

HB

353

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 353
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Sentencing for Sexual Offenses RDU Alaska Court System
 Component Trial Courts
 Sponsor Representatives Nauman and Lynn
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 353 significantly increases the presumptive sentences for those convicted of sexual offenses. It is likely that the longer sentences will increase a defendant's willingness to go to trial. Although the additional costs associated with those trials will fiscally impact the court system, the extent of the impact is too speculative to support a fiscal note.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 1/31/06 @ 9:00 am
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 1/31/2006
 Agency Alaska Court System

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Representative Mark A. Neuman *District 15*

House Bill 353

Sentencing For Sexual Offenses

Sponsor Statement

HB 353 will effectively double the present presumptive sentencing of all sexual assault offenses against minors, resulting in a clear message of zero-tolerance to anyone contemplating or involved in this most egregious act against the most vulnerable members of our society. This legislation establishes a minimum sentence of 24 years for those who commit an Unclassified Sexual Offense with a weapon or cause bodily injury, even when it's a first time felony offense. HB 353 introduces periodic polygraph testing for sex offenders on probation, which will give the Department of Corrections an additional tool to identify potential repeat offenders before another child is victimized.

With the amount of sexual assault crimes on the rise in Alaska and increasing numbers of Alaskans speaking out, it is time to toughen our laws. Other states have enacted, or are in the process of enacting, laws with stiffer penalties for those who commit such heinous crimes. Alaska should be first in the nation in protecting our children from sexual predation, not first in the rate of sexual assault.

According to the Federal Bureau of Investigation Uniform Crime Report (UCR), Alaska has the highest per capita rate of reported rapes ("rapes" in this case refer to child sexual abuse as well as adult assaults). Alaska's per capita rape rate is nearly 71% greater than that of the next highest state.

According to the "Kilpatrick Rape in America Report (1992)" reporting of these cases is as low as 16%. Arrest rates are also low, with as few as 27% of reported crimes resulting in arrest (Snyder 2000). Alaska has 4300 registered sex offenders in communities

statewide. These figures lead us to conclude that the number of actual sex offenders in Alaska is no doubt significantly higher.

While there is no record of any treatment or therapy having significant effects on sex offender recidivism rates (SOTEP Report, 1995), there are steps we can take to reduce repeat offenses. Longer sentences will ensure that the most dangerous offenders are kept away from our children. Regular polygraph testing for all sexual offenders has proven to have an effect on sexual behavior. Supervision of offenders with polygraph tests leads to 69% compliance with probation requirements, while supervision without polygraph tests leads to a 26% compliance rate (Abrams and Ogard, 1986). Requiring a probation period as part of a sentence, along with mandating regular polygraph tests will make our State safer, and reduce the numbers of sexual assault over time.

This legislation is imperative to changing our position as the number one state in the nation for sexual assault and sexual abuse and providing a safer place for our residents. I urge your support.

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Luckhaupt
2/2/06

CS FOR HOUSE BILL NO. 353()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES NEUMAN AND LYNN, Elkins, McGuire, Stoltze, LeDoux

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to sentences for sexual offenses; relating to polygraph examinations for**
2 **sex offenders; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 12.55.100 is amended by adding a new subsection to read:

5 (e) While on probation and as a condition of probation for a sex offense, the
6 defendant shall be required to submit to regular periodic polygraph examinations. In
7 this subsection, "sex offense" has the meaning given in AS 12.63.100.

8 *** Sec. 2.** AS 12.55.125(i) is amended to read:

9 (i) A defendant convicted of

10 (1) sexual assault in the first degree or sexual abuse of a minor in the
11 first degree may be sentenced to a definite term of imprisonment of not more than 99
12 years and shall be sentenced to a definite term within the following presumptive
13 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

14 (A) if the offense is a first felony conviction and does not

1 involve circumstances described in (B) of this paragraph, 16 to 24 [EIGHT TO
2 12] years;

3 (B) if the offense is a first felony conviction and the defendant
4 possessed a firearm, used a dangerous instrument, or caused serious physical
5 injury during the commission of the offense, 24 to 32 [12 TO 16] years;

6 (C) if the offense is a second felony conviction and does not
7 involve circumstances described in (D) of this paragraph, 30 to 40 [15 TO 20]
8 years;

9 (D) if the offense is a second felony conviction and the
10 defendant has a prior conviction for a sexual felony, 40 to 60 [20 TO 30]
11 years;

12 (E) if the offense is a third felony conviction and the defendant
13 is not subject to sentencing under (F) of this paragraph or (I) of this section, 50
14 to 70 [25 TO 35] years;

15 (F) if the offense is a third felony conviction, the defendant is
16 not subject to sentencing under (I) of this section, and the defendant has two
17 prior convictions for sexual felonies, 60 to 80 [30 TO 40] years;

18 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
19 first degree or sexual abuse of a minor in the first degree may be sentenced to a
20 definite term of imprisonment of not more than 99 [30] years and shall be sentenced to
21 a definite term within the following presumptive ranges, subject to adjustment as
22 provided in AS 12.55.155 - 12.55.175:

23 (A) if the offense is a first felony conviction and does not
24 involve circumstances described in (B) of this paragraph, 10 to 16 [FIVE TO
25 EIGHT] years;

26 (B) if the offense is a first felony conviction, and the defendant
27 possessed a firearm, used a dangerous instrument, or caused serious physical
28 injury during the commission of the offense, 20 to 28 [10 TO 14] years;

29 (C) if the offense is a second felony conviction and does not
30 involve circumstances described in (D) of this paragraph, 24 to 32 [12 TO 16]
31 years;

1 (D) if the offense is a second felony conviction and the
2 defendant has a prior conviction for a sexual felony, 30 to 40 [15 TO 20]
3 years;

4 (E) if the offense is a third felony conviction, does not involve
5 circumstances described in (F) of this paragraph, and the defendant is not
6 subject to sentencing under (I) of this section, 30 to 50 [15 TO 25] years;

7 (F) if the offense is a third felony conviction, the defendant is
8 not subject to sentencing under (I) of this section, and the defendant has two
9 prior convictions for sexual felonies, 40 to 60 [20 TO 30] years;

10 (3) sexual assault in the second degree, sexual abuse of a minor in the
11 second degree, unlawful exploitation of a minor, or distribution of child pornography
12 may be sentenced to a definite term of imprisonment of not more than 60 [20] years
13 and shall be sentenced to a definite term within the following presumptive ranges,
14 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

15 (A) if the offense is a first felony conviction, four to eight
16 [TWO TO FOUR] years;

17 (B) if the offense is a second felony conviction and does not
18 involve circumstances described in (C) of this paragraph, 10 to 16 [FIVE TO
19 EIGHT] years;

20 (C) if the offense is a second felony conviction and the
21 defendant has a prior conviction for a sexual felony, 20 to 28 [10 TO 14]
22 years;

23 (D) if the offense is a third felony conviction and does not
24 involve circumstances described in (E) of this paragraph, 20 to 28 [10 TO 14]
25 years;

26 (E) if the offense is a third felony conviction and the defendant
27 has two prior convictions for sexual felonies, 30 to 40 [15 TO 20] years;

28 (4) sexual assault in the third degree, sexual abuse of a minor in the
29 third degree, incest, indecent exposure in the first degree, possession of child
30 pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the
31 second degree, sexual abuse of a minor in the second degree, unlawful exploitation of

1 a minor, or distribution of child pornography, may be sentenced to a definite term of
2 imprisonment of not more than 30 [10] years and shall be sentenced to a definite term
3 within the following presumptive ranges, subject to adjustment as provided in
4 AS 12.55.155 - 12.55.175:

5 (A) if the offense is a first felony conviction, two to four [ONE
6 TO TWO] years;

7 (B) if the offense is a second felony conviction and does not
8 involve circumstances described in (C) of this paragraph, four to 10 [TWO TO
9 FIVE] years;

10 (C) if the offense is a second felony conviction and the
11 defendant has a prior conviction for a sexual felony, six to 12 [THREE TO
12 SIX] years;

13 (D) if the offense is a third felony conviction and does not
14 involve circumstances described in (E) of this paragraph, six to 12 [THREE
15 TO SIX] years;

16 (E) if the offense is a third felony conviction and the defendant
17 has two prior convictions for sexual felonies, 12 to 20 [SIX TO 10] years.

18 * Sec. 3. AS 33.16.150(a) is amended to read:

19 (a) As a condition of parole, a prisoner released on special medical,
20 discretionary, or mandatory parole

21 (1) shall obey all state, federal, or local laws or ordinances, and any
22 court orders applicable to the parolee;

23 (2) shall make diligent efforts to maintain steady employment or meet
24 family obligations;

25 (3) shall, if involved in education, counseling, training, or treatment,
26 continue in the program unless granted permission from the parole officer assigned to
27 the parolee to discontinue the program;

28 (4) shall report

29 (A) upon release to the parole officer assigned to the parolee;

30 (B) at other times, and in the manner, prescribed by the board
31 or the parole officer assigned to the parolee;

1 (5) shall reside at a stated place and not change that residence without
2 notifying, and receiving permission from, the parole officer assigned to the parolee;

3 (6) shall remain within stated geographic limits unless written
4 permission to depart from the stated limits is granted the parolee;

5 (7) may not use, possess, handle, purchase, give, distribute, or
6 administer a controlled substance as defined in AS 11.71.900 or under federal law or a
7 drug for which a prescription is required under state or federal law without a
8 prescription from a licensed medical professional to the parolee;

9 (8) may not possess or control a firearm; in this paragraph, "firearm"
10 has the meaning given in AS 11.81.900;

11 (9) may not enter into an agreement or other arrangement with a law
12 enforcement agency or officer that will place the parolee in the position of violating a
13 law or parole condition without the prior approval of the board;

14 (10) may not contact or correspond with anyone confined in a
15 correctional facility of any type serving any term of imprisonment or a felon without
16 the permission of the parole officer assigned to a parolee;

17 (11) shall agree to waive extradition from any state or territory of the
18 United States and to not contest efforts to return the parolee to the state;

19 (12) shall provide a blood sample, an oral sample, or both, when
20 requested by a health care professional acting on behalf of the state to provide the
21 sample or samples, or an oral sample when requested by a juvenile or adult
22 correctional, probation, or parole officer, or a peace officer, if the prisoner is being
23 released after a conviction of an offense requiring the state to collect the sample or
24 samples for the deoxyribonucleic acid identification system under AS 44.41.035;

25 **(13) from a conviction for a sex offense shall submit to regular**
26 **periodic polygraph examinations; in this paragraph, "sex offense" has the**
27 **meaning given in AS 12.63.100.**

28 * Sec. 4. Sections 1 and 3 of this Act take effect July 1, 2007.

29 * Sec. 5. Except as provided in sec. 4 of this Act, this Act takes effect immediately under
30 AS 01.10.070(c).

LEGISLATIVE RESEARCH REPORT

DECEMBER 15, 2005



REPORT NUMBER 06.060

FLORIDA'S "JESSICA'S LAW" AND ALASKA LAWS RELATING TO SEX OFFENDERS

PREPARED FOR REPRESENTATIVE MARK NEUMAN

BY BECKY TAYLOR, LEGISLATIVE ANALYST

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You asked how Florida's recently enacted "Jessica's Law" compares with Alaska law.

SUMMARY

"Jessica's Law" differs from Alaska law primarily in the areas of sentencing, monitoring, and registration requirements for sex offenders. The Florida law mandates increased research and data sharing capabilities, which exceed those of Alaska. We provide an overview of how Jessica's law compares with Alaska law in Table 1.

OVERVIEW OF "JESSICA'S LAW"

In May of 2005, Governor Jeb Bush signed House Bill 1877, known as the Jessica Lunsford Act, which amended a number of Florida statutes related to sex offenders. The bill, which passed unanimously in both the Senate and the House, was developed after a convicted sex offender was charged with the kidnapping and murder of nine-year old Jessica. Although other recent sex offender legislation has focused on punishing repeat offenders more harshly, the Jessica Lunsford Act imposes stringent sentencing and monitoring requirements on first-time sex offenders. By incarcerating offenders for longer periods of time and monitoring them more closely after they are released, supporters of the law hope to prevent offenders from having the opportunity to commit more crimes and create more victims.

The new Florida law establishes a sentence of 25 years to life imprisonment for sex offenders convicted of lewd and lascivious molestation when victims are under the age of 12. If released, these offenders are required to participate in lifetime active monitoring using Global Positioning System (GPS) technology, which allows law enforcement officers to determine their location at any time.¹ "Jessica's Law" also significantly increases the use of electronic monitoring in Florida to track other sex offenders under community supervision.²

The Jessica Lunsford Act provides for the following:

- ◆ Increasing the penalty for lewd and lascivious molestation of a child to life in prison or a split sentence of a mandatory minimum 25-year prison term, followed by lifetime supervision with electronic monitoring.
- ◆ Increasing, from 20 to 30 years, the period of time before a sexual predator is allowed to petition to have the sexual predator designation removed.
- ◆ Increasing sexual predator/offender registration and reporting requirements.
- ◆ Making status as a sexual predator an aggravating factor that may influence whether a criminal is sentenced to the death penalty in capital cases.
- ◆ Designating failing to re-register as a sexual offender/predator, or harboring or assisting a sexual predator/offender, a third degree felony.
- ◆ Requiring those already convicted of sex crimes to have electronic monitoring for the remainder of their probation.
- ◆ Requiring all county misdemeanor probation officials to search the sexual offender registry when a new offender is assigned to them.
- ◆ More than \$11 million in added funding for sex offender management:

¹ We include, as Attachment A, the following Florida Statutes which relate to sentencing and electronic monitoring: FS 775.082(3)(a), FS 800.04(5)(b), and FS 948.012(4).

² We include, as Attachment B, "House of Representatives Staff Analysis of HB 1877 CS," which explains provisions of the bill in greater detail. This analysis provides useful insight into the legislation; however, a few small modifications, such as date changes, were made in the enacted version of the bill.

may not be sentenced to a definite term of imprisonment of more than 20 years.

- ◆ **Sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography—1 to 2 years. The defendant may not be sentenced to a definite term of imprisonment of more than 10 years.⁷**

In Alaska, most prisoners are eligible for "good time", which allows them to serve the last third of their sentence on parole instead of in prison. In 2003, Senate Bill 85 (ch 9C SLA 2003) modified AS 33.20.010 to include repeat felony sex offenders on the list of prisoners not eligible for a good time deduction. Due to this legislation, repeat sex offenders are spending more time in jail. As Portia Parker, deputy commissioner of the Department of Corrections, notes, incarceration is the only thing that really guarantees public safety.⁸ According to Ms. Parker, most repeat offenders still serve ten years on probation after they complete their full sentence. This is in line with the recommendation from the National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention that states do not allow release without supervision.⁹

AGGRAVATING CIRCUMSTANCES IN SENTENCING

Florida law designates individuals who commit multiple or particularly severe sexual crimes as "sexual predators." "Jessica's Law" added status as a current or former registered sexual predator to the list of aggravating circumstances that can be considered when sentencing an individual convicted of a capital felony to the death penalty. Alaska law contains no provision for capital punishment, and therefore Alaska law does not contain a comparable list. Neither Florida nor Alaska include status as a sexual predator or sex offender on the list of aggravating circumstances in cases not involving a capital offense.¹⁰

⁷ We include, as Attachment D, Alaska Statute 12.55.125, which relates to sentencing for felonies.

⁸ Personal communication from Portia Parker, deputy commissioner, Alaska Department of Corrections. Ms. Parker can be reached at (907) 269-7397.

⁹ We include, as Attachment E, "A Model State Sex-Offender Policy," National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention, 2003, p. 6.

¹⁰ "Sex offender" is the only designation applied to perpetrators of sexual violence in Alaska. We include, as Attachment F, FS 921.141 and FS 921.0016, and as Attachment G, AS 12.55.155, relating to aggravating and mitigating circumstances.

ELECTRONIC MONITORING IN FLORIDA UNDER "JESSICA'S LAW"

"Jessica's Law" requires lifetime active electronic monitoring of defendants convicted of lewd and lascivious molestation whose crimes occurred after July 1, 2005.¹⁵ The law also expands the use of electronic monitoring for sex offenders released under the conditional release program, community control, and probation.¹⁶ The new law includes the following requirements:

- ◆ All offenders designated as sexual predators, as well as all adult offenders convicted of certain sex crimes that took place on or after September 1, 2005, and that involved victims 15 years of age or younger and an offender 18 years of age or older, must be under electronic monitoring for the duration of their conditional release (FS 947.1405[10]).
- ◆ If an individual designated as a sexual offender or sexual predator due to unlawful sexual activity involving a victim 15 years of age or younger and an offender 18 years of age or older has his or her probation or community control revoked due to a violation, the court must order electronic monitoring as a condition of the subsequent term of probation or community control (FS 948.063).
- ◆ In carrying out a court or commission order to electronically monitor probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses, the department must use a system that actively monitors and identifies the offender's location and reports or records the offender's presence near or within a crime scene or in a prohibited area, or the offender's departure from specified geographic limitations (FS 948.11[6]).
- ◆ All offenders who are placed on probation or community control for crimes that took place on or after September 1, 2005 must be placed under electronic monitoring as a condition of their probation or community control supervision if they are designated as sexual predators, or have ever been convicted of certain sex crimes involving victims 15 years of age or younger and an offender who is 18 years of age or older (FS 948.30[3]).¹⁷

In order to allow for the implementation of these provisions, Florida Statute 943.04352 was created to require probation service providers to search the sex offender/predator registry whenever they place an individual on misdemeanor probation.

¹⁵ FS 948.012(4).

¹⁶ In Florida, the conditional release program requires inmates convicted of repeated violent offenses or designated as sexual predators to be released under close supervision as they near the end of their sentence ("House of Representatives," p. 5, see Attachment B). As defined in FS 948.001, community control refers to supervised custody in the community in which an offender's behavior or location is restricted, and probation is a form of community supervision requiring specified contacts with parole and probation officers along with other conditions.

¹⁷ The provisions listed above reflect the changes made by Jessica's Law; however, Florida Statute 948.30 includes a number of additional terms and conditions of probation or community control for certain sex offenders that may be different from the conditions of community supervision in Alaska.

SEX OFFENDER REGISTRATION LAWS IN FLORIDA AND ALASKA

Florida law designates an offender as either a "sex offender" or "sexual predator" depending on the crime and when it was committed. An individual who commits any listed sex offense who is being released from the sanction imposed for the crime after October 1, 1997, or who is currently under the custody or control of the Florida Department of Corrections will be designated as a sex offender. The court can designate an individual as a sexual predator if the person is convicted of either one first-degree felony sex crime, or two second degree felony sex crimes, which were committed on or after October 1, 1993. Jessica's Law removed language that required the two second degree felony sex crimes to have been committed within a ten year period in order for an individual to qualify for the sexual predator designation. In addition, as of July 1, 2004, anyone civilly committed under the Florida Jimmy Ryce Sexually Violent Predator Act must also register as a sexual predator.²⁰

In Florida, sexual predators and offenders are generally required to maintain registration for the duration of their lives; however, under some circumstances a sexual predator may petition the court for removal of the sexual predator designation. "Jessica's Law" increased from 20 to 30 years the length of time sexual predators must wait after they are released from prison, supervision and sanction, before they are allowed to petition to have the designation removed.²¹

While Florida law now essentially requires that all sex offenders and sexual predators register for life unless they petition to have the designation removed, Alaska requires sex offenders to register for either 15 years or life, depending on the crime. Convicted sex offenders in Alaska are required to comply with Department of Public Safety Sex Offender/Child Kidnapper registration requirements for either 15 years, or the remainder of their lifetime, as follows:

- ◆ 15 years after the offender is released from all requirements of a sentence, including probation and parole, for a single conviction of a non-aggravated sex offense or for one child kidnapping conviction, not counting any year in which the offender failed to comply with the registration laws.
- ◆ Lifetime for registrants convicted of one aggravated sex offense, two or more sex offenses, two or more child kidnappings or one sex offense and one child kidnapping offense.²²

"Jessica's Law" requires all designated sexual predators and offenders to register twice a year in person at the sheriff's office in the county where they reside.²³ In Florida, sexual predators or

²⁰ "Frequently Asked Questions," Florida Sexual Offenders and Predators, Florida Department of Law Enforcement, <http://www3.fdle.state.fl.us/sopu/index.asp?PSessionId=829341881&>. See FS 775.21(3) and 943.0435(12) for additional information regarding sexual predators and sex offenders.

²¹ Pursuant to FS 775.21(6)(l), the 30-year period only applies to individuals who are designated as sexual predators by the court on or after September 1, 2005. "Jessica's Law" did not change the Florida policy that sex offenders can petition to have the designation removed after 20 years.

²² AS 12.63.020. We include, as Attachment I, "Information Pamphlet Concerning Sex Offender/Child Kidnapping Registration in Alaska," State of Alaska Department of Public Safety.

require background screening of all non-instructional school district employees and contractual personnel who are permitted access to school grounds when students are present. Previously this type of screening was only required if the employee had direct contact with students or access to school funds. Pursuant to AS 12.62.400, the Department of Public Safety may obtain a national criminal history record check for individuals who seek a teacher's certificate, school bus driver license, licensure as a nurse or nurse aide, or a position involving supervisory or disciplinary power over a minor or dependent adult.

RESEARCH AND IMPROVED DATA SHARING

In addition to making substantive changes in the criminal code, "Jessica's Law" also increased research, assessment, and information distribution. The law provides for the following:

- ◆ A task force within the Department of Law Enforcement to examine the collection and dissemination of offender information within the criminal justice system and the community, and recommend strategies and actions to enhance coordination within the criminal justice system;
- ◆ A study of the effectiveness of Florida's sexual predator and sexual offender registration process and community and public notification provisions prepared by the Office of Program Policy Analysis and Governmental Accountability;
- ◆ Developing a graduated risk assessment to identify and closely monitor high-risk sex offenders on probation or community control who have certain risk factors;
- ◆ Posting a cumulative chronology of any high-risk sex offender's history of probation, community control, and substantive violation on the Florida Department of Law Enforcement's Criminal Justice Intranet so that this information is available to the court at first appearance and subsequent hearings for high-risk sex offenders;
- ◆ Developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring;
- ◆ Conducting research on factors relating to sentencing of sex offenders.²⁹

The Alaska Department of Corrections utilizes an in-depth risk assessment conducted by sex offender treatment providers in creating individualized supervision and treatment plans for offenders on probation and parole. Within the Alaska Department of Corrections, evaluation of sex offender programs may be done by the individuals administering the programs. For example, the DOC recently received funding for two positions to implement, coordinate, manage and evaluate the pilot program in Anchorage involving polygraph testing. While these individuals will

²⁹ Section 22-23, HB 1877, FS 948.061, FS 216.136.

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August 11, 2005

Ms. Barbara Seybold
P.O. Box 520828
Big Lake, AK 99652

Dear Ms. Seybold:

I received and read the correspondence you sent to me, voicing concerns about sex offender issues in Alaska. Thank you for taking the time to write and express your concerns about this very serious public safety issue.

First, I am a strong supporter of increasing the number of law enforcement officers in Alaska, both within the Alaska State Troopers and local police departments. During the past two legislative sessions I asked for and received funding for 25 new Department of Public Safety state trooper positions. Ten positions were added to the specialized investigation units in order to help address in part the very issue you raise. Since becoming Governor, I have directed the Department of Public Safety and the Department of Law to aggressively investigate and prosecute those persons involved in sex offender activity.

With my signature, I put into law a statute requiring judges to sentence sex offenders with multiple convictions to a minimum of 40 to 99 years. Additionally, Alaska laws deny sex offenders one-third 'good time' reduction in sentences, and sex offenders are required to register and are prosecuted if they do not.

Under recent legislation, judges must sentence sex offenders to eight to twelve years for a first serious offense. After my election to office, I passed legislation requiring judges to impose *consecutive* jail time for sex offenses involving multiple victims or for multiple crimes against the same victim. Therefore, with these sentencing guidelines in place, a first time offender can easily receive a sentence of 24 years or more.

I am always interested in improving criminal laws to assist with the protection of our citizenry, particularly when it comes to our children. It is possible that improved legislation could be introduced, either through my office or by a legislator. I will ask the Department of Law to consider drafting a bill

Ms. Barbara Seybold
August 11, 2005
Page 2

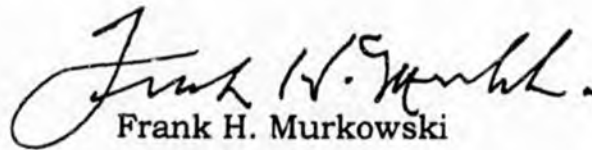
with specific intent to require additional mandatory sentencing for the crime of sexual abuse of a minor. You are certainly encouraged to work with your legislators for possible introduction of a similar bill during the next legislative session.

I certainly share your concerns and appreciate your input about this issue. I firmly believe that our children need to be protected from sexual predators. It is strong citizen advocates, such as yourself, that help create the necessary and much needed protections for those who cannot protect themselves.

Although increasing the number of police officers and enhancing the state sex offender laws are slow and complex procedures, I want to assure you that my administration is diligently working to improve these public safety issues in Alaska.

I would like to thank you again for taking your time to write about your concerns and I would encourage you to communicate with your legislators about these very important issues.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

cc: William Tandeske, Commissioner, Department of Public Safety
Colonel Julia Grimes, Director, Alaska State Troopers

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 353
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Sentencing for Sexual Offenses RDU Alaska Court System
 Component Trial Courts
 Sponsor Representatives Neuman and Lynn
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 353 significantly increases the presumptive sentences for those convicted of sexual offenses. It is likely that the longer sentences will increase a defendant's willingness to go to trial. Although the additional costs associated with those trials will fiscally impact the court system, the extent of the impact is too speculative to support a fiscal note.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 1/31/06 @ 9:00 am
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 1/31/2006
 Agency Alaska Court System

NATIONAL
CENTER FOR 
**MISSING &
EXPLOITED**
CHILDREN

OJJDP Office of Juvenile Justice
and Delinquency Prevention
Office of Justice Programs ♦ U.S. Department of Justice

A MODEL STATE SEX-OFFENDER POLICY

2003

We're here because they're out there

INTRODUCTION: THE NEED FOR ACTION

The total federal, state, and local adult correctional population has reached an all-time high of more than 6.5 million.¹ It is estimated that more than 3 percent of the adult population in the United States, or 1 in every 32 adults, is incarcerated or living in the community while on probation or parole.² In state prisons alone, 49 percent of prisoners are serving time for violent offenses³ including rape and other forms of sexual assault.

The National Center for Missing & Exploited Children[®] (NCMEC) is particularly concerned with the incidence of sex offenses committed against children. In 67 percent of all reported incidents of sexual assault,⁴ the victims are younger than 18, and 34 percent of all victims are younger than 12.⁵ One in seven victims of sexual assault reported to law-enforcement agencies nationwide is a child younger than 6.⁶ For victims younger than 12, 4-year-olds are at the greatest risk of sexual assault.⁷ Of those offenders actually convicted of rape or sexual assault, two-thirds have a victim who is younger than 18, with the vast majority of these victims being 12 or younger.⁸

Even more disconcerting, perhaps, is that juvenile victimizations are likely to include more than one victim. In 19 percent of juvenile sexual assault victimizations, the juvenile is victimized along with another individual.⁹ Thirteen percent of juvenile victimizations involve a second victim, and the remaining 6 percent involve three or more victims, although not necessarily victims of sexual assault.¹⁰

Of further concern to NCMEC is that 40 percent of offenders who victimize children younger than 6 are, themselves, juveniles younger than 18.¹¹ Yet few prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile transfers to criminal court, and even fewer have written guidelines about such transfers.¹²

As policymakers address the issue of sex offenders, they are confronted with several basic, and unfortunate, realities as noted below.

- Sex offenders who are in prison tend to serve limited sentences.¹³
- Most sex offenders are not in prison, but rather live in our own cities, towns, and neighborhoods;¹⁴ however, their presence is largely unknown.¹⁵
- Some sex offenders, particularly those who go without treatment, are at a high risk to reoffend;¹⁶ yet, state-sponsored treatment programs are under attack and disappearing around the country.¹⁷
- While community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.¹⁸

Nationwide there are more than 400,000 registered sex offenders.¹⁹ This particular criminal group poses an enormous challenge for policymakers. Sex offenders can evoke unparalleled fear, and their offenses can result in lifelong and damaging consequences for victims.

The most frequent victims of sexual attacks are often the most vulnerable segment of our society, with more than one-third of all sexual assaults involving a child victim younger than 12.²⁰ **There is an urgent need for action.**

TRIAGE: THE STRATEGY

NCMEC believes that each state must adopt a triage approach to sex offenders. We must develop a range of responses, depending on the severity of the crime, with maximum sentences for those offenders who represent the greatest risk to the community. The criteria for seriousness, however, should not be limited to "violent" offenders. NCMEC believes that many of the most predatory offenders are not violent in the traditional sense. Thus we encourage legislative language that addresses both **violent and predatory sex offenders**.

In order to implement this triage concept, we must develop mechanisms for performing effective evaluation of sex offenders at the earliest possible stage. Since juveniles are perpetrators as well as victims of sexual assault, the strategy must expressly address this group of offenders. We must also create a variety of options and alternatives for early, effective intervention with all sex offenders.

Although the public at-large generally expresses a desire for harsher penalties for sex offenders, in many cases the actual victims often desire that one result of prosecution be supervised treatment either in a prison or community setting. This is particularly true when the offender is related to or an acquaintance of the victim or the victim's family. A criminal-justice response that does not include treatment opportunities for at least some sex offenders may undermine victim cooperation with the prosecution.²¹ In this time of controversy regarding the efficacy of treatment, a general consensus has been reached on several basic points.

- Treatment is effective for some sex offenders.²²
- Treatment is generally more effective for those who participate voluntarily and have the motivation to change.²³
- Treatment may result in a reduction of additional offenses.²⁴
- Treatment goes beyond counseling in a therapist's office.²⁵

On the other hand, however, there are some offenders for whom there is no effective treatment at the current time.²⁶ Consequently our overall standard must be to **reduce harm**, and we caution against community-based studies with random assignment to treatment and non-treatment control groups, as such studies cannot seem to be conducted without introducing unacceptable risks into the community.²⁷

Finally we must make post-release supervision and follow-up a priority. It is not enough to merely ensure that an offender completes his or her particular program or sentence. Since most sex offenders will eventually return to the community, the community is interested in policies and practices that will ensure the greatest level of safety over the long term.²⁸ This makes it imperative that there be continuing contact, supervision, and resources directed to the largest segment of the sex-offender population – those who are in the community.

COMPREHENSIVE POLICY: THE RESPONSE

A comprehensive criminal-justice response is key to effectively addressing the issue of sex offenders, particularly those living within our communities and not within the confines of a prison cell. The concepts, policies, and laws noted below need not be accomplished strictly through legislation and state statute, but can also be carried out in regulations, administrative practices, codes, policies, and/or prosecutor charging and filing standards. State officials should evaluate their own current approaches to identify possible areas for change.

The eight goals of our recommended sex-offender policy are listed below.

- States should develop a comprehensive policy regarding sex offenders.
- Sex offenders should be correctly identified and charged within the criminal-justice system.
- A systematic decision-making process regarding disposition of cases should be implemented.
- A sentencing structure permitting a range of degrees of confinement and levels of supervision should be available.
- Treatment programs should be part of the criminal-justice-system response.
- Convicted sex offenders should receive community supervision.
- Sex-offender-registration and community-notification programs should be implemented.
- States should involve victims and community members and use individual interest and knowledge to improve laws, education, and prevention mechanisms.

Each element is discussed in greater detail below.

I. STATES SHOULD DEVELOP A COMPREHENSIVE POLICY REGARDING SEX OFFENDERS

A. Evaluate and Assess Available Options

States should start by evaluating and assessing the broad spectrum of laws and policies in place in other jurisdictions as well as their own. Key areas to look at are definitions of various sex offenses, punishment and sentencing requirements, treatment and supervision programs, and successful strategies that have been implemented to address the growing public concern of what to do with sex offenders.

Calculate the cost of sanctions versus the cost of services. Within this framework, decisions can be made about the essential steps needed to create a comprehensive system that responds differently to high-, medium- and low-risk situations and offenders.

B. Prosecute Vigorously

Cases for which there is legal sufficiency should be vigorously prosecuted to the fullest extent of the law. Persons who commit sex offenses, whether adults or juveniles being tried as adults, should, whenever possible, be convicted of crimes that accurately reflect the serious nature of their conduct. Such individuals should also be properly labeled as "sex offenders" so that future protective steps can be taken.

C. Encourage Victim Cooperation

Victims should be encouraged to cooperate with and participate in the criminal-justice system. Unnecessary system-induced trauma should be minimized through the implementation of a thorough crime victims' rights policy including victim-witness support programs, specialized units, and appropriately trained personnel within prosecutor offices and other law-enforcement agencies; "secondary-victim" treatment provisions for victim family members; prosecutions sensitive to child victims; and legislation adopting a comprehensive Victim Bill of Rights.

D. Focus Sentencing on Public Safety

Sentencing practices should be primarily focused on community safety. Victim wishes should be heard and considered, including requests for treatment of the offender, however, where victim requests conflict with community interests, such wishes should not be determinative.

Maximum sentences should be imposed for those offenders who represent the greatest risk to the community.

Probation should not be allowed for the majority of sex offenses committed against children or those deemed particularly violent or predatory.

Among standard probation and parole requirements for sex offenders should be to refrain from contact with the victim(s) and all immediate family members. Those convicted of crimes against children should be ordered to refrain from contact with all children.

States should create child-safety zones around the areas where children normally play. Offenders should be prohibited from entering these zones. This measure will also rule out the possibility that sex offenders will participate in activities or professions involving children such as coaching or working at daycare centers.

E. Treatment Is an Opportunity

Treatment for offenders should be viewed as an opportunity and not a right. States should support offender treatment within realistic means. Treatment programs for offenders should not receive funding disproportionate to that given to treatment programs for crime victims.

F. Make Research a Priority

Research must be a priority focusing on what does and does not work in terms of sentencing practices, treatment programs, and the like. To reiterate, however, we caution against community-based studies with random assignment to treatment and non-treatment control groups as such studies cannot seem to be conducted without introducing unacceptable risks into the community.

II. SEX OFFENDERS SHOULD BE CORRECTLY IDENTIFIED AND CHARGED WITHIN THE CRIMINAL-JUSTICE SYSTEM

A. Identify Sex Offenders Early

Sex offenders should be identified early on in their criminal careers and properly charged with any offenses they commit. Even when incarceration is not possible, prosecutors should, at a minimum, obtain a conviction that conveys the essence and egregious nature of the act(s) committed. Prosecutors should rarely agree to pleas to a nonsexual offense. It is imperative that prosecutors "build a record" from the first moment possible.

B. Disallow *Alford*'s Pleas

The *Alford* Doctrine allows a defendant to plead guilty to a crime while not admitting that he or she actually committed it. Prosecutors should not allow sex offenders to plead guilty under the *Alford* Doctrine, especially if they are going to seek treatment or registration as conditions of probation.

C. Sex-Offender Registration Is Imperative

Sex offenders should not be allowed to plea bargain out of sex-offender registration.

D. Allow for Special Findings

A special finding of "sexual motivation" should be established for use with sex offenders who are charged with or convicted of a nonsexual offense that was, however, sexually motivated such as burglary or murder.

E. Address Juvenile Offenders

Juvenile offenders who victimize their peers should be identified and addressed at the first offense. When possible, prosecutor offices handling juvenile cases should have a specialized unit dealing with juvenile cases transferred to criminal court. At a minimum all offices should have written guidelines addressing such transfers.

F. Investigate Child Pornography

States should aggressively pursue investigations that involve or uncover child pornography as these materials represent evidence of actual sexual abuse of a child and may signal a proclivity for active sexual exploitation of children.

G. Adopt Child-Enticement Laws

Child-enticement laws should be enacted to help identify would-be sex offenders.

H. Address New Areas of Sexual Exploitation

States should develop the capacity, technology, and expertise for attacking new areas of sexual exploitation including illegal uses of cyberspace. States should establish specialized "cyber" units within law enforcement to combat child sexual exploitation, child pornography, and child enticement.

III. A SYSTEMATIC DECISION-MAKING PROCESS REGARDING DISPOSITION OF CASES SHOULD BE IMPLEMENTED

A. Require Pre-Sentence Reports

Pre-sentence reports (PSR) should be required for all sex offenders. A PSR should be prepared to assist the court in determining the defendant's sentence after conviction. The PSR should include any relevant sentencing guidelines, information on prior arrests or convictions, employment and family background, and an analysis of the impact of the crime on the victim(s). The person preparing the PSR should make a reasonable effort to consult with the victim. If the victim is not available or declines to speak with the individual preparing the report, the report should reflect such information.

B. Develop Uniform Sentencing Standards

Standards identifying which offenders are eligible for different sentencing alternatives should be developed and uniformly followed. Level of risk of the offender and the offense(s) committed should be taken into consideration when developing such standards.

C. Dispositions Should Be Systematic

Dispositions should be systematic and implemented uniformly statewide. An efficient method of statewide communication, such as the Internet, should be developed to keep all prosecutors aware of developments and setbacks in the prosecution and sentencing of sex offenders.

D. Make Training Available

Training on a variety of topics should be made available to law enforcement, prosecutors, judges, and community-corrections officers who handle sex-offender cases. Possible topics include developments in state and federal law and working with child victims and witnesses.

IV. A SENTENCING STRUCTURE PERMITTING A RANGE OF DEGREES OF CONFINEMENT AND LEVELS OF SUPERVISION SHOULD BE AVAILABLE

A. Consider Certain Factors in Sentencing Decisions

Seriousness of the crime, number of victims involved, age of the victim(s), relationship of the victim(s) to the offender, injury to the victim(s), extensiveness and seriousness of the offender's criminal record, and risk to the community should all be considered in making a sentencing decision.

B. Develop Innovative Approaches to Community Supervision

Innovative approaches to community supervision, such as day-reporting and electronic monitoring, should be evaluated and encouraged.

C. Restrict Eligibility for Community-Based Treatment

Eligibility for community-based treatment programs should be restricted to less dangerous offenders. Violent rapists and repeat sex offenders should be excluded.

Eligibility for community-based treatment programs should be denied to those who plead *nolo contendere* or use *Alford* pleas.

Treatment should be available only to those who genuinely accept responsibility for their acts and remorsefully admit their guilt.

D. Back Treatment Alternatives with Suspended Prison Time

Treatment alternatives should be backed by suspended prison time so that the system maintains leverage and offenders are given the strongest possible incentive to participate in a meaningful and serious way.

E. Enact Truth-in-Sentencing Laws and Policies

States should enact truth-in-sentencing laws and policies and study them for efficacy. In addition to reducing "good time" accumulation for violent criminals, truth-in-sentencing laws should require inmates to earn sentence reductions through active participation in work, education, vocational, substance-abuse-prevention, and mental-health programs.

F. Eliminate Flat-Time Release Without Supervision

States should eliminate flat-time release without supervision for sex offenders.

G. Enact Civil-Commitment Laws

Laws should be enacted that would allow the limited and carefully constructed use of civil commitment for sex offenders displaying a mental abnormality of such severity that the offender represents a clear danger to public health and safety.³⁰

H. Construct Provisions for Repeat and Extremely Dangerous Offenders

Special provisions for repeat and/or extremely dangerous sex offenders should be considered, debated, implemented, and evaluated. Such provisions include habitual criminal statutes, civil commitment, and lifetime parole.

V. TREATMENT PROGRAMS SHOULD BE PART OF THE CRIMINAL-JUSTICE RESPONSE

A. Reduce Recidivism

To the extent possible, treatment approaches within prisons and the community should be based on current research and programs with demonstrated effectiveness in reducing recidivism. The primary concern should always be public safety and reducing potential harm to the community.

B. Offenders Should Not Select the Treatment Program

The selection of community-based treatment as a condition of probation or parole should be approved by corrections' officials. Offenders should not be allowed to select their own treatment program or provider.

C. Demand Minimum Standards of Mental-Health Practitioners

Mental-health practitioners who provide treatment services to sex offenders as a result of probation or parole requirements must meet minimum standards for competence and accountability including training in and experience with sex offenders, willingness to report infractions, and limited confidentiality. It is essential that practitioners have specialized knowledge and skill in order to effectively monitor public-safety risks.

D. "One-Size-Fits-All" Treatment Programs Are Not Effective

Treatment programs should be offender-specific and tailored to offender typology and paraphilia. States should further implement programs geared toward the treatment of juvenile sex offenders.

E. Take Culture and Language into Consideration

Culturally relevant and acceptable treatment programs and providers should be made available including ethnically diverse providers and providers with foreign-language abilities.

F. Offenders Should Be Expected to Pay for Community-Based Treatment

A revolving loan fund should be created for otherwise eligible offenders who are truly indigent.

Offenders should also be expected to contribute to a victim-restitution fund.

VI. CONVICTED SEX OFFENDERS SHOULD RECEIVE COMMUNITY SUPERVISION

A. Supervise Release of Sex Offenders

Sex offenders who remain in or are released into the community should be supervised. The level, degree, and intensity of follow-up and supervision should be based on the level of risk assigned to the offender.

States should create long periods of supervision, such as life, for the most serious sex offenders.

In developing a supervised release policy, consider the points listed below.

- Supervision should be meaningful such as face-to-face contact and unannounced visits.
- Supervision should incorporate "relapse prevention," a model for identifying precursors to offending. The supervising officer should have knowledge of and closely monitor individual precursors.
- Those who are supervising sex offenders should have specialized training.
- Polygraphs should be used by probation and parole officers at regular intervals.

B. Include Individual Restrictions

Parole and probation restrictions should be limited to a plausible few, as failure to do so sets offenders up for violation.³¹

Community supervision should include individualized restrictions on high-risk activities such as unsupervised contact with minors and alcohol or drug use. If an individual completes a prison sentence and the probation or parole supervisor feels he or she constitutes a risk to a potential victim, then that individual should not be allowed to live within a certain proximity to that particular victim.

C. Develop "Failure-to-Comply" Guidelines

Guidelines for failure-to-comply with conditions of release should be developed and strictly followed. Options to consider are an increase in the level of supervision and revocation of community-release privileges.

Parole and probation officers should also be given special authority to intervene if they determine that a registered sex offender is improperly interacting with children.

D. Limit Caseloads

Due to the need for more intensive supervision, states should seek to limit probation- and parole-officer caseloads and develop sex-offender specialists.

VII. SEX-OFFENDER REGISTRATION AND COMMUNITY-NOTIFICATION PROGRAMS SHOULD BE IMPLEMENTED

A. Require Sex-Offender Registration

Sex-offender registration with law enforcement should be required for released offenders or those who remain in the community. Convicted child molesters and other sexually violent offenders should be forced to register and provide the appropriate law-enforcement agency with a current address for a minimum of 10 years.³²

States should identify and counter attempts by sex offenders to avoid the registration obligation such as through a legal name change.

Systems must be developed for ensuring the transfer, use, and exchange of registration information between states, addressing the problem of offenders moving and traveling from state-to-state.

B. Verify Addresses

States must ensure they maintain accurate registries. Addresses of registered sex offenders should be verified annually for most offenders and every 90 days for sexually violent predators.³³

C. Obtain Key Scientific Materials

As a part of the sex-offender registration process, key scientific material should be obtained from the offender including Deoxyribonucleic Acid (DNA), Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) status; fingerprints; and handwriting samples. This material can be of value in either identifying or exonerating these individuals in connection with subsequent criminal acts.

Optimally the court should order these tests at sentencing.

D. Build and Maintain Files

Law enforcement should build and maintain files on registered sex offenders including, but not limited to, information on *modus operandi*, patterns, and rituals.

E. Flag Driver-License and Vehicle-Registration Files

States should adopt policies that flag driver-license and vehicle-registration files of registered sex offenders as a means of keeping law-enforcement authorities informed of address changes, vehicle information, and personal data. Reference to an individual's status as a registered sex offender, however, must not appear anywhere on the actual driver's license or vehicle-registration documents. Such information should only be available to law-enforcement authorities so that when, for example, a law-enforcement officer makes a stop and checks an individual's license-plate or driver's license number, the officer will also know whether or not he or she is dealing with a registered sex offender.

F. Develop Risk Assessment Procedures

States should establish an Advisory Board to help create tier designations and determine the level of risk represented by each offender. Those appointed to the Advisory Board should include individuals with knowledge and specialization in the field.

Factors to be considered in assessing an individual offender's risk include prior felony convictions for a sex crime, whether the current offense caused injury or death to the victim, whether the offender's criminal history indicates a high probability of recidivism, whether the offender has been receiving or will receive counseling or therapy, conditions of release or post-release supervision,

physical conditions that may minimize the risk of reoffense such as age or physical incapacitation, psychological or psychiatric profiles, response to treatment, and behavior such as if the offender has made recent threats that he or she will commit another sexual or violent crime, and if the offender has accepted responsibility for the crime(s) committed.

G. Create Victim-Notification Programs

Victim-notification programs should exist to inform victims of relevant release or parole hearings.

H. Enact Community-Notification Laws

Laws permitting law enforcement to notify the community of the release of dangerous offenders into the community should be enacted.

Community notification should be based on levels of risk, with offenders deemed to represent the greatest threat to the community subject to active notification.³⁴ These classifications should be informed by science as well as a multidisciplinary perspective, defined in clinical terms, and determined as a result of objective criteria.

Only a small percentage of juveniles should be subject to community notification. In many states only juveniles who are prosecuted as adults and convicted of very serious offenses are included. When a juvenile sex offender is required to register, the law-enforcement agency responsible for notification should inform school superintendents, who, in turn, should notify school principals. All other community notification of juvenile sex offenders should be limited and discretionary.

The community-notification process should be coordinated with those responsible for supervising the offender in the community.

Case studies on community notification should be developed to help communities implement effective guidelines and decrease vigilantism.

I. Educate Offenders

Offenders who are about to be released and will be subject to community notification should receive education regarding the increased vigilance that will accompany their release. Offenders should also be informed of their rights once they enter the community such as the right to not be harassed.

J. Educate the Community

The community should be educated and prepared for the release of sex offenders through the use of community programs and public-education forums. The community should also be informed of the rights of the offender.

K. Adopt a Zero-Tolerance Policy

States should adopt a zero-tolerance policy regarding acts of harassment or vigilante violence directed at offenders. It must be each state's commitment to ensure that community notification regarding released offenders is handled responsibly and properly by each individual member of the community.

States should enact legislation that prohibits the sale or exchange of sex-offender-registry information for profit, makes the misuse of sex-offender-registry information a misdemeanor, and subjects to criminal prosecution any use of sex-offender-registry information to commit a crime against another person.

Any response by the appropriate law-enforcement agency to an individual's request for a sex-offender-registry list should also include a cautionary statement pertaining to the misuse of information.

VIII. STATES SHOULD INVOLVE VICTIMS AND COMMUNITY MEMBERS AND USE INDIVIDUAL INTEREST AND KNOWLEDGE TO IMPROVE LAWS, EDUCATION, AND PREVENTION MECHANISMS

A. Appoint Task Forces

State officials should appoint Task Forces and Blue Ribbon Panels to evaluate state law and policy. Recommendations should be made on an annual basis.

B. Use the Media

Public-awareness campaigns and media coverage that encourage realistic, rational, and safe responses to sex offenders should be undertaken.

The media must play a key role in educating the community about the problem of sex offenses and offenders. The media should promote public awareness regarding the complexity of the problem and the fact that there is a wide range of offenders representing varying degrees of risk.

C. Mandate Child-Safety Curricula

States should mandate child-safety and protection curricula in schools. Research has demonstrated that positive, comprehensive, and empowering content will not frighten children, but rather better enable them to successfully deal with challenges they may encounter. States have a key role in ensuring that basic messages on safety and self-protection are taught to children.

CONCLUSION

In a time of tight budgets, limited prison space,³⁵ increased awareness of incidents and reporting, and growing public demand to address the sex-offender problem more effectively, policymakers and public officials must develop a comprehensive strategy and response.

A coordinated, interagency approach is key to establishing a comprehensive sex-offender policy. By joining forces across departmental, geographic, and political boundaries, resources can be targeted toward the common goals³⁶ of holding offenders accountable and keeping the public safe from future violent crime.

ACKNOWLEDGMENTS

The National Center for Missing & Exploited Children first published *Modeling Sex-Offender Policy* in September 1998 after having convened a Sex-Offender Policy Task Force, composed of distinguished leaders in the field. Lucy Berliner, Director of the Harborview Center for Sexual Assault & Traumatic Stress in Seattle, Washington, a long-time NCMEC Board Member and Chair of NCMEC's Professional Advisory, chaired this multidisciplinary Task Force.

The Task Force examined the issues and research, listened to a cross-section of experts and practitioners, and helped NCMEC shape an initial comprehensive, research-based policy outline for decision makers. That policy has been further developed in this updated edition.

The members of the Sex-Offender Policy Task Force were:

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This publication represents the response of the National Center for Missing & Exploited Children to the enormous challenge sex offenders pose for policymakers. NCMC's recommended strategy for policymakers embodies a common-sense approach that is tough, aggressive, balanced, sensitive to victims, and, most importantly, effective.

END NOTES

¹ Lauren E. Glaze, *Probation and Parole in the United States, 2001*, U.S. Department of Justice, Bureau of Justice Statistics, August 2002, at 1. Available (NCJ 195669) from the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420.

² *Id.*

³ Paige M. Harrison and Allen J. Beck, *Prisoners in 2001*, U.S. Department of Justice, Bureau of Justice Statistics, July 2002, at 12. [Hereinafter "*Prisoners in 2001*."] Available (NCJ 195189) from NCJRS at 1-800-851-3420.

⁴ The term "sexual assault" is generally used to refer to forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. For the purposes of this publication, we will be using the definitions provided by the National Incident-Based Reporting System. These definitions can be found in the publication titled *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* by Howard N. Snyder, sponsored by the U.S. Department of Justice, Bureau of Justice Statistics, July 2000, at 13. [Hereinafter "*Sexual Assault of Young Children*."] Available (NCJ 182990) from NCJRS at 1-800-851-3420.

A **forcible sex offense** is any sex act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

Forcible rape is the carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. If force was used or threatened, the crime should be classified as forcible rape, regardless of the victim's age. If no force was used or threatened and the victim was under the statutory age of consent, the crime should be classified as statutory rape.

Forcible sodomy is oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

Sexual assault with an object is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia such as finger, bottle, handgun, and/or stick.

Forcible fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

⁵ *Sexual Assault of Young Children*, *supra* note 4, at 2, 12.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ Sheila J. Barton, *National Conference on Sex Offender Registries: Proceedings of a BJS/Search Conference*, U.S. Department of Justice, Bureau of Justice Statistics, April 1998, at 9. Available (NCJ 168965) from NCJRS at 1-800-851-3420.

⁹ *Sexual Assault of Young Children*, *supra* note 4, at 5.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² Carol J. DeFrances and Kevin J. Strom, *Juveniles Prosecuted in State Criminal Courts*, U.S. Department of Justice, Bureau of Justice Statistics, March 1997, at 3. Available (NCJ 164265) from NCJRS at 1-800-851-3420. Nineteen percent of prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile cases transferred to criminal court, and 16 percent of prosecutor offices handling juvenile cases have written guidelines about the transfer of juveniles to criminal court.

¹³ Lawrence A. Greenfeld, *Sex Offenses and Offenders: Analysis of Data on Rape and Sexual Assault*, U.S. Department of Justice, Bureau of Justice Statistics, February 1997, at 20. [Hereinafter "*Sex Offenses and Offenders*."] Available (NCJ 163392) from NCJRS at 1-800-851-3420. In 1993 the average time served for convicted rapists was approximately five years, which is about 50 percent of their full sentences, and the average time served for convictions of sexual assault was just under three years, which is just over 41 percent of their sentences.

¹⁴ Lita Furby et al., *Sex Offender Recidivism: A Review*, 105 PSYCHOLOGICAL BULLETIN 3-4 (1989). [Hereinafter "Sex Offender Recidivism."] "[T]he overwhelming majority of apprehended sex offenders are not incarcerated or institutionalized at all. For those who are convicted, probation with mandatory treatment (and perhaps some jail time) is the most common disposition." *Sex Offenses and Offenders*, supra note 13, at 15. Approximately 234,000 convicted sex offenders are currently under correctional supervision. Nearly 60 percent of these offenders are on parole or probation. These figures do not account for the sex offenders who have not entered the criminal-justice system such as offenders who have avoided detection.

¹⁵ Roxanne Lieb and Scott Matson, *Community Notification in Washington State: 1996 Survey of Law Enforcement*, Washington State Institute for Public Policy, November 1996, at 7. Only a small percent of offenders are subject to active community notification. In Washington State, for example, from 1990 to 1996, it is estimated that only 1,105 out of the 9,912 (11 percent) registered offenders were subject to Level II and III notification. In addition many offenders were able to escape detection. See also Gene Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 JOURNAL OF INTERPERSONAL VIOLENCE 3 (1987) (results from a self-report study).

¹⁶ W.L. Marshall and H.E. Barbaree, *Outcome of Comprehensive Cognitive-Behavioral Treatment Programs*, HANDBOOK OF SEXUAL ASSAULT 371 (1990). Baseline recidivism rates for untreated sex offenders are difficult to calculate, but several studies indicate that recidivism based on law-enforcement records only, for exhibitionists is between 41-71 percent; for rapists 7-35 percent; for opposite-sex child molesters 10-29 percent; and same-sex child molesters 13-40 percent. See also Lucy Berliner and Diana Elliot, *Sexual Abuse of Children*, THE APSAC HANDBOOK ON CHILD MALTREATMENT 53 (John Briere et al. eds., 1996) (discussing family, race, and gender rates of sexual abuse among children). See generally *Sex Offender Recidivism*, supra note 14, at 105 (reviewing different empirical studies of sexual offense recidivism rates).

¹⁷ R.F. Longo et al., *1994 Nationwide Survey of Treatment Programs and Models*, The Safer Society Program and Press (1995). Although private treatment programs have been increasing in recent years, there has been a decrease in sex-offender treatment programs in prison.

¹⁸ Carol Poole and Roxanne Lieb, *Community Notification in Washington State: Decision-Making and Costs*, Washington State Institute for Public Policy, July 1995, at 10. The level of community supervision of sex offenders varies. In Clarke County, Washington, for example, offenders deemed highly dangerous are visited monthly by law-enforcement personnel. In King County, Washington, which has a significantly larger population, home visits are replaced by telephone calls and certified mail.

¹⁹ Personal interviews with representatives of sex-offender registries in the 50 states and the District of Columbia conducted by the Legal Resource Division of the National Center for Missing and Exploited Children, December 2002 - April 2003. Total figure is 456,935.

²⁰ *Sexual Assault of Young Children*, supra note 4, at 12.

²¹ Lucy Berliner et al., *A Sentencing Alternative for Sex Offenders: A Study of Decision Making and Recidivism*, 10 JOURNAL OF INTERPERSONAL VIOLENCE 487-488 (1995). Especially in cases where the offender is related or known to the victim, the victim may not want to report the incident(s) if there is no other alternative to incarceration. For example the victim may not wish that a father or sibling be incarcerated. This may also hold true if the offender provides financial support. Additionally the victim may be concerned about potential harm to the society caused by the future release of a sex offender who remains untreated. See also William D. Murphy and Timothy A. Smith, *Sex Offenders Against the Children*, THE APSAC HANDBOOK ON CHILD MALTREATMENT 176 (John Briere et al. eds., 1996) (considering whether treatment instead of incarceration for sex offenders would encourage victims to step forward).

²² W.L. Marshall and W.D. Pithers, *Reconsideration of Treatment Outcome with Sex Offenders*, 21 CRIMINAL JUSTICE AND BEHAVIOR 10-27 (1994).

²³ Judith Becker, *Offender Characteristics and Treatment*, 4 THE FUTURE OF CHILDREN 176, 187 (1994) (citing R. McGrath, *Sex Offender Risk Assessment and Disposition Planning: A Review of Empirical and Clinical Findings*, 35 INTERPERSONAL JOURNAL OF OFFENDER TREATMENT AND COMPARATIVE CRIMINOLOGY 328 (1991)). [Hereinafter "Offender Characteristics and Treatment."] A sex offender can be amenable to treatment if he or she acknowledges his or her sexual offense, wants to stop, and is willing to participate fully in treatment.

²⁴ See, for example., W.L. Marshall and H.E. Barbaree, *The Long-Term Evaluation of a Behavioral Treatment Program for Child Molesters*, 26 BEHAVIOR RESEARCH THERAPY 499 (1988). One treatment study for child molesters, comparing a control group (n=58) and an experimental group (n=68), found that recidivism rates between the two groups was statistically significant. The sex reoffense rate, using unofficial statistics, was 13 percent for the treatment group and 35 percent for the nontreatment group. The follow-up period was one to eleven years. See also W.L. Marshall et al.,

Treatment Outcome With Sex Offenders, 11 CLINICAL PSYCHOLOGY REVIEW 465 (1991) (concluding that comprehensive cognitive behavioral programs are the most likely effective treatment for child molesters).

²⁵ *The Sex Offender: Corrections, Treatment and Legal Practice Part IV*, Barbara K. Schwartz and Henry R. Cellini eds., Civic Research Institute, 1995. Aside from treatment, other elements in relapse prevention include behavioral management, aftercare treatment programs, external supervision, and community management of the sex offender.

²⁶ M.E. Rice et al., *Sexual Recidivism Among Child Molesters Released from a Maximum Security Psychiatric Institution*, 59 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 381 (1991). Experts suggest that for a small number of dangerous offenders, treatment is not effective. One treatment study for child molesters, comparing a control group (n=86) to an experimental group (n=50), found no statistically significant difference in recidivism rates. For the offenders who matched on criminal history and sexual preference, the reconviction rate was 38 percent for the treatment group and 31 percent for the nontreatment group. The average follow-up time was 6.3 years.

²⁷ *Offender Characteristics and Treatment*, *supra* note 23, at 184. Community-based controlled studies with random assignment are ethically questionable.

²⁸ Marie A. Bochnewich, *Predictions of Dangerousness and Washington's Sexually Violent Predator Statute*, 29 CAL. W. L. REV. 227 (1992). There is evidence that very few sex offenders are permanently incarcerated. See generally Lin Song and Roxanne Lieb, *Adult Sex Offender Recidivism: A Review of Studies*, Washington State Institute for Public Policy, January 1994, at 2 (observing that most convicted sex offenders eventually return to the community).

²⁹ In *North Carolina v. Alford*, 400 U.S. 25 (1970), the U.S. Supreme Court held that an individual may voluntarily and knowingly consent to the imposition of a prison sentence even if he is unwilling or unable to permit his participation in the acts constituting the crime.

³⁰ The Supreme Court decision of *Kansas v. Hendrick*, 521 U.S. 346 (1997), examines one such statute and provides a framework and context for the creation of such provisions.

³¹ Walter J. Dickey and Michael E. Smith, *Rethinking Probation: Community Supervision, Community Safety*, U.S. Department of Justice, Office of Justice Programs, December 1998, at 10. [Hereinafter "Rethinking Probation."] Available (NCJ 178236) from NCJRS at 1-800-851-3420.

³² These requirements are suggested pursuant to the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (42 U.S.C. § 14071).

³³ *Id.*

³⁴ Leading community notification models include those in Minnesota, New Jersey, and the state of Washington.

³⁵ *Prisoners in 2001*, *supra* note 3, at 10. On December 31, 2001, state prisons were operating between 1 and 16 percent above capacity, while federal prisons were operating at 31 percent above capacity.

³⁶ *Rethinking Probation*, *supra* note 31, at 5.

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*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 30, 2005 ***

TITLE 47. CRIMINAL PROCEDURE AND CORRECTIONS (Chs. 900-985)
CHAPTER 921. SENTENCE

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 921.141 (2005)

§ 921.141. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence

(1) *SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.* --Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

(2) *ADVISORY SENTENCE BY THE JURY.* --After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) *FINDINGS IN SUPPORT OF SENTENCE OF DEATH.* --Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(4) *REVIEW OF JUDGMENT AND SENTENCE.* --The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) *AGGRAVATING CIRCUMSTANCES.* --Aggravating circumstances shall be limited to the following:

(a) [As amended by s. 1, ch. 96-302.] The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(a) [As amended by s. 5, ch. 96-290.] The capital felony was committed by a person under sentence of imprisonment or placed on community control or on probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal street gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(6) *MITIGATING CIRCUMSTANCES.* --Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

(7) VICTIM IMPACT EVIDENCE. --Once the prosecution has provided evidence of the existence of one or more aggravating circumstances as described in subsection (5), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

(8) APPLICABILITY. --This section does not apply to a person convicted or adjudicated guilty of a capital drug trafficking felony under s. 893.135.

HISTORY: s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8663(246); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353; s. 177, ch. 83-216; s. 1, ch. 87-368; s. 10, ch. 88-381; s. 3, ch. 90-112; s. 1, ch. 91-270; s. 1, ch. 92-81; s. 1, ch. 95-159; s. 5, ch. 96-290; s. 1, ch. 96-302; s. 7, ch. 2005-28; s. 2, ch. 2005-64.

NOTES:

AMENDMENTS

The 2005 amendment by s. 7, ch. 2005-28, effective September 1, 2005, added (5)(o).

The 2005 amendment by s. 2, ch. 2005-64, effective July 1, 2005, in the first sentence in (7), added "to the jury" following "victim impact evidence."

NOTE.--Former s. 919.23.

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TITLE 47. CRIMINAL PROCEDURE AND CORRECTIONS (Chs. 900-985)
CHAPTER 921. SENTENCE

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 921.0016 (2005)

§ 921.0016. Recommended sentences; departure sentences; aggravating and mitigating
circumstances

(1) (a) The recommended guidelines sentence provided by the total sentence points is
assumed to be appropriate for the offender.

(b) A trial court judge may impose a state prison sentence which varies upward or
downward by up to, and including, 25 percent from the recommended guidelines state
prison sentence without issuing a written statement delineating the reasons for the
variation.

(c) A state prison sentence which varies upward or downward from the
recommended guidelines prison sentence by more than 25 percent is a departure sentence
and must be accompanied by a written statement delineating the reasons for the
departure, filed within 7 days after the date of sentencing. A written transcription of
orally stated reasons for departure from the guidelines at sentencing is permissible if it is
filed by the court within 7 days after the date of sentencing.

(d) The imposition of a split sentence of incarceration followed by community
control or probation does not by itself constitute a departure from sentencing guidelines.
For the purpose of determining the maximum sentence authorized by law, any
community control portion of a split sentence does not constitute a term of imprisonment.

(e) A departure sentence must be within any relevant maximum sentence limitations
provided by s. 775.082.

(2) A departure from the recommended guidelines sentence is discouraged unless
there are circumstances or factors which reasonably justify the departure. Aggravating
and mitigating factors to be considered include, but are not limited to, those listed in
subsections (3) and (4). The failure of a trial court to impose a sentence within the

sentencing guidelines is subject to appellate review under chapter 924, but the extent of departure from a guidelines sentence is not subject to appellate review.

(3) Aggravating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.

(c) The offenses before the court for sentencing arose out of separate episodes; the primary offense is scored at offense level 4 or higher; and the defendant has committed five or more offenses within a 180-day period that have resulted in convictions.

(c) The primary offense is scored at offense level 3 and the defendant has committed eight or more offenses within a 180-day period that have resulted in convictions.

(e) The offense before the court for disposition was committed within 6 months after the defendant was discharged from a release program, as defined in s. 921.0011(6), or released from state prison, whichever is later.

(f) The defendant occupied a leadership role in a criminal organization.

(g) The offense was committed by a public official under color of office.

(h) The defendant knew the victim was a law enforcement officer at the time of the offense; the offense was a violent offense; and that status is not an element of the primary offense.

(i) The offense created a substantial risk of death or great bodily harm to many persons or to one or more small children.

(j) The victim was especially vulnerable due to age or physical or mental disability.

(k) The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.

(l) The victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.

(m) The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.

(n) The offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:

1. The offense involved multiple victims or multiple incidents per victim;

2. The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

3. The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or

4. The defendant was in the past involved in other conduct similar to that involved in the current offense.

(o) The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.

(p) The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).

(q) The defendant induced a minor to participate in any of the offenses pending before the court for disposition.

(r) The primary offense is scored at offense level 7 or higher and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher.

(s) The defendant has an extensive unscorable juvenile record.

(t) The defendant committed an offense involving sexual contact or sexual penetration and as a direct result of the offense, the victim contracted a sexually transmissible disease.

(4) Mitigating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

(f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(g) The defendant acted under extreme duress or under the domination of another person.

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

(5) A defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (4) and does not, under any circumstances, justify a downward departure from the sentence recommended under the sentencing guidelines.

HISTORY: s. 13, ch. 93-406; s. 7, ch. 95-184; s. 5, ch. 96-409; ss. 1, 41, ch. 97-194.

NOTES:

NOTE.--Section 1, ch. 97-194, provides that "[s]ections 921.0001, 921.001, 921.0011, 921.0012, 921.0013, 921.0014, 921.0015, 921.0016, and 921.005, Florida Statutes, as amended by this act, are repealed effective October 1, 1998, except that those sections shall remain in effect with respect to any crime committed before October 1, 1998." Section 43, ch. 97-194, provides that "[t]he Division of Statutory Revision of the Joint Legislative Management Committee shall leave the repealed statutory provisions referenced herein in the Florida Statutes for 10 years from October 1, 1998." Section 4, ch. 95-184, deleted the definition of the term "release program" from s. 921.0011(6), which is referred to in paragraph (3)(e).