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OPINION OF THE FIRST DISTRICT  
COURT OF APPEAL STATE OF FLORIDA  
(JUNE 16, 2020)

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FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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BRANDAN A. MACK,

*Appellant,*

v.

STATE OF FLORIDA,

*Appellee.*

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No. 1D19-1383

On appeal from the Circuit Court for  
Walton County, Kelvin C. Wells, Judge.

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PER CURIAM.

AFFIRMED.

WOLF, MAKAR, and NORDBY, JJ., concur.

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NOT FINAL UNTIL DISPOSITION OF ANY  
TIMELY AND AUTHORIZED MOTION UNDER  
FLA. R. APP. P. 9.330 OR 9.331.

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**ORDER DENYING THE DEFENDANT'S  
MOTION TO CORRECT SENTENCING  
ERROR PURSUANT TO RULE 3.800(B)(1)  
(MARCH 20, 2019)**

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IN THE CIRCUIT COURT OF THE  
FIRST JUDICIAL CIRCUIT IN AND FOR  
WALTON COUNTY, FLORIDA

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STATE OF FLORIDA,

v.

BRANDAN A. MACK,

*Defendant.*

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Case No. 2018-CF-000098

Before: Kelvin C. WELLS, Circuit Judge.

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THIS CAUSE comes before the court for review upon the defendant's Motion to Correct Sentencing Error Pursuant to Rule 3.800(b)(1), electronically filed by defendant's counsel on March 20, 2019, pursuant to rule 3.800(b)(1), Florida Rules of Criminal Procedure. Having reviewed the instant motion, record, and relevant legal authority, the court finds and determines that the instant motion should be denied.

On February 19, 2019, the defendant entered a nolo contendere plea to eleven counts of possess, control, or view a depiction of sexual conduct by a child (counts 1 through 11) and one count of transmitting a

visual depiction of sexual conduct of a minor by use of a computer (count 12). The defendant was sentenced to four years of probation as a youthful offender concurrent on each count. The defendant was classified as a sexual offender. The defendant has not filed a notice of appeal.

In the instant motion, the defendant alleges he should not be classified as a sexual offender or be subject to the registration requirements of section 943.0435, Florida Statutes, because he was sentenced as a youthful offender pursuant to chapter 958, Florida Statutes. In particular, the defendant argues chapter 958 is a separate sentencing scheme for defendants to whom the Act applies. The defendant also alleges section 943.0435 does not include any express language that supersedes the provisions of chapter 958. As a result, the defendant argues the mandatory sentencing provisions of section 943.0435 should not be imposed on a defendant who is sentenced as a youthful offender under chapter 958. Additionally, the defendant raises federal constitutional arguments regarding applying sexual offender registration requirements to juvenile offenders.

The defendant is not entitled to relief. The defendant does not cite, and the court's independent review does not indicate, any Florida case law that is directly on point. However, a review of the relevant statutes refutes the defendant's claim. Section 943.0435(1)(h)(1)(a)(I-II) provides a:

“sexual offender” means a person who . . . has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in

another jurisdiction: . . . s. 827.071; . . . s. 847.0135; . . . and has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I).

Section 943.0436(2)(a) is also applicable and states:

If a person meets the criteria in chapter 775 for designation as a sexual predator or meets the criteria in s. 943.0435 . . . for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which: exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders.

In the instant case, the defendant was convicted of committing eleven counts of an offense included in section 827.071 and one count of an offense included in section 847.0135.<sup>1</sup> These convictions qualify the defendant for classification as a sexual offender pursuant to section 943.0435. The plain language of the above authority reflects the court has a duty and is required to classify the defendant as a sexual offender. Considering such information, the court may not exempt the defendant from the registration requirements of section 943.0435. In other words, the court is required to classify the defendant as a sexual offender

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<sup>1</sup> Order Sex Offender Prob., March 12, 2019 (Attach. 1); Information, Feb. 12, 2018 (Attach. 2).

even though he was sentenced as a youthful offender pursuant to chapter 958. Therefore, the instant motion is denied.

Accordingly, it is hereby ORDERED and ADJUDGED that the defendant's Motion to Correct Sentencing Error Pursuant to Rule 3.800(b)(1), electronically filed by the defendant's counsel on March 20, 2019, is DENIED.

DONE and ORDERED in Chambers at DeFuniak Springs, Walton County, Florida.

/s/ Kelvin C. Wells  
Circuit Judge

**ORDER OF SEX OFFENDER PROBATION  
(ATTACHMENT 1)  
(FEBRUARY 19, 2019)**

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IN THE FIRST JUDICIAL  
CIRCUIT COURT, IN AND FOR  
WALTON COUNTY

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STATE OF FLORIDA,

v.

BRANDAN ANDREW MACK,

*Defendant.*

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Case No. 18-CF-098

DC No. P70306

Before: Kelvin C. WELLS, Circuit Judge.

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This cause coming before the Court to be heard,  
and you, the defendant, being now present before the  
court, and you having

☒ entered a plea of nolo contendere to

Count 01      POSSESS CONTROL VIEW DEPICTION  
CHILD SEX CONDUCT X11

Count 02      POSSESS COMPILE COMPUTER  
CHILD PORNOGRAPHY

## **Section 2: Order Withholding Adjudication**

Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Probation for a period of four (4) years, Youthful Offender, all counts concurrent under the supervision of the Department of Corrections, subject to Florida law.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

(1) You will report to the probation officer as directed.

(2) You will pay the State of Florida the amount of \$40.00 per month, as well as 4% surcharge, toward the cost of your supervision in accordance with s. 948.09, F.S., unless otherwise exempted in compliance with Florida Statutes.

(3) You will remain in a specified place. You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.

(4) You will not possess, carry or own any firearm. You will not possess, carry, or own any weapon without first procuring the consent of your officer.

(5) You will live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of your probation, community control, or any other form of court ordered supervision.

(6) You will not associate with any person engaged in any criminal activity.



(7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.

(8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.

(9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.

(10) You will pay restitution, court costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.

(11) You will submit to random testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances.

(12) You will submit a DNA sample, as directed by your officer, for DNA analysis as prescribed in ss. 943.325 and 948.014, F.S.

(13) You will submit to the taking of a digitized photograph by the department. This photograph may be displayed on the department's website while you are on supervision, unless exempt from disclosure due to requirements of s. 119.07, F.S.

(14) You will report in person within 72 hours of your release from incarceration to the probation office in \_\_\_\_ County, Florida, unless otherwise instructed by

the court or department. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at \_\_\_\_.

### SPECIAL CONDITIONS

1. You must undergo a Psycho-sexual evaluation and, if treatment is deemed necessary, you must successfully complete the treatment, and be responsible for the payment of any costs incurred while receiving said evaluation and treatment, unless waived by the court.

Additional instructions ordered: \_\_\_\_

3. You will be required to pay for drug testing unless exempt by the court.

13. You will have no contact (direct or indirect with minors under 18 years of age during the period of supervision.

28. Other:

You are sentenced as a Youthful Offender

29. Other:

You are designated as a Sexual Offender.

AND, IF PLACED ON PROBATION OR COMMUNITY CONTROL FOR A SEX OFFENSE PROVIDED IN CHAPTER 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, COMMITTED ON OR AFTER OCTOBER 1, 1995 YOU WILL COMPLY WITH THE FOLLOWING STANDARD SEX OFFENDER CONDITIONS, IN ADDITION TO THE STANDARD CONDITIONS LISTED ABOVE AND ANY OTHER SPECIAL CONDITIONS ORDERED BY THE COURT:

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

(16) If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, child care facility, park, playground, or other place where children regularly congregate, as prescribed by the court. The 1,000-foot distance shall be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, child care facility, park, playground, or other place where children congregate. The distance may not be measured by a pedestrian route or automobile route.

(17) Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the offender's own expense. If a qualified practitioner is not available within a 50-mile radius of the offender's residence, the offender shall participate in other appropriate therapy.

(18) A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, a qualified practitioner in the sexual offender treatment program, and the sentencing court.

(19) If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except as provided in this paragraph. The court may approve supervised contact with a child under the

age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment. Further, the sex offender must be currently enrolled in or have successfully completed a sex offender therapy program. The court may not grant supervised contact with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time.

(20) If the victim was under age 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to any school, child care facilities, park, playground, pet store, library, zoo, theme park, or mall.

(21) Unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program, a prohibition on viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

(22) A requirement that the offender submit a DNA sample to the Florida Department of Law Enforcement to be registered with the DNA data bank.

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

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

EFFECTIVE FOR PROBATIONER OR COMMUNITY CONTROLLEE WHOSE CRIME WAS COMMITTED ON OR AFTER OCTOBER 1, 1997, AND WHO IS PLACED ON COMMUNITY CONTROL OR SEX OFFENDER PROBATION FOR A VIOLATION OF CHAPTER 794, s. 800.04, s. 827.071, s. 847.0135(5) or s. 847.0145, IN ADDITION TO ANY OTHER PROVISION OF THIS SECTION, YOU MUST COMPLY WITH THE FOLLOWING CONDITIONS OF SUPERVISION:

(25) As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. A polygraph examination must be conducted by a polygrapher who is a member of a national or state polygraph association and who is certified as a post-conviction sex offender polygrapher, where available, and at the expense of the offender.

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

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

(28) If there was sexual contact, a submission to, at the offender's expense, an FIN test with the results to be released to the victim and/or the victim's parent or guardian.

(29) Electronic monitoring when deemed necessary by the probation officer and supervisor, and ordered by the court at the recommendation of the Department of Corrections. If you are placed on electronic moni-

toring, you must pay the department for the cost of the electronic monitoring service.

(30) Effective for an offender whose crime was committed on or after July 1, 2005, and who are placed on supervision for violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, a prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

(31) Effective for offenders whose crime was committed on or after September 1, 2005, there is hereby imposed, in addition to any other provision in this section, mandatory electronic monitoring as a condition of supervision for those who:

- Are placed on supervision for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or a. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or
- Are designated as a sexual predator pursuant to a. 775.21; or
- Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

You are hereby placed on notice that should you violate your probation or community control, and the conditions set forth in s. 948.063(1) or (2) are satisfied,

whether your probation or community control is revoked or not revoked, you shall be placed on electronic monitoring in accordance with F.S. 948,063,

(32) Effective for offenders who are subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s.943.0435(1)(h)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense: the following conditions are imposed in addition to all other conditions:

- (a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose Of attending a religious service as defined ins. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.
- (b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

(33) Effective for offenders whose crime was committed on or after October 1, 2014, and who is placed on probation or community control for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to all other conditions imposed, is prohibited from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

YOU ARE HEREBY PLACED ON NOTICE that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by Jaw, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

IT IS FURTHER ORDERED that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability, (This paragraph applies only if section 1 or section 2 is checked.)

IT IS FURTHER ORDERED that you pay:

Court Costs, Fees, and Fines, as imposed at sentencing, in the total amount of: \$975.00



Payments processed through the Department of Corrections will be assessed a 4% surcharge pursuant to s. 945.31, F.S.

Pursuant to s. 948.09, F.S., you will be assessed an amount of \$2.00 per month for each month of supervision for the Training Trust Fund Surcharge.

SPECIFIC INSTRUCTIONS FOR PAYMENT:  
Payment Order: 1) Restitution; 2) Court Ordered Costs, Fines & Fees; 3) Department of Corrections Fees (COS, Drug Testing & Training Trust Fund Fee).

IT IS FURTHER ORDERED that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on February 19, 2019

/s/ Kelvin C. Wells  
Circuit Judge

**INFORMATION  
(ATTACHMENT 2)  
(FEBRUARY 12, 2018)**

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IN THE NAME AND BY THE  
AUTHORITY OF THE STATE OF FLORIDA  
IN THE CIRCUIT COURT OF  
WALTON COUNTY, FLORIDA

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STATE OF FLORIDA

v.

BRANDAN ANDREW MACK

---

No. 18CF098

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SA#: 6618CF001917A

RACE: W SEX: M DOB: 07/24/2000

ADDRESS OF DEF.:

BRANDAN ANDREW MACK,  
XXXXXXXXXXXXX, DESTIN, FL

1-11 POSSESSING PHOTOS, MOTION PICTURES,  
ETC., WHICH INCLUDE SEXUAL CONDUCT  
BY A CHILD (1135)

12 COMPUTER PORNOGRAPHY (1150)

WILLIAM EDDINS, STATE ATTORNEY FOR THE FIRST JUDICIAL CIRCUIT OF FLORIDA, PROSECUTING FOR THE STATE OF FLORIDA, CHARGES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, "078fea16-de52-4473-a3e2-6779d6e66832.jpg" which depicted a female child approximately 6-8 years of age with her vagina exposed and an adult male inserting his penis into her vagina, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 2:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled whole or in part, "a01b93b2-01d4-4798-956f-6bad2b765759.jpg" which depicted a nude female child approximately 7-10 years of age with her vagina exposed in a lewd manner and her finger inserted into her vagina, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 3:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, "462e2919-65eb-49c5-99ad-6139d6b5dd32.jpg" which depicted a female child approximately 4-6 years of age laying on her stomach with an adult male's penis inserted into her anus and another male's penis underneath the girl's vagina, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, In violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 4:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, "688f07c54986-4135-8111-96412a0a45ac.jpg" which depicted a nude female child approximately 5-7 years of age with her vagina exposed in a lewd manner, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 5:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole in part, "2015-08-13 23.45.45.jpg" which depicted a nude female child approximately 8-10 years of age with what appears to be semen on her mouth, with an adult male's penis next to her mouth, and the man's hand covering her shirtless breast, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 6:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, "a07a794c-7400-4ffd-a6c8-3e8af0dcae8f.jpg" which depicted a nude female child approximately 6-8 years old with her vagina exposed in a lewd manner and both her hands holding male penises, which, in whole or in part, he knew Included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 7:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, “a433b3a4-b243-4d5fr9e68-ea86054656e6.jpg” which depicted a partially nude female child approximately 3-5 years of age with her vagina exposed in a lewd manner, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 8:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, “af4f9525-d9cd-41d2-b824-d9689clbebd1.jpg” which depicted a female child between 5-7 years of age with an adult male’s penis in her mouth with her hand holding the penis, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 9:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or In part, "imgsrc.ru 50.46686rCd.jpg" which depicted an approximately 7-9 years of age nude female sitting on the lap of a nude male child approximately 10-12 years of age with her legs wrapped around him while kissing him, which, in whole or in part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 10:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, "imgsrc.ru50.46686rCd.jpg" which depicted an approximately 10-12 years of age nude male with a 7-9 years of age nude female sitting on his lap with her legs wrapped around him and kissing him with his genitals visible underneath her buttocks, which, in whole or in part, he knew Included any sexual conduct

by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 11:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation, a photograph, titled in whole or in part, "Photo Feb 04, 2 09 38 pPM.jpg" which depicted from the waist up a nude female child approximately 5-7 years of age holding a male's erect penis in her hands while there is a white substance that appears to be semen on the girl's face, which, in whole or In part, he knew included any sexual conduct by a child, less than eighteen (18) years of age, in violation of Section 827.071(5), Florida Statutes. (F3-L5)

**Count 12:**

AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT BRANDAN ANDREW MACK, from on or about December 29, 2017 through on or about February 6, 2018, at and in Walton County, Florida, did unlawfully and knowingly compile, enter into, or transmit by use of computer; OR make, print, publish, or reproduce by other computerized means; OR knowingly cause or allow to be entered into or transmitted by use of computer; OR buy, sell, receive, exchange or disseminate any notice, statement, or advertisement of



any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, in violation of Section 847.0135(2), Florida Statutes. (F3-L6)

STATE OF FLORIDA  
COUNTY OF WALTON

Before me personally appeared the undersigned designated Assistant State Attorney for the First Judicial Circuit of Florida, being personally known to me, and who first being duly sworn, says that the allegations set forth in the foregoing Information are based on facts that have been sworn as true, and which if true, would constitute the offense there charged, that said Assistant State Attorney has received testimony under oath from a material witness or witnesses for the offense and that this prosecution is instituted in good faith.

Sworn to and subscribed before me this 12 day of February, 2018.

Matthew J. Richardson

Florida Bar No.: 91208

Assistant State Attorney

524A E HWY 90

DeFuniak Springs, FL 32435

Phone No: (595) 892-8080

mrichardson@sa01.org

## CONSTITUTIONAL PROVISIONS INVOLVED

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### **FLA § 827.071**

#### **Sexual performance by a child; penalties.**

- (1) As used in this section, the following definitions shall apply:
  - (a) “Deviate sexual intercourse” means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.
  - (b) “Intentionally view” means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.
  - (c) “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.
  - (d) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.
  - (e) “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

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

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

(h) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breast-feeding of her baby does not under any circumstance constitute “sexual conduct.”

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

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

- (2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content

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

- (3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (5)
  - (a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part,

he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

- (6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

[ \* \* \* ]

**FLA § 847.0135**

**Computer pornography; prohibited computer usage; traveling to meet minor; penalties**

- (1) **SHORT TITLE.**—This section shall be known and may be cited as the “Computer Pornography and Child Exploitation Prevention Act.”
- (2) **COMPUTER PORNOGRAPHY.**—A person who:
  - (a) Knowingly compiles, enters into, or transmits by use of computer;
  - (b) Makes, prints, publishes, or reproduces by other computerized means;
  - (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
  - (d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.
- (3) **CERTAIN USES OF COMPUTER SERVICES OR DEVICES PROHIBITED.**—Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other

device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

- (4) **TRAVELING TO MEET A MINOR.**—Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of



engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or

(b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) CERTAIN COMPUTER TRANSMISSIONS PROHIBITED.—

(a) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity live over a computer online service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim who is less than 16 years of age, commits lewd or lascivious exhibition in violation of this subsection. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this subsection shall not constitute a defense to a prosecution under this subsection.
- (b) An offender 18 years of age or older who commits a lewd or lascivious exhibition using a computer commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (c) An offender less than 18 years of age who commits a lewd or lascivious exhibition using a computer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (d) A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this subsection.

- (6) **OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE.**—It is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of this section. Any person who violates this section commits a misdemeanor of the first degree, punishable by a fine not exceeding \$2,000.
- (7) **STATE CRIMINAL JURISDICTION.**—A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child, a child's guardian, or another person believed by the person to be a child or a child's guardian.
- (8) **EFFECT OF PROSECUTION.**—Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

[ \* \* \* ]

**FLA § 943.0435**

**Sexual offenders required to register with the department; penalty.**

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

(a) “Change in status at an institution of higher education” has the same meaning as provided in s. 775.21.

(b) “Convicted” means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, and includes an adjudication of delinquency of a juvenile as specified in this section. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(c) “Electronic mail address” has the same meaning as provided in s. 668.602.

(d) “Institution of higher education” has the same meaning as provided in s. 775.21.

(e) “Internet identifier” has the same meaning as provided in s. 775.21.

(f) “Permanent residence,” “temporary residence,” and “transient residence” have the same meaning as provided in s. 775.21.

(g) “Professional license” has the same meaning as provided in s. 775.21.

(h)

1. “Sexual offender” means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:

a.

- (I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-sub-subparagraph or at least one offense listed in this sub-sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

- (II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;
- b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;
- c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s.

393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011 (10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701 (1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

- d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:
  - (I) Section 794.011, excluding s. 794.011 (10);
  - (II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

- (III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals;
  - (IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals; or
  - (V) Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph.
2. For all qualifying offenses listed in sub-subparagraph 1.d., the court shall make a written finding of the age of the offender at the time of the offense.

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

- (i) "Vehicles owned" has the same meaning as provided in s. 775.21.
- (2) Upon initial registration, a sexual offender shall:
- (a) Report in person at the sheriff's office:



App.40a

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:
  - a. Establishing permanent, temporary, or transient residence in this state; or
  - b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or
2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and any change in status at an institution of higher education after the sexual offender reports in person at the sheriff's office must be reported in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; photograph; employment information; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; home telephone numbers and cellular telephone numbers; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office

written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.
3. A sexual offender shall report in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

(c) Provide any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers, when available.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver license office of the Department of Highway Safety and Motor Vehicles, unless a driver license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver license, renewed license, or identification card, and for use by

the department in maintaining current records of sexual offenders.

- (b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver license or identification card as required by this section. The driver license or identification card issued must be in compliance with s. 322.141(3).
  - (c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.
- (4)
- (a) Each time a sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the offender's driver license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process, the offender shall report in person to a driver license office, and is subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for pur-

poses of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. A sexual offender who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in subsection (3) and this subsection shall also report any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this paragraph do not negate the requirement for a sexual offender to obtain a Florida driver license or an identification card as required in this section.

(b)

1. A sexual offender who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual

offender must provide or update all of the registration information required under paragraph (2)(b). The sexual offender must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

2. A sexual offender shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual offender must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this subparagraph. Reporting to the sheriff's office as required by this subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this subparagraph. The sheriff's office shall,

within 2 business days, electronically submit and update all information provided by the sexual offender to the department.

- (c) A sexual offender who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to paragraph (b) for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under paragraph (b) but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).
- (e)
  - 1. A sexual offender shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the



department through the department's on-line system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in

person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through which sexual offenders may securely access, submit, and update all changes in status to electronic mail addresses; Internet identifiers and each Internet identifier's corresponding web-site homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.
- (5) This section does not apply to a sexual offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.
- (6) County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual offenders who are not under the care, custody, control, or supervision of the Department of Corrections, and may verify the addresses of sexual offenders who are under the care, custody, control, or supervision

of the Department of Corrections, in a manner that is consistent with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. Local law enforcement agencies shall report to the department any failure by a sexual offender to comply with registration requirements.

- (7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforce-

ment agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

- (8) A sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, report in person to the sheriff to which the sexual offender reported the intended change of permanent, temporary, or transient residence, and report his or her intent to remain in this state. The sheriff shall promptly report this information to the department. A sexual offender who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country but who remains in this state without reporting to the sheriff in the manner required by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (9)
  - (a) A sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- (b) For a felony violation of this section, excluding subsection (13), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:
  - 1. For a first offense, a mandatory minimum term of 6 months with electronic monitoring.
  - 2. For a second offense, a mandatory minimum term of 1 year with electronic monitoring.
  - 3. For a third or subsequent offense, a mandatory minimum term of 2 years with electronic monitoring.
- (c) A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual offender, in the county where the sexual offender was released from incarceration, or in the county of the intended address of the sexual offender as reported by the offender prior to his or her release from incarceration.
- (d) An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of

an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register. Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

- (10) The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted

in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual offender fails to report or falsely reports his or her current place of permanent, temporary, or transient residence.

- (11) Except as provided in s. 943.04354, a sexual offender shall maintain registration with the department for the duration of his or her life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender only if the person:

(a)

1. Has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and has not been arrested for any felony or misdemeanor offense since release, provided that the sexual offender's requirement to register was not based upon an adult conviction:

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- a. For a violation of s. 787.01 or s. 787.02;
  - b. For a violation of s. 794.011, excluding s. 794.011(10);
  - c. For a violation of s. 800.04(4)(a)2. where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
  - d. For a violation of s. 800.04(5)(b);
  - e. For a violation of s. 800.04(5)(c)2. where the court finds the offense involved the use of force or coercion and unclothed genitals or genital area;
  - f. For a violation of s. 825.1025(2)(a);
  - g. For any attempt or conspiracy to commit any such offense;
  - h. For a violation of similar law of another jurisdiction; or
  - i. For a violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.
2. If the sexual offender meets the criteria in subparagraph 1., the sexual offender may, for the purpose of removing the requirement for registration as a sexual offender, petition the criminal division of the circuit court of the circuit:
- a. Where the conviction or adjudication occurred, for a conviction in this state;



- b. Where the sexual offender resides, for a conviction of a violation of similar law of another jurisdiction; or
  - c. Where the sexual offender last resided, for a sexual offender with a conviction of a violation of similar law of another jurisdiction who no longer resides in this state.
3. The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the federal Adam Walsh Child Protection and Safety Act of 2006<sup>1</sup> and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection.

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<sup>1</sup> See 42 U.S.C.A. § 16901 *et seq.*

4. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.
  - (b) As defined in sub-subparagraph (1)(h) 1.b. must maintain registration with the department for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.
- (12) The Legislature finds that sexual offenders, especially those who have committed offenses against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount

government interest. Sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Releasing information concerning sexual offenders to law enforcement agencies and to persons who request such information, and the release of such information to the public by a law enforcement agency or public agency, will further the governmental interests of public safety. The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes.

- (13) Any person who has reason to believe that a sexual offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual offender in eluding a law enforcement agency that is seeking to find the sexual offender to question the sexual offender about, or to arrest the sexual offender for, his or her noncompliance with the requirements of this section:
  - (a) Withholds information from, or does not notify, the law enforcement agency about the sexual offender's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual offender;
  - (b) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual offender; or

- (c) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual offender; or
- (d) Provides information to the law enforcement agency regarding the sexual offender that the person knows to be false information, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(14)

- (a) A sexual offender must report in person each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister.
- (b) However, a sexual offender who is required to register as a result of a conviction for:
  - 1. Section 787.01 or s. 787.02 where the victim is a minor;
  - 2. Section 794.011, excluding s. 794.011(10);
  - 3. Section 800.04(4)(a)2. where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
  - 4. Section 800.04(5)(b);
  - 5. Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals or genital area;
  - 6. Section 800.04(5)(c)2. where the court finds molestation involving the use of

force or coercion and unclothed genitals or genital area;

7. Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals or genital area;
  8. Section 825.1025(2)(a);
  9. Any attempt or conspiracy to commit such offense;
  10. A violation of a similar law of another jurisdiction; or
  11. A violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph, must reregister each year during the month of the sexual offender's birthday and every third month thereafter.
- (c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:
1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any

transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers and each Internet identifier's corresponding website home-page or application software name; all home telephone numbers and cellular telephone numbers; employment information; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual

offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.
4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses and all Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, or who knowingly provides false registration information by act or omission commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- (d) The sheriff's office shall, within 2 working days, electronically submit and update all information provided by the sexual offender to the department in a manner prescribed by the department.

[ \* \* \* ]

**FLA § 943.0436**

**Duty of the court to uphold laws governing sexual predators and sexual offenders.**

- (1) The Legislature finds that, for the purpose of approving a plea agreement or for other reasons, certain courts enter orders that effectively limit or nullify requirements imposed upon sexual predators and sexual offenders pursuant to the laws of this state and prevent persons or entities from carrying out the duties imposed, or exercising the authority conferred, by such laws. The laws relating to sexual predators and sexual offenders are substantive law. Furthermore, the Congress of the United States has expressly encouraged every state to enact such laws, and has provided that, to the extent that a state's laws do not meet certain federal requirements, the state will lose significant federal funding provided to the state for law enforcement and public safety programs. Unless a court that enters such an order determines that a person or entity is not operating in accordance with the laws governing sexual predators or sexual offenders, or that such laws or any part of such laws are unconsti-



tutional or unconstitutionally applied, the court unlawfully encroaches on the Legislature's exclusive power to make laws and places at risk significant public interests of the state.

- (2) If a person meets the criteria in chapter 775 for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:
  - (a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;
  - (b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or
  - (c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority as such duty or authority relates to sexual predators or sexual offenders.
- (3) If the court enters an order that affects an agency's performance of a duty imposed under the laws governing sexual predators or sexual offenders, or that limits the agency's exercise of authority conferred under such laws, the Legislature strongly encourages the affected agency to file a motion in the court that entered such order. The affected agency may, within 1 year after

the receipt of any such order, move to modify or set aside the order or, if such order is in the nature of an injunction, move to dissolve the injunction. Grounds for granting any such motion include, but need not be limited to:

- (a) The affected agency was not properly noticed.
- (b) The court is not authorized to enjoin the operation of a statute that has been duly adjudged constitutional and operative unless the statute is illegally applied or unless the statute or the challenged part of it is unconstitutional on adjudicated grounds.
- (c) Jurisdiction may not be conferred by consent of the parties.
- (d) To the extent that the order is based upon actions the agency might take, the court's order is premature and, if and when such actions are taken, these actions may be challenged in appropriate proceedings to determine their enforceability.
- (e) The injunction affects the public interest and would cause injury to the public.
- (f) The order creates an unenforceable, perpetual injunction.
- (g) The order seeks to restrict the agency in the performance of its duties outside the court's territorial jurisdiction.

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