Section 2. Subsection (7) is added to section 775.084,
16 Florida Statutes, 1996 Supplement, to read:

17 775.084 Violent career criminals; habitual felony
18 offenders and habitual violent felony offenders; repeat sex
19 offenders and habitual sex offenders; definitions; procedure;
20 enhanced penalties.--

21 (2) For the purposes of this section, the placing of a
22 person on probation without an adjudication of guilt shall be
23 treated as a prior conviction if the subsequent offense for
24 which the person is to be sentenced was committed during such
25 probationary period.

26 (3)

27 (b) In a separate proceeding, the court shall
28 determine whether the defendant is a violent career criminal
29 with respect to a primary offense committed on or after
30 October 1, 1995. The procedure shall be as follows:

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1 1. Written notice shall be served on the defendant and
2 the defendant's attorney a sufficient time prior to the entry
3 of a plea or prior to the imposition of sentence in order to
4 allow the preparation of a submission on behalf of the
5 defendant.

6 2. All evidence presented shall be presented in open
7 court with full rights of confrontation, cross-examination,
8 and representation by counsel.

9 3. Each of the findings required as the basis for such
10 sentence shall be found to exist by a preponderance of the
11 evidence and shall be appealable only as provided in paragraph
12 (c).

13 4. For the purpose of identification, the court shall
14 fingerprint the defendant pursuant to s. 921.241.

15 5. For an offense committed on or after October 1,
16 1995, if the state attorney pursues a violent career criminal
17 sanction against the defendant and the court, in a separate
18 proceeding pursuant to this paragraph, determines that the
19 defendant meets the criteria under subsection (1) for imposing
20 such sanction, the court must sentence the defendant as a
21 violent career criminal, subject to imprisonment pursuant to
22 this section unless the court finds that such sentence is not
23 necessary for the protection of the public. If the court
24 finds that it is not necessary for the protection of the
25 public to sentence the defendant as a violent career criminal,
26 the court shall provide written reasons; a written transcript
27 of orally stated reasons is permissible, if filed by the court
28 within 7 days after the date of sentencing. Each month, the
29 court shall submit to the Sentencing Commission the written
30 reasons or transcripts in each case in which the court
31 determines not to impose a violent career criminal sanction.

1 (4)

2 (f) A sentence imposed under this section shall not be
3 increased after such imposition.

4 (g) A sentence imposed under this section is not
5 subject to s. 921.001.

6 (h) The provisions of this section do not apply to
7 capital felonies, and a sentence authorized under this section
8 does not preclude the imposition of the death penalty for a
9 capital felony.

10 (5) In order to be counted as a prior felony for
11 purposes of sentencing under this section, the felony must
12 have resulted in a conviction sentenced separately prior to
13 the current offense and sentenced separately from any other
14 felony conviction that is to be counted as a prior felony.

15 (6) The purpose of this section is to provide uniform
16 punishment for those crimes made punishable under this
17 section, and to this end, a reference to this section
18 constitutes a general reference under the doctrine of
19 incorporation by reference.

20 (7)(a) As used in this subsection:

21 1. "Repeat sex offender" means a defendant for whom
22 the court may impose an extended term of imprisonment, as
23 provided in paragraph (c), if it finds that all of the
24 following apply:

25 a. The defendant has been previously convicted, in
26 this state of a violation of one or more of the following
27 statutes: s. 794.011, s. 800.04(3), or other qualified sexual
28 offense.

29 b. The offense for which the defendant is to be
30 sentenced was committed:

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1 (I) On or after July 1, 1997, and is a violation of s.
2 794.011(2)(a), (2)(b), (3), (4), (8)(b) or s. 800.04(3); and

3 (II) The offense was committed while the defendant was
4 in custody or under any type of community supervision, or
5 under any other supervision or commitment imposed as a result
6 of a prior conviction for an enumerated felony or other
7 qualified offense; or the offense was committed within 10
8 years after the date of the imposition of sentence of the last
9 prior enumerated offense, or within 10 years after the
10 defendant's release from a prison sentence or other commitment
11 imposed as a result of a prior sentence for an enumerated
12 offense or other qualified offense, or within 10 years after
13 the date of the defendant's lawful completion and discharge
14 from the supervision of parole, probation, conditional
15 release, control release, or any other form of supervision of
16 the Parole Commission, or of the Department of Corrections, or
17 of any other criminal justice agency in any state or
18 jurisdiction, whichever is later.

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20 For purposes of sentencing the defendant as a repeat sex
21 offender, the placing of the defendant on probation without an
22 adjudication of guilt shall be treated as a prior conviction
23 if the subsequent offense for which the defendant is to be
24 sentenced was committed during such probationary period.

25 c. The defendant has not received a pardon on the
26 ground of innocence for any crime that is necessary for the
27 operation of this subparagraph; and

28 d. A conviction of a crime necessary to the operation
29 of this subparagraph has not been set aside in any
30 postconviction proceeding.

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1 2. "Habitual sex offender" means a defendant for whom
2 the court may impose an extended term of imprisonment, as
3 provided in paragraph (c), if it finds that all of the
4 following apply:

5 a. The defendant has two or more prior felony
6 convictions, in this state of a violation of one or more of
7 the following statutes: s. 794.011, s. 800.04(3), or other
8 qualified offenses. In order to be counted as a prior felony
9 for purposes of sentencing under this section as a habitual
10 sex offender, the prior felony need not have resulted from a
11 conviction sentenced separately from any other felony
12 conviction that is to be counted as a prior felony.

13 b. The offense for which the defendant is to be
14 sentenced was committed on or after July 1, 1997, and is a
15 felony violation of any of the following statutes: s. 794.011
16 or s. 800.04(3); and the offense was committed while the
17 defendant was in custody or under any type of community
18 supervision, or under any other supervision or commitment
19 imposed as a result of a prior conviction for an enumerated
20 felony or other qualified offense; or within 10 years after
21 the date of the imposition of sentence of the last prior
22 enumerated offense, or within 10 years after the defendant's
23 release from a prison sentence or other commitment imposed as
24 a result of a prior sentence for an enumerated offense or
25 other qualified offense, or within 10 years after the date of
26 the defendant's lawful completion and discharge from the
27 supervision of parole, probation, conditional release, control
28 release, or any other form of supervision of the Parole
29 Commission, or of the Department of Corrections, or of any
30 other criminal justice agency in any state or jurisdiction,
31 whichever is later. For purposes of sentencing the defendant

1 as a habitual sex offender, the placing of the defendant on
2 probation without an adjudication of guilt shall be treated as
3 a prior conviction if the subsequent offense for which the
4 defendant is to be sentenced was committed during such
5 probationary period.

6 c. The defendant has not received a pardon on the
7 ground of innocence for any crime that is necessary for the
8 operation of this paragraph.

9 d. A conviction of a crime necessary to the operation
10 of this paragraph has not been set aside in any postconviction
11 proceeding.

12 (b) In a separate proceeding, the court shall
13 determine if the defendant is a repeat sex offender, or
14 habitual sex offender. The procedure shall be the same as for
15 a violent career criminal as established in subparagraphs
16 (3)(b)1. through 4., except regarding the appeal of the
17 court's determination to impose or not impose a sentence as a
18 repeat or habitual sex offender.

19 (c) In conformity with the procedure established in
20 subparagraphs (3)(b)1. through 4., the court may sentence a
21 repeat sex offender as follows:

22 1. In the case of a life felony, or a felony of the
23 first degree, for not less than life.

24 2. In the case of a felony of the second degree, for a
25 term of years not exceeding 30 years, with a mandatory minimum
26 term of 15 years, followed by not less than 5 years sex
27 offender probation.

28 3. In the case of a felony of the third degree, for a
29 term of years not exceeding 10 years.

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1 (d) In conformity with the procedure established in
2 paragraph (3)(b), the court shall sentence a habitual sex
3 offender as follows:

4 1. In the case of a life felony, or a felony of the
5 first degree, or felony of the second degree, for life.

6 2. In the case of a felony of the third degree, for a
7 term of years not exceeding 20 years with a mandatory minimum
8 term of 15 years, followed by not less than 5 years of sex
9 offender probation.

10 (e) A person sentenced under paragraph (c) as a repeat
11 sex offender or under paragraph (d) as a habitual sex offender
12 has the right of direct appeal, and either the state or the
13 defendant may petition the trial court to vacate an illegal
14 sentence at any time. However, the determination of the trial
15 court to impose or not to impose a repeat sex offender
16 sentence is presumed appropriate, and no petition or motion
17 for collateral or other postconviction relief may be
18 considered based on an allegation either by the state or the
19 defendant that such sentence is inappropriate, inadequate, or
20 excessive. However, the determination of the trial court to
21 impose or not a habitual sex offender sentence may be appealed
22 by the defendant or the state.

23 1. It is the intent of the Legislature that, with
24 respect to both direct appeal and collateral review of repeat
25 sex offender sentences or habitual sex offender sentences, all
26 claims of error or illegality be raised at the first
27 opportunity and that no claim should be filed more than 2
28 years after the judgment and sentence became final, unless it
29 is established that the basis for the claim could not have
30 been ascertained at the time by the exercise of due diligence.
31 Technical violations and mistakes at trials and sentencing

1 proceedings of repeat sex offenders that do not affect due
2 process or fundamental fairness are not appealable by either
3 the state or the defendant.

4 2. It is the intent of the Legislature that no funds,
5 resources, or employees of the state or its political
6 subdivisions be used, directly or indirectly, in appellate or
7 collateral proceedings based on repeat sex offender or
8 habitual sex offender sentencing, except when such use is
9 constitutionally or statutorily mandated.

10 (f) For an offense committed on or after July 1, 1997,
11 a defendant sentenced under this subsection as a repeat sex
12 offender or habitual sex offender is not eligible for any form
13 of discretionary early release, other than pardon or executive
14 clemency, or conditional medical release granted pursuant to
15 s. 947.149.

16 (g) The provisions of this section regarding
17 sentencing as a repeat sex offender or habitual sex offender
18 do not apply to capital felonies, except to the extent that a
19 capital felony may be a qualified prior offense. No language
20 herein shall preclude the imposition of the death penalty for
21 a capital felony.

22 (h) At any time when it appears to the court that the
23 defendant is eligible for sentencing as a repeat sex offender
24 or habitual sex offender, the court shall make that
25 determination as provided in paragraph (b). The court's
26 failure to sentence an offender as a habitual sex offender may
27 be appealed by the state.

28 Section 3. Section 775.0871, Florida Statutes, is
29 created to read:

30 775.0871 Mandatory minimum penalties for certain sex
31 crimes involving sexual battery.--

1 (1) A person who is convicted of sexual battery which
2 was committed on or after July 1, 1997, upon a person 12 years
3 of age or older without that person's consent and in the
4 process thereof used or threatened to use a deadly weapon or
5 used actual physical force likely to cause serious personal
6 injury under s. 794.011(3) shall be sentenced to a mandatory
7 minimum term of imprisonment of 10 years.

8 (2) A person who is convicted of lewd, lascivious, or
9 indecent assault which was committed on or after July 1, 1997,
10 in violation of s. 800.04(3) upon a victim under 14 years of
11 age shall be sentenced to a minimum term of imprisonment of 10
12 years. This subsection shall apply regardless of any claims
13 of consent on the part of the victim.

14 Section 4. Subsection (6) of section 921.001, Florida
15 Statutes, is amended to read:

16 921.001 Sentencing Commission and sentencing
17 guidelines generally.--

18 (6) A court may impose a departure sentence outside
19 the sentencing guidelines based upon circumstances or factors
20 which reasonably justify the aggravation or mitigation of the
21 sentence in accordance with s. 921.0016. The level of proof
22 necessary to establish facts supporting a departure from a
23 sentence under the guidelines is a preponderance of the
24 evidence. When multiple reasons exist to support a departure
25 from a guidelines sentence, the departure shall be upheld when
26 at least one circumstance or factor justifies the departure
27 regardless of the presence of other circumstances or factors
28 found not to justify departure. Any sentence imposed outside
29 the range recommended by the guidelines must be explained in
30 writing by the trial court judge. Notwithstanding the
31 provisions of this subsection, no court shall impose a

1 downward departure for a violation under s. 794.011 or s.
2 800.04, which was committed on or after July 1, 1997, based on
3 a claim that defendant requires, or is requesting, mental
4 treatment or sex offender counseling. The Legislature finds
5 that sexual offenders must be punished commensurately with the
6 seriousness of the offense, and that the offender's mental or
7 psychological condition does not entitle the sexual offender
8 to leniency.

9 Section 5. Subsection (7) is added to section 948.001,
10 Florida Statutes, to read:

11 948.001 Definitions.--As used in this chapter, the
12 term:

13 (7) "Sex offender probation" means a form of intensive
14 supervision which emphasizes public safety and treatment of
15 offenders and is administered by officers with restricted
16 caseloads. Caseloads shall be restricted to 45 cases per
17 officer in order to ensure an adequate level of supervision.

18 Section 6. Subsection (5) of section 948.03, Florida
19 Statutes, 1996 Supplement, is amended to read:

20 948.03 Terms and conditions of probation or community
21 control or sex offender probation.--

22 (1) The court shall determine the terms and conditions
23 of probation or community control. Conditions specified in
24 paragraphs (a) through and including (n) do not require oral
25 pronouncement at the time of sentencing and may be considered
26 standard conditions of probation. Conditions specified in
27 paragraphs (a) through and including (n) and (2)(a) do not
28 require oral pronouncement at sentencing and may be considered
29 standard conditions of community control. These conditions
30 may include among them the following, that the probationer or
31 offender in community control shall:

- 1 (a) Report to the probation and parole supervisors as
2 directed.
- 3 (b) Permit such supervisors to visit him at his home
4 or elsewhere.
- 5 (c) Work faithfully at suitable employment insofar as
6 may be possible.
- 7 (d) Remain within a specified place.
- 8 (e) Make reparation or restitution to the aggrieved
9 party for the damage or loss caused by his offense in an
10 amount to be determined by the court. The court shall make
11 such reparation or restitution a condition of probation,
12 unless it determines that clear and compelling reasons exist
13 to the contrary. If the court does not order restitution, or
14 orders restitution of only a portion of the damages, as
15 provided in s. 775.089, it shall state on the record in detail
16 the reasons therefor.
- 17 (f) Effective July 1, 1994, and applicable for
18 offenses committed on or after that date, make payment of the
19 debt due and owing to a county or municipal detention facility
20 under s. 951.032 for medical care, treatment, hospitalization,
21 or transportation received by the felony probationer while in
22 that detention facility. The court, in determining whether to
23 order such repayment and the amount of such repayment, shall
24 consider the amount of the debt, whether there was any fault
25 of the institution for the medical expenses incurred, the
26 financial resources of the felony probationer, the present and
27 potential future financial needs and earning ability of the
28 probationer, and dependents, and other appropriate factors.
- 29 (g) Support his legal dependents to the best of his
30 ability.
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1 (h) Make payment of the debt due and owing to the
2 state under s. 960.17, subject to modification based on change
3 of circumstances.

4 (i) Pay any attorney's fees and costs assessed under
5 s. 27.56, subject to modification based on change of
6 circumstances.

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

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

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

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

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

29 (n) Attend an HIV/AIDS awareness program consisting of
30 a class of not less than 2 hours or more than 4 hours in
31 length, the cost for which shall be paid by the offender.

1 (o) Pay not more than \$1 per month during the term of
2 probation or community control to a nonprofit organization
3 established for the sole purpose of supplementing the
4 rehabilitative efforts of the Department of Corrections.

5 (4) The court shall require a diagnosis and evaluation
6 to determine the need of a probationer or offender in
7 community control for treatment. If the court determines that
8 a need therefor is established by such diagnosis and
9 evaluation process, the court shall require outpatient
10 counseling as a term or condition of probation or community
11 control for any person who was found guilty of any of the
12 following, or whose plea of guilty or nolo contendere to any
13 of the following was accepted by the court:

14 (a) A lewd, lascivious, or indecent assault or act
15 upon, or in the presence of, a child.

16 (b) Sexual battery, as defined in chapter 794, against
17 a child.

18 (c) Exploitation of a child as provided in s. 450.151,
19 or for prostitution.

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21 Such counseling shall be required to be obtained from a
22 community mental health center, a recognized social service
23 agency providing mental health services, or a private mental
24 health professional or through other professional counseling.
25 The plan for counseling for the individual shall be provided
26 to the court for review.

27 (5) Effective for probationers or community controlees
28 whose crime was committed on or after July 1, 1997 ~~October 1,~~
29 ~~1995~~, and who are placed under supervision for violation of
30 chapter 794 or s. 800.04, s. 827.071, or s. 847.0145, the
31 court must impose the following conditions in addition to all

1 other standard and special conditions imposed. In addition, a
2 person whose crime was committed or whose term of supervision
3 was revoked and a new term of supervision imposed on or after
4 July 1, 1997, and who is placed on supervision for violation
5 of chapter 794 or s. 800.04, s. 827.071, or s. 847.0145 shall
6 have the conditions in paragraphs (a) through (q) as standard
7 conditions. These conditions do not require oral
8 pronouncement at the time of sentencing and shall be
9 considered standard conditions of sex offender probation or
10 sex offender community control in addition to all other
11 standard or special conditions. None of these conditions in
12 paragraphs (a) through (q) may be deleted or made to be
13 ineffective in any manner.+

14 (a) A mandatory curfew from 10 p.m. to 6 a.m. or
15 during another 8-hour period if the offender's employment
16 precludes the above specified time as recommended by the
17 Department of Corrections and ordered, ~~if appropriate, during~~
18 ~~hours set~~ by the sentencing court.

19 (b) If the victim was under the age of 18, a
20 prohibition on living within 1,000 feet of a school, day care
21 center, park, playground, or other place where children
22 regularly congregate, ~~as prescribed by the court.~~

23 (c) Active participation in and successful completion
24 of a sex offender treatment program with therapists
25 specifically trained to treat sex offenders, at the
26 probationer's or community controlee's own expense, unless one
27 is not available within a 50-mile radius of the probationer's
28 or community controlee's residence.

29 (d) A prohibition on any contact with the victim,
30 directly or indirectly, including through a third person,
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1 unless approved by both the victims and the offenders
2 therapist and the sentencing court.

3 (e) If the victim was under the age of 18, a
4 prohibition, until successful completion of a sex offender
5 treatment program, on ~~unsupervised~~ contact with a child under
6 the age of 18. After successful completion there may be
7 supervised contact only if there is, unless authorized by the
8 ~~sentencing court without~~ another adult present who is
9 responsible for the child's welfare, has been advised of the
10 crime by the probation officer, and is approved by the
11 commission.

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

16 (g) ~~Unless otherwise indicated in the treatment plan~~
17 ~~provided by the sexual offender treatment program,~~A
18 prohibition on viewing, owning, or possessing any obscene,
19 pornographic, or sexually explicit material.

20 (h) A requirement that the probationer or community
21 controlee must submit two specimens of blood to the Florida
22 Department of Law Enforcement to be registered with the DNA
23 data bank.

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

29 (j) The probationer or community controlee may be
30 placed on electronic monitoring when deemed necessary by the
31 probation officer and his or her supervisor.

1 (k) The probationer or community controlee shall at
2 his or her own expense submit to a minimum of one polygraph
3 examination per year to answer questions regarding his or her
4 compliance with conditions of supervision. The exams shall be
5 performed by an examiner who at a minimum complies with the
6 standards set by the National Association of Polygraph
7 Specialists in Sex Offender Testing/Monitoring.

8 (l) If there was sexual contact, a submission to, at
9 the probationer's or community controlee's expense, an HIV
10 test with the results to be released to the victim and or the
11 victim's parent or guardian.

12 (m) Submission to a warrantless search by the
13 probation officer of the probationer's or community
14 controlee's person, residence, or vehicle.

15 (n) A probation on owning, using, or possessing a
16 computer with a modem or any other communications device that
17 provides Internet access.

18 (o) A contribution of \$1 per month for each month of
19 supervision to be paid to the Florida Network of Children's
20 Advocacy Centers, Inc., at a minimum of once per year for the
21 upcoming year.

22 (p) If the probationer or community controlee has had
23 prior supervision, served state prison or county jail time for
24 a violation of any of the offenses listed in subsection (4)
25 within 10 years of the date the offense was committed, a
26 submission to antiandrogen therapy where recommended by a sex
27 offender therapist or physician if such treatment is
28 available.

29 (q) Registration as a sex offender with the local
30 sheriff's office in the county of permanent or temporary
31 residence.

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Section 7. This act shall take effect July 1, 1997.

HOUSE SUMMARY

Provides for a separate proceeding for court determination of whether a defendant is a "repeat sex offender" or "habitual sex offender," as defined. Provides penalties for such offenders, including minimum mandatory imprisonment, under specified circumstances.

Provides mandatory minimum penalties of 10 years' imprisonment for certain crimes involving sexual battery.

Prohibits downward departure sentences for specified sexual battery offenses or offenses involving lewd, lascivious, or indecent assault or act upon or in presence of a child. Provides legislative finding.

Defines "sex offender probation." Revises terms and conditions of probation or community control. Provides terms and conditions of sex offender probation or sex offender community control.

See bill for details.