

FACTORS RELATING TO THE SENTENCING OF SEX OFFENDERS

March 1, 2006

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The Office of Economic and Demographic Research would like to thank the Department of Corrections, the Office of the State Courts Administrator, the Florida Department of Law Enforcement, and the Office of Program and Policy Analysis for their generous assistance in the preparation of this study.

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Executive Summary

This study was directed by Chapter No. 2005-28, Laws of Florida, also known as the “Jessica Lunsford Act.” Section 2 contains the following language:

In addition, the Office of Economic and Demographic Research shall study the factors relating to the sentencing of sex offenders from the point of arrest through the imposition of sanctions by the sentencing court, including original charges, plea negotiations, trial dispositions, and sanctions. The Department of Corrections, the Office of the State Courts Administrator, the Florida Department of Law Enforcement, and the State Attorneys shall provide information deemed necessary for the study. The final report shall be provided to the President of the Senate and Speaker of the House by March 1, 2006.

Most sexual offenses are identified in Chapter 794 relating to sexual battery, and Chapter 800 relating to lewd or lascivious behavior, including exhibitionism and molestation. To study the sentencing of sex offenders, the Office of Economic and Demographic Research (EDR) analyzed all available databases and conducted a survey directed to a group of judges and assistant state attorneys with experience in cases involving sexual offenders.

Although each data source has its own strengths and weaknesses, a comprehensive examination of all the sources results in a more accurate picture of sexual offender processing.

Sex offenses share some characteristics with other serious offenses such as murder and robbery. The defendants face potentially lengthy prison terms. Therefore, defendants are motivated to fight the charges with whatever resources are at their disposal. The trial rates are highest for these three offenses. Law enforcement and prosecutorial resources gravitate towards these most serious cases. With the attention and time devoted to these cases, any problems with the evidence or proceedings associated with the case are more likely to be revealed and utilized by the defense.

But sex offenses are also different from other offenses. Sanction and length mitigation is high. High proportions of defendants have at least some counts dismissed. Data from the various sources as well as the survey responses from judges and prosecutors point to unique difficulties in the prosecution and conviction of sexual offenses. Foremost is the young age of most of the victims. From the Ryce data, the average age of the victims was 13.4 years old. Eighty-three percent were 15 or younger. The second key factor is that 85% of the victims knew the offender. For successful prosecution, unless there is corroborative evidence, the child must testify in court. The prospect of having a child victim of a sexual crime testify in a public trial is daunting. The victims and their families may consider the trauma of repeatedly revisiting the crimes in a public forum too difficult. A child does not possess the intellectual and emotional skills necessary for the adversarial confrontation with the defense. Faced with these challenges, the prosecution often finds the best outcome may be to offer a plea bargain involving a mitigated sanction or sentence length, hence the high mitigation rates found for sexual crimes. Frequent law changes with stricter sanctions may cause mitigations back toward historical sentence lengths. With a conviction, even if the sanction is not as strict as the prosecution desired, the offender may qualify to be registered as a sex offender.

CHAPTER 1--INTRODUCTION

This study was directed by Chapter No. 2005-28, Laws of Florida, also known as the “Jessica Lunsford Act.” Section 2 contains the following language:

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Most sex offenses are identified in Chapter 794 relating to sexual battery, and Chapter 800 relating to lewd or lascivious behavior, including exhibitionism and molestation. To study the sentencing of sex offenders, the Office of Economic and Demographic Research (EDR) analyzed all available databases and conducted a survey directed to a group of judges and assistant state attorneys with experience in cases involving sexual offenders. The sources used include the following:

- The Criminal Code Database, which contains records on sentencing events.
- The Summary Reporting System (SRS) which includes summary data on the processing of filings in the state court system.
- The Offender Based Transaction System which contains information on criminal charges at the time of arrest and during subsequent phases as the charge moves through the judicial system.
- The Uniform Crime Report data from the Florida Department of Law Enforcement.
- Data from the Department of Corrections on referrals to the Jimmy Ryce Sexually Violent Predator Program, which include data on the victims of referred offenders.

The report begins with a demographic profile of sexual offenders who have been convicted and sentenced in the state of Florida, including information on their victims. The rest of the report is generally organized by data source, with each source used to develop a broader picture of the complex processing of defendants as they move through the criminal justice system.

In this study, the sexual offense category will be compared both to other offense categories and to the aggregate of all offenses to determine whether there are unique characteristics that distinguish sex offenders from other types of offenders.

Although each data source has its own strengths and weaknesses, a comprehensive examination of all the sources results in a more accurate picture of sexual offender processing. A summary chapter at the end of this report identifies the most important findings from each data source and explores some ideas and recommendations for improving the system

CHAPTER 2—DEMOGRAPHIC PROFILE OF SENTENCED OFFENDERS

To develop a demographic profile of sex offenders and compare them to all other criminal offenders, EDR used the Criminal Code database for the years 2002, 2003, and 2004. This database is a large, comprehensive dataset which provides valuable information on the universe of all criminal sentencing events. It has the unique advantage of containing records of offenders sentenced to both county jail terms and to incarceration or supervision by the state Department of Corrections (DOC). Although scoresheets were not received for every offender, the DOC estimates that compliance was 71.1% in FY 2002-03, 71.9% in FY 2003-04, and 67.9% in FY 2004-05. Compliance tended to be slightly higher for the more serious prison sanctions than lesser supervision sanctions. Given the large number of sentencing events in the database (109,977 in 2002, 116,962 in 2003, and 117,290 in 2004), it is unlikely that underreporting biased the information in this report. Since the statistics varied only slightly from year to year, aggregate numbers based on all three years, representing 344,229 sentencing events, will be presented. See Appendix A for tables with information on the number of sentencing events by year.

GENDER

Table 2.1 displays the gender breakdown of the nine major criminal offense categories. Despite the occasional high profile case involving an older woman and an adolescent male, male offenders outnumber females by a wide margin. Most revealing, men comprised 98.3% of the 5,840 sex offense convictions in the 2002-2004 period. In

spite of a small increase in the number of female offenders, the women's share of total convictions declined slightly in each of the three years. After sex offenses, the greatest gender discrepancy was found in weapons crimes, where women comprised 6.0% of the offenders. Overall, men were responsible for 80.5% of 344,229 total offenses.

Table 2.1
Gender of Offenders Sentenced 2002-2004

Offense group ¹	Male		Female	
	Number	Percent	Number	Percent
Murder/Manslaughter	1,701	88.7%	216	11.3%
Sexual/Lewd Behavior	5,741	98.3%	99	1.7%
Robbery	8,260	90.4%	882	9.7%
Violent, Other	37,033	81.8%	8,269	18.3%
Burglary	30,064	91.8%	2,672	8.2%
Property Theft/Fraud/Damage	51,772	67.5%	24,884	32.5%
Drugs	97,236	80.2%	24,034	19.8%
Weapons	6,332	94.0%	403	6.0%
Other	38,951	87.3%	5,680	12.7%
Total	277,090	80.5%	67,139	19.5%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

RACE

Table 2.2 shows a breakout of major offense categories by race. Whites made up 56.3% of all sentenced offenders, but 64.7% of sex offenders. Only burglary, with 66.6% white offenders, had a higher proportion of Caucasians. Blacks, responsible for 41.9% of all sentenced offenders, comprised 32.2% of the 5,840 sex crimes. "Others" were involved in 1.8% of all crimes and about 3% of the sex offenses.

Table 2.2
Race of Offenders Sentenced 2002-2004

Offense group ¹	White		Black		Other	
	Number	Percent	Number	Percent	Number	Percent
Murder/Manslaughter	1,088	56.8%	768	40.1%	61	3.2%
Sexual/Lewd Behavior	3,776	64.7%	1,882	32.2%	182	3.1%
Robbery	3,955	43.3%	5,028	55.0%	159	1.7%
Violent, Other	27,492	60.7%	16,788	37.1%	1,022	2.3%
Burglary	21,800	66.6%	10,265	31.4%	671	2.0%
Property Theft/Fraud/Damage	46,508	60.7%	28,705	37.4%	1,443	1.9%
Drugs	60,140	49.6%	59,555	49.1%	1,575	1.3%
Weapons	3,209	47.6%	3,380	50.2%	146	2.2%
Other	25,778	57.8%	17,973	40.3%	880	2.0%
Total	193,746	56.3%	144,344	41.9%	6,139	1.8%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Considerable variation appears when specific sexual offenses are analyzed by race (Table 2.3). For instance, 75.4% of the offenders sentenced for *sexual battery by adult, victim under 12* were white. Yet blacks numbered 57.2% of those sentenced for *sexual battery, threat with deadly weapon*. Such variations may reflect racial behavioral variations, relationships to law enforcement, or prosecutorial and judicial perceptions, all factors which are extremely complex to determine, describe, or measure.

Table 2.3
Race of Offenders Sentenced for Sex Offenses 2002-2004

Offense	White		Black		Other	
	Number	Percent	Number	Percent	Number	Percent
Sexual battery by adult, victim under 12 ¹	187	75.4%	56	22.6%	5	2.0%
Sexual battery, threat with deadly weapon	62	40.8%	87	57.2%	3	2.0%
Sexual battery without physical force likely to cause serious injury	220	50.2%	200	45.7%	18	4.1%
Adult 24 or older --sex with 16-17 year old	189	61.2%	107	34.6%	13	4.2%
Lewd or lascivious battery, victim 12-15	792	61.2%	461	35.6%	42	3.2%
Lewd or lascivious molestation, victim under 12/offender 18 or older	407	75.8%	110	20.5%	20	3.7%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	310	67.0%	144	31.1%	9	1.9%
Lewd or lascivious conduct, victim under 16/offender 18 or older	336	77.8%	86	19.9%	10	2.3%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	249	77.6%	61	19.0%	11	3.4%
All other sex offenses	1,024	62.2%	570	34.7%	51	3.1%
Total	3,776	64.7%	1,882	32.2%	182	3.1%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

AGE

As seen in Table 2.4, the average age at the time of their offense for all offenders sentenced for sex crimes was 31.1 years, the same as the average age for all offenders sentenced. Most offense groups vary only slightly from the mean. The offense group varying the most is robbery, where the average offender was 25.7 years old at the time of the offense.

Table 2.4

**Average Age at Offense of Offenders
Sentenced 2002-2004**

Offense group ¹	Average age
Murder/Manslaughter	30.2
Sexual/Lewd Behavior	31.1
Robbery	25.7
Violent, Other	31.2
Burglary	27.3
Property Theft/Fraud/Damage	31.0
Drugs	31.9
Weapons	29.7
Other	33.2
Total	31.1

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Age at time of offense varies greatly when analyzed by individual sexual offenses, ranging from 25.4 years for *lewd or lascivious battery, victim 12-15* to 39.6 years for *lewd or lascivious molestation, victim under 12/offender 18 or older* (see Table 2.5). The average age of offenders convicted of *sexual battery by adult, victim under 12* is also high, at 35.7 years. The higher average age for these two offenses is especially disturbing since they involve the youngest victims.

Table 2.5
Average Age at Time of Offense for Offenders Sentenced
for Sex Offenses 2002-2004

Offense	Average age
Sexual battery by adult, victim under 12 ¹	35.7
Sexual battery, threat with deadly weapon	29.9
Sexual battery without physical force likely to cause serious injury	30.8
Adult 24 or older --sex with 16-17 year old	31.5
Lewd or lascivious battery, victim 12-15	25.4
Lewd or lascivious molestation, victim under 12/offender 18 or older	39.6
Lewd or lascivious molestation, victim 12-15/offender 18 or older	32.7
Lewd or lascivious conduct, victim under 16/offender 18 or older	31.7
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	35.2
All other sex offenses	30.8
Total	31.1

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

PRIOR FELONY CONVICTIONS

The Criminal Code database includes a variable indicating the offender’s number of prior felony convictions. The variable is based on the prior felony record indicated on the scoresheet. Table 2.6 displays the average number of prior felony convictions by the major offense categories. These prior convictions are for any felony, not necessarily a felony in the same category as the instant offense. Sex offenders had an average of .60 prior felony convictions, the lowest of any category. The second lowest was the property theft and fraud category at .85 and the highest was the drug category at 1.22. The average for all offenders was 1.06. Sex offenders are less likely to have a prior felony conviction than any other offense group.

Table 2.6
Average Number of Prior Felonies for
Offenders Sentenced 2002-2004

Offense group ¹	Average number of prior felonies
Murder/Manslaughter	0.94
Sexual/Lewd Behavior	0.60
Robbery	1.18
Violent, Other	0.85
Burglary	1.11
Property Theft/Fraud/Damage	0.85
Drugs	1.22
Weapons	1.15
Other	1.17
Total	1.06

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

The Criminal Code database does not include any information on employment status. However, this information is available from the Department of Corrections for prison admissions. As shown in Table 2.7, for the three-year period (2002 to 2004), 47.7% of prison admissions had been employed full-time at the time of their arrest. However, 62.4% of sexual offenders were employed full-time when they were arrested—the highest of any offense group.

Table 2.7
Percent of Prison Admissions (2002-2004)
Employed Full-Time at Time of Arrest

Offense group ¹	% Employed Full-Time
Murder/Manslaughter	51.9%
Sexual/Lewd Behavior	62.4%
Robbery	43.1%
Violent, Other	52.6%
Burglary	47.2%
Property Theft/Fraud/Damage	49.2%
Drugs	42.7%
Weapons	50.2%
Other	55.9%
Total	47.7%

Source: Department of Corrections end-of-month status files.

CHAPTER 3—SEXUAL OFFENSE VICTIMS

Important factors in the effective prosecution of any offense include the existence of physical evidence, corroborating witnesses, and cooperative victims. To better understand the role of these factors, EDR analyzed information on the victims of these crimes.

Unfortunately, information on the characteristics of victims of sexual offenses is very limited. The Criminal Code database includes information on victim injury but nothing on the characteristics of the victim. Nor does Court data contain this information. Only two sources contain this data. The Department of Corrections collects information on the characteristics of the victims of individuals referred for involuntary civil commitment, and the Florida Department of Law Enforcement also keeps data related to victims of domestic violence. This chapter presents information on victims available from these sources.

VICTIMS OF RYCE REFERRALS

In 1998 the Florida Legislature passed the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.” The act provides that offenders convicted (or adjudicated delinquent) of a sexually violent offense and serving a sentence in the custody of the Department of Corrections, or committed to the Department of Juvenile Justice, or to the Department of Children and Families (DCF) custody after being found not guilty by reason of insanity, be referred to DCF for screening for civil commitment prior to their release. Ninety-four percent, an overwhelming majority, are from the Department of Corrections. The referral can be for

a prior conviction or even for a nonsexual offense that was sexually motivated. As of December 31, 2005 there had been 20,539 referrals to DCF. Of those, 205 individuals or one percent were committed to the civil commitment facility. The same facility housed another 313 individuals awaiting disposition of the civil commitment proceedings. DCF determined that 86% of the referrals did not meet the statutory definition of sexually violent predators. The remaining 11.4% (86% non-qualifying, 1.6% in detention status, and 1.0% committed) includes 978 individuals with their initial record review pending, 942 individuals who were not recommended for commitment by the multi-disciplinary screening that follows the preliminary record review and 219 individuals who were released by court order, had their petition dismissed, were released at trial, or were released after commitment. (Please see Appendix B for a flowchart showing this information.)

As part of the review process for referral to DCF, the Department of Corrections compiles information in electronic format on offenders, their offenses, and their victims. EDR requested and received from DOC the complete file of all referrals since the inception of the program in 1999. If an offender was referred more than once, the information presented here covers the most recent referral. It should also be noted that since the Ryce file is of offenders about to be released from prison, it only includes offenders who received the more serious sanction of a prison term, as opposed to the group of all offenders convicted of sex offenses.

While most chapters of this study consider offenders convicted of a sex offense during a recent three year period, the Ryce dataset consists of sex offenders approaching release from incarceration. This shift in perspective was necessary because the Ryce data

is the only available detailed source on sex offender victims. Using the Department of Corrections 2004-05 Annual Report, EDR compared the general characteristics of prison admissions and prison releases, and the characteristics were quite similar. Despite the different perspectives of the data, the Ryce file is a large and valuable dataset for the purposes of this study.

There is a separate referral record for each victim. A total of 4,713 offender records had no victim information and were excluded from the analysis. Without these, and retaining the data for the most recent referral, there were records for 18,441 victims of crimes committed by 10,732 offenders, an average of 1.72 victims per offender. (As a point of reference, there were 1,798 admissions to prison for sex offenses in FY 2004-05.) Table 3.1 indicates the referral offense. Since most of these offenses were committed prior to the 1999 revisions to chapter 800 relating to lewd or lascivious behavior, the most frequent offense is the pre-1999 *lewd or lascivious offense, child under 16*, at 37.5% of the total. (See Appendix C for information on the 1999 changes to Chapter 800.) *Sexual battery by adult, victim under 12* is the second most common referral offense, with 10.9% of the total. Together, these two offenses constitute the referrals for nearly half of the victims.

**Table 3.1
Referral Offense¹**

Offense	Number	Percent
Lewd or lascivious, child under 16	6,915	37.5%
Sexual battery by adult, victim under 12	2,018	10.9%
Sexual battery without physical force likely to cause serious injury	1,571	8.5%
Lewd assault/sex battery, victim less than 16	1,104	6.0%
Sexual battery, threat with deadly weapon	856	4.6%
Sexual battery--coerce child by adult	847	4.6%
Lewd or lascivious battery, victim 12-15	811	4.4%
Kidnap committed to facilitate a felony	495	2.7%
Other offenses	3,824	20.7%
Total	18,441	100.0%

Source: Department of Corrections datafile of offenders referred to DCF.

¹ This is the offense associated with a particular victim from the offender's most recent referral. The offender may have had prior and/or additional offenses.

Table 3.2 shows the offense date. Note that 21.7% of the offenses were prior to 1990, suggesting that many of the offenders were in prison for at least ten years before their referral.

**Table 3.2
Offense Date**

	Number	Percent
Before 1990	4,004	21.7%
1990-1994	5,329	28.9%
1995-1999	6,182	33.5%
2000-2005	2,926	15.9%
Total	18,441	100.0%

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.3 displays the age of the victim at the time of the offense. The dataset included ages for 15, 532 of the 18,441 victims. Particularly striking is the young age of most of the victims: more than 82% were 15 or younger. Only 9.3% were older than 19. The average age of the victims was 13.4 years. Note that 38% of the victims were less than 12 years old. Because so many of the victims are children, the issue of the children’s testimony about the offenses is crucial. Subsection 90.803(23), Florida Statutes, explicitly provides an exception to the prohibition against hearsay testimony, to allow for statements of child victims under the age of twelve. The importance of hearsay evidence is explored further in Chapter 7 of this report.

**Table 3.3
Victim Age**

Age in Years	Number	Percent	Cumulative Percent
1 - 5	1,104	7.1%	7.1%
6 - 11	4,798	30.9%	38.0%
12 - 15	6,913	44.5%	82.5%
16 - 17	1,010	6.5%	89.0%
18 -19	257	1.7%	90.7%
20 - 24	546	3.5%	94.2%
25 - 34	527	3.4%	97.6%
35 or older	377	2.4%	100.0%
Total	15,532	100.0%	
Unknown	2,909		
Mean age - 13.4 years			

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.4 shows the relationship of the offender to the victim, which was known in 15,679 of the cases. In total the offender was known to the victim in 84.8% of the cases. The offender was a member of the victim's family in 28.4% of the offenses. Nearly 16% of the offenders were immediate family; 12.8% were non-immediate family members. The offenders were classified as "Other Known Person" in 56.4% of the cases. The offenders were strangers to the victim in only 15.2% of the cases. This large dataset verifies the findings of other research concerning the relationship between the offender and the victim in sexual offenses. The vast majority of children who are victims of sexual offenses know the offender.

Table 3.4
Relationship of Offender to Victim

	Number	Percent	Cumulative Percent
Immediate family	2,454	15.7%	15.7%
Non-immediate family	2,006	12.8%	28.4%
Other known person	8,836	56.4%	84.8%
Stranger	2,383	15.2%	100.0%
Total	15,679	100.0%	
Unknown	2,762		

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.5 displays the relationship of the offender to the victim by age of the victim. For victims under twelve, the offender was known to the victim in 92.5% of the cases and a stranger in only 7.5%. And, nearly 46% of the offenses were committed by a family member. Although the public is understandably horrified by cases of stranger abduction and murder, the resultant emphasis on identifying and locating registered sexual offenders and predators may be ignoring potential threats far closer to home. As

victim age increases through age 24, so does the percentage of stranger attacks, reaching a high of 48.4% for victims 20-24 years of age.

The relationship of the offender to the victim is an important factor in the prosecution. A judge responding to the survey question about the influence of the relationship on conviction indicated that:

[relationship] impacts a case greatly. It explains away contact. There is often family pressure to balance the needs of the victim with the needs of a defendant. There is often the psychological defense of denial going on in the family.

Table 3.5
Victim Age by Relationship of Offender to Victim

Victim Age	Number				Total
	Immediate Family	Non-Immediate	Other Known Person	Stranger	
1 - 5	288	220	459	52	1,019
6 - 11	1,110	909	2,110	359	4,488
12 - 15	799	656	4,274	739	6,468
16 - 17	72	64	653	131	920
18 -19	8	16	124	82	230
20 - 24	25	19	218	246	508
25 - 34	17	14	226	216	473
35 or older	24	6	166	151	347
Total	2,343	1,904	8,230	1,976	14,453
Unknown	3,988				

Victim Age	Percent of Age Group				Total
	Immediate Family	Non-Immediate Family	Other Known Person	Stranger	
1 - 5	28.3%	21.6%	45.0%	5.1%	100.0%
6 - 11	24.7%	20.3%	47.0%	8.0%	100.0%
12 - 15	12.4%	10.1%	66.1%	11.4%	100.0%
16 - 17	7.8%	7.0%	71.0%	14.2%	100.0%
18 -19	3.5%	7.0%	53.9%	35.7%	100.0%
20 - 24	4.9%	3.7%	42.9%	48.4%	100.0%
25 - 34	3.6%	3.0%	47.8%	45.7%	100.0%
35 or older	6.9%	1.7%	47.8%	43.5%	100.0%
Total	16.2%	13.2%	56.9%	13.7%	

Source: Department of Corrections datafile of offenders referred to DCF.

Table 3.6 reveals that for the 16,045 victims with known injury information, there were a total of 11 deaths (.1%). There was no physical injury to the victim in 61.8% of the cases.

**Table 3.6
Highest Level of Violence**

Level of injury	Number	Percent
Death	11	0.1%
Severe injury	483	3.0%
Moderate injury	2,086	13.0%
Minimal injury	3,552	22.1%
No injury	9,913	61.8%
Total	16,045	100.0%
Unknown	2,396	

Source: Department of Corrections datafile of offenders referred to DCF.

Note: DOC data entry instructions state, "All non-consensual sexual acts are considered violent, however [this] is violence above and beyond the sex act itself."

As seen in Table 3.7, a weapon was used in the commission of less than 10 % of the cases examined.

**Table 3.7
Weapon Used**

	Number	Percent
Weapon used	1,399	8.6%
Weapon not used	14,943	91.4%
Total	16,342	100.0%
Unknown	2,099	

Source: Department of Corrections datafile of offenders referred to DCF.

Finally, Table 3.8 indicates that the activity was not consensual in 86.4% of the cases.

**Table 3.8
Consent**

	Number	Percent
Consensual	2,231	13.6%
Not consensual	14,209	86.4%
Total	16,440	100.0%
Unknown	2,001	

Source: Department of Corrections datafile of offenders referred to DCF.

The question of consent may determine whether an offender is charged with sexual battery or lewd or lascivious battery. Under the sexual battery chapter, the offense of *sexual battery without physical force likely to cause serious injury*, must be without the person’s consent. The offense is a second degree felony. (Consent is not a defense if the victim is under twelve or the defendant is in a position of familial or custodial custody.) If the victim is at least 12 years of age but younger than 16, the offender (of any age) can be charged with lewd or lascivious battery for sexual activity, also a second degree felony, even if the act is consensual.

Several survey respondents mentioned that s. 800.04(4)(a), F.S., which defines lewd or lascivious battery, is problematic. A judge said, “[The] law does not distinguish between serious cases and other boyfriend-girlfriend cases when one is underage and there is consent.” The defendant could be 18, or younger than 18 but prosecuted as an adult, when the victim is 12 through 15 and the activity was consensual. Even if the

offenders receive a mitigated sanction, they still qualify for the state's sex offender registry.

VICTIMS OF DOMESTIC VIOLENCE

The Florida Uniform Crime Report (UCR) data from the Florida Department of Law Enforcement is a comprehensive measure of reported crimes and arrests in Florida. A subsection within the UCR is dedicated to domestic violence and the categories of domestic violence, including forcible sex offenses. This information is of interest because it includes the victim's relationship to the offender. Since this data has been stable and consistent for the past three years, our analysis will only examine the statistics for 2004.

In 2004, out of a total of 12,756 reported forcible sex offenses, 2,699 (21%) were considered domestic violence. Although this seems to contradict the earlier finding that the perpetrator is known to the victim in 80 to 90% of the cases, it should be remembered that 'domestic violence' crimes are much more limited in scope. As defined in s. 741.28, F.S., domestic violence is perpetrated by one family or household member upon another family or household member. To be a family or household member

with the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

For purposes of domestic violence laws, the definition focuses on the geographical residence. Hence family members such as uncles or grandfathers who have not resided in the same single dwelling unit do not qualify as family or household members under this definition, even though common usage could consider them so. The category "known to

the victim” used in Ryce data is a much more expansive group that would include neighbors, friends, church, school, and youth activity workers, etc.

Table 3.9 displays reported domestic violence incidents by offense type to victim’s relationship to offender. The 2,699 reported domestic violence forcible sex offenses are broken out into three subcategories: forcible rape (1,146 in 2004), forcible sodomy (407), and forcible fondling (1,146). Children are the most frequent victims, identified in 815 reported incidents, or 30.2% of the total. The second largest victim category is “other family members,” with 773 reported incidents. There are specific categories to show the victim is a spouse, parent, or sibling, so the “other family member” refers to someone other than a spouse, parent, or sibling. Siblings are the third most frequent victim, with 314 reported incidents.

Table 3.9
2004 Domestic Violence -- Forcible Sex Offenses by Victim's Relationship to Offender

Offense	Relationship of Victim to Offender							
	Total	Spouse	Parent	Child	Sibling	Other family	Cohabitant	Other
All Forcible Sex Offenses	2,699	194	93	815	314	773	229	281
Forcible Rape	1,146	162	45	280	104	243	153	159
Forcible Sodomy	407	15	10	119	88	127	20	28
Forcible Fondling	1,146	17	38	416	122	403	56	94
All Forcible Sex Offenses	100.0%	7.2%	3.4%	30.2%	11.6%	28.6%	8.5%	10.4%
Forcible Rape	100.0%	14.1%	3.9%	24.4%	9.1%	21.2%	13.4%	13.9%
Forcible Sodomy	100.0%	3.7%	2.5%	29.2%	21.6%	31.2%	4.9%	6.9%
Forcible Fondling	100.0%	1.5%	3.3%	36.3%	10.6%	35.2%	4.9%	8.2%

Source: Florida Department of Law Enforcement, "Crime in Florida, January -December 2004."

As shown in Table 3.10, there were only 912 arrests for the 2,699 reported forcible sex offenses, an average of 1 arrest for every 3 incidents. An incident may not lead to an arrest for a number of reasons. In addition, a single offender may be

responsible for multiple incidents. Some incidents never result in an arrest because probable cause is lacking, or the victims, after initially reporting an incident, may change their minds and decline further cooperation with the law enforcement agency. Finally, the offenders may have fled and escaped apprehension.

Table 3.10

2004 Domestic Violence -- Reported Forcible Sex Offenses and Arrests

Offense	Total reported incidents	Arrests	Arrests per Incident
All Forcible Sex Offenses	2,699	912	0.3
Forcible Rape	1,146	432	0.4
Forcible Sodomy	407	145	0.4
Forcible Fondling	1,146	335	0.3

Source: Florida Department of Law Enforcement, "Crime in Florida, January - December 2004."

To put the domestic violence arrest rate into perspective, in 2004 there were a total of 850,490 reported index offenses in Florida, and a total of 175,555 arrests for index offenses, an average of one arrest per five incidents. The arrest rate is higher for domestic violence sexual offenses at least in part because the perpetrators were actually known by the victims.

CHAPTER 4—CRIMINAL CODE SENTENCING

This chapter compares the sentencing of sex offenders to the sentencing of other offenses. The Criminal Code database, which was used to obtain demographic information on offenders, was also used in this analysis. As noted earlier, this is a rich source of data on sentencing in Florida because it includes information on state prison, state supervision, and county jail sanctions, as well as other sanctions such as fines. In addition, the sentencing detail available on the Criminal Code scoresheet provides information on sanction and sentence length mitigation.

Table 4.1 displays the **incarceration rate** (the percentage of guilty dispositions receiving a prison sentence sanction) by the nine major offense categories for calendar years 2002, 2003, and 2004. The offense category with the highest incarceration rate is, as expected, the murder/manslaughter category, with rates over 80 percent. In general, the incarceration rate for all offenses has increased slightly during this three-year period, from 20.2% in 2002 to 21.6% in 2004. But the sex offense/lewd behavior category has shown a sharp increase, rising from 49.4% in 2002 to 59.2% in 2004. While in 2002 the robbery category had the second highest rate at 57.6%, by 2004 the sexual offense group had moved into the second position. The majority of the increase in the sex offense incarceration rate took place in 2003, when it jumped to 57.2%.

Table 4.1
Percent Sentenced to Prison by Offense Group
(Guilty Dispositions)

Offense group ¹	2002	2003	2004	Change 2002-2004
Murder/Manslaughter	83.2%	86.8%	86.5%	3.3%
Sexual/Lewd Behavior	49.4%	57.2%	59.2%	9.7%
Robbery	57.6%	57.1%	56.9%	-0.8%
Violent, Other	23.5%	26.0%	26.4%	2.9%
Burglary	30.7%	33.2%	33.4%	2.7%
Property Theft/Fraud/Damage	13.3%	14.6%	15.4%	2.1%
Drugs	16.3%	17.9%	17.5%	1.2%
Weapons	29.1%	29.8%	30.6%	1.4%
Other	14.6%	14.4%	15.4%	0.8%
Total	20.2%	21.6%	21.6%	1.5%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Although such a dramatic increase in one year raises the question of whether there was a specific law change or high profile incident that may have triggered the increase, that does not appear to be the case. The changes in Chapter 800 relating to lewd or lascivious conduct which revised offense definitions and upgraded the seriousness ranking of various offenses in this chapter occurred in 1999 and were in place for the third year by 2002. The system of emergency alerts to the public in cases of child abduction known as “Amber Alerts” was implemented in Florida in 2000. The first case receiving high profile media attention, the abduction and slaying of eleven-year old Carlie Brucia, took place in February of 2004, after the rate jump that occurred in 2003. Whatever the cause or causes may be, the increase is significant.

Table 4.2 displays the incarceration rate for specific sex offenses. The offense with the highest incarceration rate has remained *sexual battery, threat with deadly weapon* at 95.9% in 2004. This rate has varied only slightly over the three year period. The second highest incarceration rate is for *sexual battery by adult, victim under 12*.

Although the rate was 90.6% in 2002, it decreased to 85.7% in 2004. It should be noted that capital offenses are not sentenced under the Criminal Code. This means that the *sexual battery by adult, victim under 12* numbers shown here are for attempted *sexual battery by adult, victim under 12* which is a first degree felony.

Table 4.2
Percent Sentenced to Prison by Sexual Offense
(Guilty Dispositions)

Offense	2002	2003	2004	Change 2002-2004
Sexual battery by adult, victim under 12 ¹	90.6%	88.0%	85.7%	-4.9%
Sexual battery, threat with deadly weapon	94.4%	93.9%	95.9%	1.5%
Sexual battery without physical force likely to cause serious injury	54.3%	66.2%	60.6%	6.4%
Adult 24 or older --sex with 16-17 year old	40.6%	37.5%	45.9%	5.2%
Lewd or lascivious battery, victim 12-15	42.0%	51.7%	57.8%	15.8%
Lewd or lascivious molestation, victim under 12/offender 18 or older	56.4%	71.9%	73.4%	17.0%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	38.8%	50.0%	56.1%	17.3%
Lewd or lascivious conduct, victim under 16/offender 18 or older	35.6%	36.3%	42.9%	7.3%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	46.5%	38.6%	42.1%	-4.4%
All other sex offenses	48.1%	62.2%	59.5%	11.4%
Total	49.4%	57.2%	59.2%	9.7%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

The offenses with the largest increases in the incarceration rate over the three years are three of the lewd or lascivious offenses. The rate for *lewd or lascivious molestation, victim 12-15/offender 18 or older* rose by 17.3 percentage points, from 38.8% in 2002 up to 56.1% in 2004. The incarceration rate for the corresponding offense when the victim was under 12 increased by almost the same amount from 56.4% in 2002

to 73.4% in 2004. *Lewd or lascivious battery, victim 12-15* increased by 15.8 percentage points from 42% in 2002 to 57.8% in 2004.

Even without law changes or other high profile events, the number and rate of sex offenders receiving a prison term has increased significantly from 2002 to 2004, led by the largest increases in the lewd or lascivious offense types. Note that the lewd or lascivious offenses were rewritten in 1999, with some offenses moving up to a higher offense severity ranking in 1999. For purposes of this analysis, the relatively few lewd or lascivious offenses committed prior to the 1999 changes but sentenced during the 2002 through 2004 period were placed into the other sexual offenses category. As a result, the increase in the incarceration rate for lewd or lascivious offenses is attributable not to the law changes but instead to the sentencing behavior, since all the offenders in the category were sentenced under the same revised laws. The only distinction between them is time.

Table 4.3 displays the **average sentence length** for offenders sentenced to prison in 2002, 2003 and 2004. Under Florida's Criminal Code, the only upper limit to a sentence is the statutory maximum allowed for the felony degree of the offense. (Thirty years for a first degree felony, fifteen for a second degree felony, and five years for a third degree felony.) Hence the sentence imposed should represent the court's assessment, whether arrived at through a plea bargain or imposed by the judge after a trial, of the appropriate sanction based on the seriousness of the offense. If the average sentence length is an accurate indicator of an offense's seriousness, then sexual offenses are the second most serious category. In 2004, the average sentence length for a sexual offense was 7.8 years, 5.6 years less than murder, the most serious category with an average sentence length of 13.4 years. The third most serious category, robbery, had an

average sentence length of 6.9 years, or nine-tenths of a year less than sexual offenses. The next category, burglary, averaged 4.3 years and the remaining categories decline to the lowest, theft and fraud, at 2.3 years.

Table 4.3
Average Sentence Length (in years) for Offenders Sentenced to Prison under the Criminal Code

Offense group ¹	2002	2003	2004
Murder/Manslaughter	12.7	13.3	13.4
Sexual/Lewd Behavior	8.3	8.5	7.8
Robbery	7.1	6.9	6.9
Violent, Other	4.1	4.0	3.9
Burglary	4.4	4.3	4.3
Property Theft/Fraud/Damage	2.5	2.4	2.3
Drugs	3.2	3.0	2.9
Weapons	4.1	3.8	3.8
Other	2.7	2.5	2.4
Total	4.1	4.0	3.9

Source: Criminal Code database, updated 7/1/2005.

Note: Sentences of 50 years or more were recoded to 50 years.

¹Criminal code scoresheets are only prepared for non-capital offenses.

These serious rankings seem intuitively correct. The loss of human life as a result of criminal acts is unique in its finality. It also seems intuitively correct that sex offenses would be the next most serious offense. These crimes are a traumatic violation of privacy, may involve violence and injury, and often result in long-lasting or even life-time damage to the victims, either physical or psychological or both.

Table 4.3 shows that the average for all offenses has declined slightly from 4.1 years in 2002 to 3.9 years in 2004. The average sentence length for sex offenses has been more erratic, actually increasing from 8.3 years in 2002 to 8.5 years in 2003, then declining to 7.8 years in 2004.

As noted above, the incarceration rate has increased over the last three years but this has been accompanied by a decline in the average sentence length. Logic suggests that as offenders, who previously would have received a non-prison sanction, are sentenced to prison, they will receive shorter sentences than those already receiving a prison sanction: hence the decline in the average sentence length. This general observation would be applicable to sex offenders as well.

Table 4.4 displays the average sentence length for specific sex offenses. The longest average sentence length in 2004 was 14.7 years for the offense of *sexual battery by adult, victim under 12* and the shortest average sentence length in 2004 was 3.7 years for *lewd or lascivious exhibitionism, victim under 16/offender 18 or older*. Although there has been some variation over the three years, in most cases the average sentence length in 2004 was shorter than in 2002. The offense with the largest increase in the incarceration rate, *lewd or lascivious molestation, victim 12–15/offender 18 or older*, also had the largest decrease in the average sentence length. The incarceration rate increased from 38.8% to 56.1% from 2002 to 2004, while the average sentence length decreased from 7.3 years to 4.3 years.

Table 4.4

Average Sentence Length (in years) for Offenders Sentenced to Prison for Sex Offenses under the Criminal Code

Offense	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	12.1	14.1	14.7
Sexual battery, threat with deadly weapon	14.9	12.4	13.4
Sexual battery without physical force likely to cause serious injury	9.3	8.3	9.9
Adult 24 or older --sex with 16-17 year old	5.1	6.4	4.6
Lewd or lascivious battery, victim 12-15	7.6	7.1	6.7
Lewd or lascivious molestation, victim under 12/offender 18 or older	10.2	10.7	8.8
Lewd or lascivious molestation, victim 12-15/offender 18 or older	7.3	5.3	4.3
Lewd or lascivious conduct, victim under 16/offender 18 or older	4.7	4.1	4.3
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	4.0	5.3	3.7
All other sex offenses	7.6	9.1	8.4
Total	8.3	8.5	7.8

Source: Criminal Code database, updated 7/1/2005.

Note: Sentences of 50 years or more were recoded to 50 years.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony,

So the phenomenon seen in all offense categories can be observed with sex offenses as well: as incarceration rates increase, the sentences of the offenders who formerly received non-prison sanctions lower the average prison sentence length. The same pattern holds for the two offense categories with the next largest incarceration rate increases, *lewd or lascivious molestation, victim under 12/ offender 18 or older* and *lewd or lascivious battery, victim 12–15*. The average sentence length of the lewd or lascivious molestation offense decreased from 10.2 years in 2002 to 8.8 years in 2004, and for lewd or lascivious battery from 7.6 years in 2002 to 6.7 years in 2004.

Table 4.5 shows the percentage of offenders receiving a **mitigated sanction** by major offense category. The presumed minimum sentence for an offender with more than 44 points under the Criminal Code is a prison sentence; hence a non-prison sanction constitutes a mitigated sanction. The sex offense category has the highest mitigation rate in each of the three years studied. The overall mitigation rate for all offenses was stable throughout the three year period, at 11.6% in 2002, 11.6% in 2003, and 11.2% in 2004. The rate for sex offenders declined from 40.3% in 2002 to 33.1% in 2004. Although the rate fell over the three year period, it was by far the highest of any category in 2004. The second highest rate was 23.4% in the ‘other violent crimes’ category.

Table 4.5
Percent Receiving a Mitigated Sanction

Offense group ¹	2002	2003	2004	Change 2002-2004
Murder/Manslaughter	16.7%	13.2%	13.5%	-3.2%
Sexual/Lewd Behavior	40.3%	34.2%	33.1%	-7.2%
Robbery	16.4%	19.3%	18.6%	2.2%
Violent, Other	24.1%	22.9%	23.4%	-0.7%
Burglary	20.5%	21.4%	21.2%	0.6%
Property Theft/Fraud/Damage	4.4%	5.0%	4.8%	0.4%
Drugs	8.8%	8.9%	8.7%	-0.1%
Weapons	10.1%	12.3%	11.4%	1.3%
Other	7.0%	6.8%	6.3%	-0.6%
Total	11.6%	11.6%	11.2%	-0.4%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table 4.6 breaks the sex offense category out into specific offenses. The sanction mitigation rates exhibit considerable variation, ranging from a high of 58% for *lewd or lascivious battery, victim 12–15* in 2002 to a low of 4.1% for *sexual battery, threat with deadly weapon* in 2004. Three of the lewd or lascivious offenses have mitigation rates

Table 4.6

Percent of Sex Offenders Receiving a Mitigated Sanction

Offense	2002	2003	2004	Change 2002-2004
Sexual battery by adult, victim under 12 ¹	9.4%	12.0%	14.3%	4.9%
Sexual battery, threat with deadly weapon	5.6%	6.1%	4.1%	-1.5%
Sexual battery without physical force likely to cause serious injury	44.2%	33.1%	38.7%	-5.5%
Adult 24 or older --sex with 16-17 year old	43.8%	49.0%	41.3%	-2.5%
Lewd or lascivious battery, victim 12-15	58.0%	48.3%	41.3%	-16.7%
Lewd or lascivious molestation, victim under 12/offender 18 or older	42.9%	28.1%	26.6%	-16.3%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	54.4%	44.4%	40.6%	-13.8%
Lewd or lascivious conduct, victim under 16/offender 18 or older	22.7%	22.6%	20.1%	-2.6%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	10.1%	8.7%	16.8%	6.7%
All other sex offenses	41.7%	32.4%	35.2%	-6.4%
Total	40.3%	34.2%	33.1%	-7.2%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony,

which have declined significantly over the three-year period, yet remain at relatively high levels compared to other offenses. For example, the sanction mitigation rate for *lewd or lascivious battery, victim 12-15* declined from 58% in 2002 to 41.3% in 2004. This is a high frequency offense with 431 score sheets for 2004. Similarly, the rate for *lewd or lascivious molestation, victim 12-15/offender 18 or older* fell from 54.4% in 2002 to 40.6% in 2004. *Lewd or lascivious molestation, victim under 12/offender 18 or older* mitigation rates fell from 42.9% in 2002 to 26.6% in 2004. Two sexual battery offenses have experienced smaller declines, but still exhibit high mitigation rates. Mitigation rates for *adult 24 or older--sex with 16-17 year old* was 43.8% in 2002 and 41.3% in 2004.

Offenders convicted of *sexual battery without physical force likely to cause serious injury* received a mitigated sanction 44.2% of the time in 2002 and 38.7% of the time in 2004.

A second type of mitigation is the **mitigated sentence length**. Under the Criminal Code, if the total sentence points are greater than 44, then the lowest permissible prison sentence (in months) is calculated by deducting 28 from the total sentence points, then multiplying by 75%. If the defendant is sentenced to prison, but the sentence length is less than the lowest permissible sentence, the result is characterized as a mitigated sentence length.

Table 4.7 displays the percentage of mitigated sentence lengths by major offense category. The category with the highest mitigation rate for all three years is the sex offense group. Moreover, this category had the highest increase in the use of mitigation (3.5%) with the exception of 'Other'. In 2004 nearly half (48.2%) of all prison sentences for sex offenses were shorter than the Criminal Code's lowest permissible sentence length. This rate is much higher than the mitigation rate for all offenses in 2004, which was 28.4%. The category with the second highest mitigation rate is murder/manslaughter, with rates just under those of the sex offense group.

Table 4.7

Percent Receiving a Mitigated Sentence Length

Offense group ¹	2002	2003	2004	Change 2002-2004
Murder/Manslaughter	43.9%	43.2%	45.4%	1.5%
Sexual/Lewd Behavior	44.7%	45.6%	48.2%	3.5%
Robbery	29.8%	27.9%	26.5%	-3.2%
Violent, Other	28.1%	28.9%	27.6%	-0.5%
Burglary	31.3%	30.4%	30.1%	-1.2%
Property Theft/Fraud/Damage	21.8%	21.7%	23.2%	1.4%
Drugs	24.2%	25.4%	26.5%	2.2%
Weapons	18.8%	20.7%	17.2%	-1.6%
Other	21.5%	23.7%	25.9%	4.4%
Total	27.7%	28.2%	28.4%	0.7%

Source: Criminal Code database, updated 7/1/2005.

Note: Includes offenders sentenced to prison (excluding life sentences) with points greater than 44.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table 4.8 shows the sentence length mitigation rates for specific sex offenses. By far, the highest sentence length mitigation rate is for the offense of *lewd or lascivious battery, victim 12-15* which peaked at 60.4% in 2003 and remained nearly that high in 2004. Other offenses with very high rates include *lewd or lascivious molestation, victim 12-15/offender 18 or older* at 54.5% in 2004 and *sexual battery without physical force likely to cause serious injury* at 51.6% in 2004. Of interest, these offenses also had increasing uses of mitigation over the three-year period (2002 compared to 2004).

Table 4.8
Percent of Sex Offenders Receiving a Mitigated Sentence Length

Offense	2002	2003	2004	Change 2002-2004
Sexual battery by adult, victim under 12 ¹	39.0%	38.4%	32.1%	-6.9%
Sexual battery, threat with deadly weapon	30.0%	43.3%	36.4%	6.4%
Sexual battery without physical force likely to cause serious injury	44.3%	46.5%	51.6%	7.4%
Adult 24 or older --sex with 16-17 year old	48.6%	45.7%	44.9%	-3.8%
Lewd or lascivious battery, victim 12-15	59.0%	60.4%	59.4%	0.4%
Lewd or lascivious molestation, victim under 12/offender 18 or older	33.7%	37.3%	41.8%	8.1%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	42.5%	35.2%	54.5%	12.0%
Lewd or lascivious conduct, victim under 16/offender 18 or older	27.9%	24.4%	15.8%	-12.1%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	13.8%	13.5%	14.3%	0.5%
All other sex offenses	48.8%	48.1%	52.9%	4.1%
Total	44.7%	45.6%	48.2%	3.5%

Source: Criminal Code database, updated 7/1/2005.

Note: Includes offenders sentenced to prison (excluding life sentences) with points greater than 44.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

Section 921.0026, F.S., has a list of twelve mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified. Legitimate mitigation reasons are not limited to those on the list. EDR examined a variable provided on the Criminal Code scoresheet which indicates the reasons for mitigation. By far the most frequent explanation was a legitimate, uncoerced plea bargain. For sex offenders, 87.1% of the downward departures were pleas. This is comparable to the 87.8% rate for all offenses. The next two most common reasons for sex offenders' mitigated sentences were the defendant being sentenced as a youthful offender, and the "other" category:

each accounting for 4.7%. Together the three reasons account for 97% of the mitigations of sex offense sentences.

Which leads to the next question: why so many downward departure plea bargains? One possibility may be that the prosecution suspects for various reasons that it may be difficult to obtain a conviction at trial. However, by accepting a sanction mitigation—e.g. community supervision instead of prison, the defendant is willing to plead guilty to the sex offense charge. Should the defendant reoffend with another sex offense, the previous sex offense conviction will contribute prior record points and may make it easier for the prosecution to obtain another conviction with a more substantial sanction.

Another possible reason for the high mitigation rates observed for sex offenses is that the minimal presumptive sanction is more severe than what seems to be an appropriate sanction to the prosecution and judge. The following discussion on victim injury points explores this possibility in more detail. The history of sex offense sentencing since guidelines were established shows that sex offenses have been frequently amended to impose stricter sentencing. But the sentencing guidelines were originally designed to reflect the actual sentencing practices of judges at the time, so each change is designed to alter existing sentencing practices.

Society does change its attitude toward certain offenses over time. Clear movements towards stricter enforcement and punishment of drunken driving and domestic violence offenses have transpired. Public advocacy groups and education have shifted the public consensus on these issues. Sex offenses seem to be experiencing a similar movement, but it is not clear why the trajectory has been so steep. The function

of legislative bodies is to make and change laws. The judiciary enforces these laws. But many times changes to the law become more muted when they are put into practice, as when, for example a new minimum mandatory sentence is imposed for an offense where the average sentence has been less than the new minimum. Prosecutors may find working with strict minimum mandatory or presumptive minimum sentences advantageous in the plea bargaining process. With the starting point a strict sanction, the offer of a lesser sanction becomes more attractive to the defendant. On the other hand, the prosecutors and judges have other reasons for wanting to do this. After years of practice, prosecutors and judges, with their legal discretion, develop individual preferences for the appropriate sanctions for specific offenses. If a new minimum mandatory sanction seems excessive, they may offer a plea bargain with a sanction mitigation, or even offer to accept a plea to a lesser offense that does not have the minimum mandatory sentence. This adjustment to law changes has been observed repeatedly

One way to understand the reasons for high mitigation rates is to directly ask prosecuting attorneys and judges why they think these rates are so high. Question 2 of the survey was:

Certain sex offenses have high mitigation rates (sanction mitigation rates around 40%, sentence length mitigation rates between 40% and 60%). The offenses are

- (a) Sexual battery—s. 794.011(5)*
- (b) Adult 24 or older having sex with 16 or 17 year old—s. 794.05(1)*
- (c) Lewd or lascivious battery, victim 12-15—s. 800.04(4)(a)*
- (d) Lewd or lascivious molestation, victim under 12, offender 18 or older—s.800.04(5)(b)*
- (e) Lewd or lascivious molestation, victim 12-15, offender 18 or older—s.800.04(5)(a)2.*

What do you think contributes to each or all of these offenses having such high mitigation rates?

Responses included the following--

- Need for negotiated mitigation to resolve a factually weak case, rather than risk a Not Guilty verdict at trial.
- Sex offenses are hard to try and hard to prove. Sex crimes most often take place without objective witnesses. Much of the evidence is subject to attack, victims are reluctant or unable to testify. Family relationship between victim & defendant result in pressure on the victim to drop charges, etc.
- ...a plea may be offered or a lesser sentence due to the potential trauma a trial causes a victim. (Some defense attorneys are merciless and a trial can be more damaging than the original act.)

VICTIM INJURY POINTS

Under the Criminal Code (and Sentencing Guidelines before that) a defendant's lowest permissible sentence (recommended sentence) is calculated by adding up points which are assigned based on the offense(s) committed, the defendant's prior record, and a variety of factors relating to the circumstances of the offense including victim injury points. From the advent of sentencing guidelines in 1983 until the major revision in 1994, the conversion from a score to a sentence required a conversion table. A separate table existed for each of the nine offense categories. For instance, for a sexual offense, a score of 186 to 207 corresponded to a recommended sentence of two and a half to three and a half years. As originally written, a single count of a first degree sexual offense was worth 180 points. Twenty victim injury points were added for "contact but no penetration" and 40 for "penetration or slight injury." As an example, consider the offense *sexual battery, threat with deadly weapon*, a first degree felony. Under the

original guidelines, the offender would have scored 180 points for the primary offense, plus 40 points for penetration for a total of 220 points, scoring in the three and a half to four and a half year prison term range. Without the victim injury points the recommended sentence would have been one to one and a half years or community control. Note that in this example the 40 victim injury points accounted for 18% of the 220 total points.

Although the Guidelines had been constructed to reflect actual sentences imposed, in less than a year the Florida Supreme Court adopted changes to the Rules of Criminal Procedure to increase the points associated with the primary offense for sexual crimes. In our example, the points for a first degree felony were increased from 180 to 216. Adding the 40 points for penetration yields a total score of 256, associated with a recommended sentence range from five and a half to seven years. The points associated with the sexual penetration now account for 16% of the total score, i.e. 40 out of 256 total points.

The Guidelines underwent a major revision with the passage of the “Safe Streets Initiative of 1994.” The tables constituting the Guidelines were placed in the Florida Statutes themselves, rather than in the Rules of Criminal Procedure, making them accessible for future revisions by the Legislature. The nine offense categories were replaced by an offense severity ranking consisting of ten levels of seriousness. Levels range from One for the less serious offenses up to Ten for the most serious crimes. A key characteristic of the revised guidelines was that each point of the score generally corresponds to a month of prison sentence, with no conversion table required to translate the score into a recommended prison term. The total score is calculated and 28 points are subtracted to account for non-prison sentences and the fact that a prison sentence must be

at least twelve months long. The remaining point score corresponds directly to months in prison. Returning to the example of a *sexual battery, threat with deadly weapon* the offense is ranked in level Nine of the offense severity ranking. A primary offense ranked at level Nine is worth 91 points plus 40 points for sexual penetration. From the total of 131 points, subtract 28 for a resultant sentence of 103 months, or 8.6 years. The victim injury points are now 31% of the total score.

By 1994, the recommended sentence for this particular sexual battery offense had increased from four years up to 8.6 years, with the contribution of the victim injury points increasing from 18% to 31%. The next major revision came in the “Crime Control Act of 1995.” Along with many other significant revisions, the points for sexual penetration were doubled from 40 to 80 and the points for sexual contact were increased from 18 to 40. Returning again to the example of the sexual battery offense, a level Nine offense was worth one more point, 92, plus 80 points for sexual penetration, for a total of 172 points and a recommended 12 year prison term. The victim injury points now constitute 47% of the total score. The last major revision, the creation of the Florida Criminal Punishment Code in 1997, did not alter these points, but did provide for the imposition of statutory maximum sentences by degree. A first degree felon could now receive up to 30 years in prison. This sentence is not considered an aggravated sentence and cannot be appealed simply because of its length. Exhibit 4-1 summarizes changes in the recommended sentence for this specific sexual battery offense.

Exhibit 4-1

Contribution of Victim Injury Points to Recommended Sentence for Offense of Sexual Battery (victim 12 or older, with threat of physical force likely to cause serious injury)

	Original Sentencing Guidelines	Florida Supreme Court 1984 Revision	"Safe Streets Initiative of 1994" Revision	"Crime Control Act of 1995" Revision
Primary offense points	180	216	91	92
Recommended sentence for primary offense with no victim injury	1 - 1.5 years ¹	3.5 - 4.5 years	5.3 years	5.3 years
Victim injury points for penetration	40	40	40	80
Total points	220	256	131	172
Recommended sentence for primary offense with victim injury points	3.5 - 4.5 years	5.5 to 7 years	8.6 years	12.0 years
Victim injury points as percent of total points	18.2%	15.6%	30.5%	46.5%
Increase in recommended sentence due to victim injury points	2.5 - 3.0 years	2.0 - 2.5 years	3.3 years	6.7 years

¹ Community Control was also permitted with this score.

The Criminal Code database was also used to examine the role that victim injury points play in the sentencing of offenders. Table 4.9 shows the percentage of offenders receiving victim injury points by major offense category. The category with the highest percentage of offenders receiving victim injury points is the murder/manslaughter group, with 84.1% receiving points in 2004. Those offenders not receiving points were presumably attempts where no injury occurred. The offense group with the second highest percentage is the sexual offense group, with 67.6% receiving victim injury points in 2004. Some of the offenses in the sexual group, such as lewd exhibitionism, will not normally have victim injury points. The next highest category is other violent offenses-- with 24.3% receiving victim injury points in 2004-- followed by robbery with 11.2%.

Table 4.9
Percent of Offenders Receiving Victim Injury Points

Offense group ¹	2002	2003	2004
Murder/Manslaughter	84.3%	83.5%	84.1%
Sexual/Lewd Behavior	68.9%	69.3%	67.6%
Robbery	11.6%	11.3%	11.2%
Violent, Other	26.9%	26.9%	24.3%
Burglary	2.8%	2.8%	2.7%
Property Theft/Fraud/Damage	0.3%	0.3%	0.2%
Drugs	0.2%	0.3%	0.2%
Weapons	1.6%	1.7%	1.9%
Other	0.7%	0.9%	0.9%
Total	6.2%	6.1%	5.4%

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table 4.10 addresses the question of the importance of victim injury points in determining an offender's score under the Criminal Code by showing information on the average percentage of victim injury points to the total score, by the major offense categories. In 2004, victim injury points were 53.2% of the total score in the murder/manslaughter category, followed by 44.5% in the sexual offense category. Recall the first degree sexual battery offense example, where victim injury points were 47% of the total score. For all offenders with victim injury points, the points constituted, on average, 27.1% of the score in 2004.

Table 4.10
Victim Injury Points as Percent of Total Points-- Offenders
with Victim Injury Points

Offense group ¹	2002	2003	2004
Murder/Manslaughter	53.6%	54.0%	53.2%
Sexual/Lewd Behavior	46.2%	44.9%	44.5%
Robbery	12.9%	12.8%	14.7%
Violent, Other	17.6%	18.3%	18.9%
Burglary	12.9%	12.6%	14.9%
Property Theft/Fraud/Damage	21.5%	27.7%	22.0%
Drugs	21.3%	28.7%	25.5%
Weapons	12.0%	15.6%	24.1%
Other	27.0%	37.1%	38.4%
Total	25.5%	26.6%	27.1%

¹Criminal code scoresheets are only prepared for non-capital offenses.

One purpose of the Safe Streets Initiative of 1994 was to place the guidelines point structure within the statutes to make them accessible to lawmakers for future revisions. Not surprisingly the Legislature has enhanced points for sex offenders in response to various concerned parties. But the high sanction and sentence length mitigation rates for sex offenders could be a result of this effort being too successful. As mentioned earlier, if presumptive minimum sanctions seem too severe to the prosecuting and judicial practitioners, frequent downward departures may be the result. Inherent in the substantial sentences originally designed for murder and for sexual offenses was the fact that a victim was murdered or subjected to sexual battery. With the enhancement of victim injury points, the proportionality of these offenses to all other offenses may have been distorted. The chief judge for criminal cases in one circuit suggested, “The severity

of the sentence compared to how these offenses were treated 20 years ago” as a reason for high mitigation rates.

The next two tables show the percentage of sex offenders receiving victim injury points for sexual contact by specific sexual offense (Table 4.11) and victim injury points for sexual penetration by specific sexual offense (Table 4.12). This gives some idea of the actual nature of the sexual activity associated with each of these specific offenses beyond that implied in the definition of the offense itself. For example, for the offense of *sexual battery by adult, victim under 12*, there were points for sexual contact in 68.3% of the convictions, and points for sexual penetration in 34.9% of the 2004 convictions. Again, note that most of these cases are “attempts.” For the offense of *lewd or lascivious battery, victim 12-15*, there were points for sexual contact in 16.0% of the convictions and for sexual penetration in 69.8% of the convictions..

Table 4.11
Percent of Sex Offenders Receiving Victim Injury Points for Sexual Contact

Offense ¹	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	56.5%	59.0%	68.3%
Sexual battery, threat with deadly weapon	18.5%	18.4%	18.4%
Sexual battery without physical force likely to cause serious injury	20.2%	16.9%	16.1%
Adult 24 or older --sex with 16-17 year old	12.5%	10.6%	8.3%
Lewd or lascivious battery, victim 12-15	17.5%	16.9%	16.0%
Lewd or lascivious molestation, victim under 12/offender 18 or older	73.7%	78.7%	71.9%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	53.4%	46.1%	43.3%
Lewd or lascivious conduct, victim under 16/offender 18 or older	28.8%	25.3%	28.6%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	0.0%	1.6%	0.0%
All other sex offenses	25.1%	34.9%	31.9%
Total	28.4%	30.7%	30.0%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

Table 4.12
Percent of Sex Offenders Receiving Victim Injury Points for Sexual Penetration

Offense ¹	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	36.5%	33.0%	34.9%
Sexual battery, threat with deadly weapon	83.3%	77.6%	71.4%
Sexual battery without physical force likely to cause serious injury	55.0%	51.3%	57.4%
Adult 24 or older --sex with 16-17 year old	66.3%	66.3%	58.7%
Lewd or lascivious battery, victim 12-15	74.7%	70.2%	69.8%
Lewd or lascivious molestation, victim under 12/offender 18 or older	5.1%	5.1%	9.4%
Lewd or lascivious molestation, victim 12-15/offender 18 or older	17.5%	15.0%	20.0%
Lewd or lascivious conduct, victim under 16/offender 18 or older	5.3%	4.8%	1.9%
Lewd or lascivious exhibitionism, victim under 16/offender 18 or older	0.0%	0.0%	0.0%
All other sex offenses	43.9%	41.8%	43.3%
Total	42.7%	40.6%	40.4%

Source: Criminal Code database, updated 7/1/2005.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

SEX OFFENDERS AND MURDER

In February 2004 Floridians were horrified at the kidnapping and murder of 11-year old Carlie Brucia. A security video surveillance tape of the child being led away by her abductor presented a vivid picture and created massive media attention. The defendant in the case, Joseph P. Smith, was on drug offender probation for possession of cocaine at the time of the crime, had a history of alleged violence, and seemed to be personally in a deteriorating spiral. Some suggested that the criminal justice system had failed by allowing the defendant to be at large in the community. Since March 2003 the Department of Corrections has implemented a "zero tolerance" policy for technical violators of probation. Joseph Smith had failed to pay \$170 of \$411 in court costs which

generated a probation violation report in December 2003. However, since Smith was unemployed, he apparently could not be violated for nonpayment, and additional information which might have raised a red flag was not included in the violation report or other information available to the judge.

Crimes that result in the death of the victim are obviously uniquely serious in their finality: a death can never be undone or mitigated. Furthermore, the horrific nature of the child's murder has evoked both proposed and implemented changes in the law aimed at preventing recurrences. With this in mind, several high profile cases occurring after Brucia will be explored, as well as all admissions to prison in the past three years where both a sex offense and a murder were committed. In particular, the cases will be examined for evidence of systemic failures that might have prevented these crimes, or for a particular profile which might alert officials to the potential for further criminal behavior.

The kidnapping, sexual assault, and murder of nine-year-old Jessica Lunsford in February 2005 resulted in similar responses from the public and the media. The defendant in the case, John Couey, 46, was a registered sex offender with an extensive criminal history. At the time of the offense, Couey was on county probation for a misdemeanor drug offense, but his probation officer was unaware that the man was a registered sex offender. Whether this information would have made any difference is unknown, but the Legislature has subsequently addressed this shortcoming in the "Jessica Lunsford Act" by requiring public or private entities providing misdemeanor probation services to check the sexual offender and sexual predator registration lists for each of their cases. Couey had also moved and failed to notify law enforcement of his change of

address. In response, the “Jessica Lunsford Act” increased registration requirements and the penalties for their violation.

Since a key legal principle provides that laws cannot retroactively criminalize acts committed prior to the effective date of the law, such laws are generally prospective in nature. One such law that might have prevented Couey’s alleged crimes is the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.” Passed in 1998, the law provides screening and evaluation for inmates convicted of a sexually violent offense who are about to be released from prison. Couey had been convicted of an attempted lewd or lascivious act on a child under 16 but was released prior to the passage of the Jimmy Ryce Act. Although only a small number of inmates are civilly committed (just over 200 since 1998) Couey himself had made statements over the years regarding his need for treatment that might have resulted in his civil commitment.

A third case involved the murder and attempted sexual battery of thirteen-year-old Sarah Lunde in April of 2005. The defendant in the case, David Onstott, was released from prison in 2001 after having served five and a half years for sexual battery. Onstott had previously dated the girl’s mother and it is alleged he went to the house looking for her, when he found Sarah there alone. Just one month before, Onstott had been arrested for failing to register as a sex offender. The “Jessica Lunsford Act” upgraded the offense of failing to register as a sex offender from a level Six offense where the lowest permissible sentence is any non-state prison sanction, to a level Seven offense where it is a state prison sentence.

All inmate admissions to Florida prisons in 2002, 2003, and 2004 were screened to select those cases in which there was both a murder and a sexual offense. There were a total of 20 admissions meeting the criteria: 4 in 2002, 11 in 2003, and 5 in 2004. Then, the Department of Corrections inmate database was examined to determine prior commitments to the Department, either to prison or to state supervision (probation or community control). This data source does not have information about prior misdemeanor convictions, or convictions for felonies in other states. Of the twenty, ten offenders had no prior commitment to the DOC, either as an inmate or for community supervision.

Eight admissions had a prior commitment to the Department, but no prior sex offense. Of the prior commitments, each had only one: four had a prior prison commitment, and four had a prior commitment to community supervision.

Of the two remaining offenders, one had no prior commitments to the Department, but after the arrest for the murder and sexual battery, was convicted of another sexual battery that occurred in a separate event after the original murder/sexual battery. The final offender is the only offender to have had a prior conviction for a sexual offense at the time of the murder coupled with a sexual offense. To summarize these findings: In 2002, 2003 and 2004 there were 20 defendants sentenced to prison for a murder and a sexual offense. Eleven had no prior commitments to the DOC. Eight had one prior commitment (four supervision, four prison) but none of the prior commitments were for a sexual offense. One offender out of the 20 had a prior commitment for a sexual offense.

Given all of this information, evidence of systemic failures or unique profiles is not readily apparent. This suggests that additional legal and policy changes would have to be written broadly. In fact, so broadly that financial and civil rights issues become significant factors.

CHAPTER 5—SUMMARY REPORTING SYSTEM DATA

The Summary Reporting System (SRS) data are based on submissions from the 67 Clerks of the Circuit Courts of Florida. The information is extracted by the Office of the State Court Administrator (OSCA) from a static data base containing the official trial court statistics. EDR analyzed tables prepared by OSCA to determine if the legal processing of sexual offenders differs from that of other offenders in any significant ways. The following analysis looks at averages over three fiscal years, FY 2001-02 through FY 2003-04.

Table 5.1 below shows the total number of defendants disposed, the number whose cases were dismissed before trial, and the pre-trial dismissal rate (the number dismissed pre-trial divided by the total number of defendants disposed) for the eleven subcategories reported in the SRS as well as for major offense categories calculated for this analysis.

Table 5.1
SRS Filed Defendants and Pre-Trial Dismissal Rate
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number of filed defendants disposed	Number dismissed before trial	% dismissed before trial
Murder	1,310	175	13.4%
Capital Murder	240	44	18.2%
Non Capital Murder	1,070	132	12.3%
Sexual Offenses	3,195	498	15.6%
Robbery and Other Crimes against Persons	33,609	4,383	13.0%
Robbery	5,080	685	13.5%
Other Crimes Against Person	28,529	3,698	13.0%
Property Crimes	63,234	7,633	12.1%
Burglary	16,172	1,396	8.6%
Theft Forgery Fraud	39,624	3,687	9.3%
Worthless Checks	5,801	2,368	40.8%
Other Crimes Against Property	1,636	182	11.1%
Drugs	55,597	4,982	9.0%
Other	22,730	1,576	6.9%
Total	179,675	19,247	10.7%

Source: State Courts website.

The SRS classification scheme breaks property crimes into four subcategories; (1) burglary (2) theft, forgery, and fraud (3) worthless checks and (4) other crimes against property. The percentage of defendants for worthless checks whose cases were dismissed before trial was 40.8%, by far the largest share of any category. Note that this information is only for felonies, and a worthless check must be for \$150 or greater to constitute a felony offense. These offenders may be offered a pretrial intervention alternative, which results in the dismissal of the charges if successfully completed. Alternatively, if the offender makes restitution and pays the fines prior to prosecution of the offense, the case may also be dismissed.

Because the classification scheme divides property crimes into several subcategories, the high dismissal rate for the offense of felony worthless checks was revealed. But the overall dismissal rate for all property crimes, including worthless checks is 12.1%. When the dismissal rates for the six major categories are examined (murder, sexual offenses, robbery and other crimes against persons, property crimes, drug crimes, and other) the category with the highest dismissal rate is the sex offense category. However, the average dismissal rate for the three years was 15.6%, much lower than the rate for the subcategory of worthless checks and slightly lower than for the capital murder subcategory.

At the major category level, the second highest pre-trial dismissal rate was for *robbery and other crimes against persons*, at 13.0%, followed by property crimes at 12.1%. The overall rate for all offenses was 10.7%. The rates vary from year to year, and in fiscal year 2001-02 the highest dismissal rate before trial was in the murder category, at 15.9%, then the sexual offense category, at 15.2%.

Table 5.2 contains related information on dismissals and acquittals: the total number of defendants dismissed before trial as well as the number dismissed during or after the trial, and the number acquitted. Of the six main categories, sex offenses had the highest acquittal/dismissal rate at 19.7% with the second highest rate being murder cases at 19.0%. The subcategory of worthless checks again had the highest overall rate at 41.0%.

Table 5.2
Dismissal/Acquittal Rate for Disposed Defendants
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number dismissed/ acquitted	% dismissed/ acquitted
Murder	249	19.0%
Capital Murder	57	23.9%
Non Capital Murder	191	17.9%
Sexual Offenses	630	19.7%
Robbery and Other Crimes against Persons	4,885	14.5%
Robbery	800	15.7%
Other Crimes Against Person	4,085	14.3%
Property Crimes	7,934	12.5%
Burglary	1,521	9.4%
Theft Forgery Fraud	3,826	9.7%
Worthless Checks	2,380	41.0%
Other Crimes Against Property	207	12.6%
Drugs	5,211	9.4%
Other	1,750	7.7%
Total	20,658	11.5%

Source: State Courts website.

Again there is variation among the three fiscal years, with the highest acquittal/dismissal rate in fiscal years 2001-02 and 2002-03 occurring in the murder category, with rates of 21.4% and 20.8% respectively, followed closely by the sexual offense category with 19.4% and 19.5%.

In summary, the acquittal/dismissal rate for the sexual offense category, averaged over the three fiscal years, was the highest of any category, at 19.7%. It slightly exceeded the murder category rate of 19.0%. The third highest category was *robbery and*

other crimes against persons, at 14.5%. While sharing characteristics with these other two serious categories, the acquittal/dismissal rate for sexual offenses seems slightly high and this finding will be explored further.

Table 5.3 shows the percentage of defendants that were disposed at trial as opposed to being disposed at the pre-trial phase either by dismissal or plea. This measure was selected to gauge the proclivity to go to trial by offense category.

Table 5.3
Trial Rate for Disposed Defendants
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number disposed at trial	% disposed at trial
Murder	365	27.3%
Capital Murder	122	50.3%
Non Capital Murder	243	22.2%
Sexual Offenses	356	10.9%
Robbery and Other Crimes against Persons	1,403	3.9%
Robbery	401	7.6%
Other Crimes Against Person	1,002	3.2%
Property Crimes	847	1.2%
Burglary	417	2.4%
Theft Forgery Fraud	363	0.8%
Worthless Checks	20	0.2%
Other Crimes Against Property	47	2.2%
Drugs	666	1.1%
Other	606	2.4%
Total	4,244	2.2%

Source: State Courts website.

By far the highest percentage was for the murder category, where on average 27.3% of the defendants were disposed by trial over the three year period. Within the murder category, the trial rate for capital murder cases was 50.3%, more than twice as high as the rate for non-capital murder. The second highest trial disposition rate by major category was for sexual offenses with a trial rate averaging 10.9%. The third highest

category was robbery, at 3.9%. While the trial rate for sexual offenses is relatively high at 10.9% compared to the overall rate of 2.1%, it is well below the trial rates for murder.

The Summary Reporting System information examined up to this point has been based on defendants. The same tables will now be analyzed based on counts. Obviously, the same defendant can have more than one count. During the three fiscal years under consideration there were, on average, 144,551 defendants found guilty of felony offenses. They were convicted of 190,719 felony counts, an average of 1.3 counts per defendant.

Table 5.4, comparable to Table 5.1 above, shows the total number of felony counts disposed, the number dismissed before trial, and the pre-trial dismissal rate (the number dismissed pre-trial divided by the total number of felony counts disposed) for the eleven subcategories reported in the SRS as well as for major offense categories calculated for this analysis.

Table 5.4
SRS Pre-Trial Dismissal Rate of Filed Felony Counts
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number of filed felony counts disposed	Number dismissed before trial	% dismissed before trial
Murder	1,792	406	22.7%
Capital Murder	262	50	18.9%
Non Capital Murder	1,530	357	23.3%
Sexual Offenses	6,480	2,221	34.3%
Robbery and Other Crimes against Persons	44,685	9,888	22.1%
Robbery	6,812	1,431	21.0%
Other Crimes Against Person	37,873	8,457	22.3%
Property Crimes	107,927	21,856	20.3%
Burglary	21,892	3,642	16.6%
Theft Forgery Fraud	76,565	14,810	19.3%
Worthless Checks	6,921	2,925	42.3%
Other Crimes Against Property	2,549	479	18.8%
Drugs	74,469	11,383	15.3%
Other	29,511	5,290	17.9%
Total	264,864	51,044	19.3%

Source: State Courts website.

Overall, nearly one in five disposed counts was dismissed before trial (19.3%) compared to one in ten defendants who had charges dismissed before trial (10.7%). Worthless checks had the highest pre-trial dismissal rate at 42.3%--and this percentage is only slightly higher than the defendant dismissal rate. On the other hand, sexual offense counts had the highest pre-trial dismissal rate among the six major categories at 34.3%--more than twice as high as at the defendant level. Looking at it another way, sexual offense counts that were dismissed pre-trial accounted for 4.4% of all dismissed counts while the comparable percentage for defendants was 2.6%.

Similar patterns are present in the data on acquittals/dismissed counts (Table 5.5). In terms of this measure, the sex offense category is uniquely high. For the three years, an average of 39.6% of the counts were acquitted or dismissed (as noted above, 34.3% were dismissed pre-trial). The next highest category is murder with a 29.6% acquittal or dismissal rate, a full ten percentage points lower than the sex offense category. The drug category had the lowest rate at 15.8%, and the rate for all categories was 20.4%.

Table 5.5
Dismissal/Acquittal Rate for Disposed Counts
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number dismissed/ acquitted	% dismissed/ acquitted
Murder	530	29.6%
Capital Murder	75	28.7%
Non Capital Murder	454	29.7%
Sexual Offenses	2,564	39.6%
Robbery and Other Crimes against Persons	10,944	24.5%
Robbery	1,650	24.2%
Other Crimes Against Person	9,294	24.5%
Property Crimes	22,503	20.9%
Burglary	3,913	17.9%
Theft Forgery Fraud	15,128	19.8%
Worthless Checks	2,944	42.5%
Other Crimes Against Property	519	20.4%
Drugs	11,774	15.8%
Other	5,591	18.9%
Total	53,905	20.4%

Source: State Courts website.

As shown in Table 5.6, the trial rate for disposed counts is similar to that for disposed defendants. While 2.2% of the disposed defendants go to trial, 2.7% of disposed counts reach the trial phase. The trial rate for sexual offense counts is 13.0%, somewhat higher than the defendant trial rate of 10.9%. Murder trial rates exceed those for sexual offenses, but rates for all of the other offenses are much lower than those for sexual offenses.

Table 5.6
Trial Rate for Disposed Counts
Three year average (FY 2001-02 through FY 2003-04)

Offense category	Number disposed at trial	% disposed at trial
Murder	483	26.9%
Capital Murder	138	52.7%
Non Capital Murder	344	22.5%
Sexual Offenses	842	13.0%
Robbery and Other Crimes against Persons	2,388	5.3%
Robbery	682	10.0%
Other Crimes Against Person	1,706	4.5%
Property Crimes	1,582	1.5%
Burglary	651	3.0%
Theft Forgery Fraud	815	1.1%
Worthless Checks	31	0.5%
Other Crimes Against Property	85	3.3%
Drugs	1,034	1.4%
Other	722	2.4%
Total	7,051	2.7%

Source: State Courts website.

In summary, the SRS data were analyzed for both defendants and counts. From the perspective of defendants, sex offenses had the highest rate of acquittals or dismissals, at 19.7%. However, that rate was closely followed by the murder category, at 19.0%. The overall rate for all offenses was 11.5%. From the perspective of total counts the picture is different. Nearly 40 percent (39.6%) of sex offense counts resulted in an acquittal or dismissal, significantly higher than the second highest category, murder, at 29.6%, and all categories at 20.4%. So sex offender defendants are convicted at rates

similar to those accused of murder, but many of the counts are dropped or result in acquittals.

Various possibilities could explain this pattern. When the defendant is known to the victim, the criminal behavior may have occurred repeatedly over a period of time and resulted in many charges, though evidence for conviction is not present for all counts. The prosecutorial strategy may then involve charging as many counts as possible and dropping the weaker ones as part of the plea bargaining process. When there are multiple child victims, the general reluctance to expose victims to the potentially re-traumatizing effects of a courtroom appearance may lead to dropped charges when convictions with lengthy prison sanctions are obtained from other charges and victims. When judges and prosecutors with experience in the prosecution of sex crimes were surveyed, one question asked specifically about the high percentage of acquittals/dismissals. Explanations included the following:

- Age of the typical victim which often creates an inability to testify; lack of corroborative evidence (rarely any witnesses),
- Media hype and T.V. shows create a desire in juries to get more (“the smoking gun” so to speak) than just a child’s testimony, which is rarely the case in these types of crimes.
- Most normal people have no frame of reference for sex crimes against children: therefore juries have a hard time believing that a pedophile can be (by appearance and manner) such a nice person.

Although counts are dropped or result in acquittals at a high rate, it is also important to keep the end result in mind. Less than 20 percent of defendants had all counts against them dismissed (or were acquitted of all counts). Seventy-seven percent of sex offense defendants either pled or, at trial, were found to be guilty of a sex offense.

CHAPTER 6--OFFENDER BASED TRANSACTION SYSTEM

The Legislature first passed legislation to establish the Offender Based Transaction System (OBTS) in 1985. Florida's 67 Clerks of the Court provide the data in an automated format to the Office of the State Courts Administrator (OSCA), the Florida Department of Law Enforcement (FDLE) and the Department of Corrections (DOC). From this data OSCA produces the Summary Reporting System database, and FDLE updates its Computerized Criminal History file with court dispositional information.

The Office of Economic and Demographic Research requested and received copies of the felony criminal portion of the OBTS database from OSCA twice in the summer of 2005 for use in this sex offender study, and received a final updated version December 1, 2005. Each record of the dataset represents a single felony charge. Records are updated as a charge moves through the legal system. This is the only dataset that can be used to analyze the evolution of charges as they move from arrest to final disposition by the courts.

EDR analyzed the data for a three-fiscal year period: 2001-02, 2002-03, and 2003-04. The database contains information on various phases of each charge's legal processing: the basic phase, the initial phase, the prosecutor phase, the court phase, the sentence phase, and the post sentence phase. Specifically, variables indicate the statutory charge at the initial phase, the prosecutor phase, and the court phase of the process. This allows a window into how charges may change or remain the same as they move through the legal system.

The two major categories of sexual offenses are sexual battery offenses (F. S. Chapter 794) and lewd or lascivious offenses (F.S. Chapter 800). (See Appendix D for a

listing of all sex offenses.) The records were screened to produce two subsets, one with an initial charge of sexual battery, and one with an initial charge of a lewd or lascivious offense. The data were then screened to include only counts where all processing had been completed. The older the case, the more likely it is to have been completed. For example, 92.5% of the sexual battery counts from fiscal year 2001-02 are complete, while 85.4% are complete for fiscal year 2003-04. For the three year period, 89.6% of the records with an initial charge of sexual battery and 91.1% of the records with an initial lewd or lascivious charge had been completed and were included in the analysis.

The analysis first examined completed counts as they moved from the initial phase to the prosecutor phase. The statutory charge in the initial phase is the charge at the time of arrest or notice to appear. The statutory charge in the prosecutor phase reflects any changes in the charge that occur at this level. Table 6.1 details the changes from the initial phase to the prosecutor phase. For the three fiscal years, an average of 3,560 counts (89.9%), that began as a sexual battery charge remained such at the prosecutor phase. Two hundred and twenty-seven charges that were initially sexual battery charges were changed to charges of lewd or lascivious acts, (5.7%); and 172 (4.4%) were changed to other offenses. For the charges of lewd or lascivious acts in the initial phase, 4,801 (95.6%) remained the same, while 63 (1.2%) were changed to sexual battery charges, and 157 (3.1%) were changed to other offenses.

Table 6.1
Statutory Charge at Prosecutor Phase
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	3,560	63
F.S. 800	227	4,801
Other	172	157
Total	3,959	5,021
Statutory Charge	Percent	
F.S. 794	89.9%	1.2%
F.S. 800	5.7%	95.6%
Other	4.3%	3.1%
Total	100.0%	100.0%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

Information in the database on the final action of the prosecutor provides additional information on the processing of sexual offenses. The prosecutor may file charges at this time or the charges may be dropped, consolidated, or transferred to another court. Also, the prosecutor may not take any action. Filing occurs after the prosecutors have examined the case, including the evidence and the witnesses and decided whether to proceed with prosecution. Charges that are filed continue to move through the system.

As shown in Table 6.2, 38.7% of the counts that were initially for a sexual battery charge resulted in a filing, and 42.5% of the initial lewd or lascivious charges resulted in a filing.

Table 6.2
Counts Filed at the Prosecutor Phase
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	1,203	34
F.S. 800	178	1,962
Other	150	136
Total	1,531	2,132
Statutory Charge	Filing Rate--Filed Counts as Percent of Total Counts	
F.S. 794	33.8%	53.7%
F.S. 800	78.3%	40.9%
Other	87.6%	86.8%
Total	38.7%	42.5%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

However, the filing rate is much higher for counts where the statutory charge changed during the prosecutor phase. In cases where an initial charge of sexual battery was changed to a lewd or lascivious offense, the filing rate was 78.3%. The rate was even higher (87.6%) for those sexual battery charges which were changed to another offense. Similar differences were observed for counts where the initial offense was a lewd or lascivious offense.

For the sexual battery cases that did not result in a filing, the most common reason was “Dropped/Abandoned - A formal notification by the prosecutor identifying that the charge will not be filed on and no further action is to be taken.” “Dropped/Abandoned” was indicated in 1,160 counts. The second most common reason, indicated in 693 charges, was “Nolle Prosequi – A formal entry upon the record by the prosecuting officer, by which it is declared that the charge will not be prosecuted.” The third most

common, indicated in 471 counts was “No action – No action taken by the prosecutor.” A much smaller number of charges were indicated as consolidated with other charges, transferred to another court, or administratively dismissed. The decision not to file for lewd or lascivious charges were for the same reasons, in the same order of frequency.

The next phase is the court phase. For all counts with an initial charge of sexual battery that resulted in a filing by the prosecutor, about two thirds continued as a sexual battery charge and about one third changed, either to a lewd or lascivious charge or to another offense. Almost 80% of the lewd or lascivious charges remained the same.

Table 6.3
Statutory Charge at Court Phase of Filed Counts
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	987	29
F.S. 800	215	1,676
Other	329	427
Total	1,531	2,131
Statutory Charge	Percent	
F.S. 794	64.5%	1.3%
F.S. 800	14.0%	78.6%
Other	21.5%	20.0%
Total	100.0%	100.0%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

As shown in Table 6.4, eighty-eight percent of the filed counts with an initial charge of sexual battery resulted in a guilty disposition. Although initially charged with a sexual battery offense, many of these charges result in a conviction for another offense. On average for the three years, 61.6% of these convictions were still for a sexual battery, while 14.5% were for a lewd or lascivious offense, and 23.9% were for another offense. So nearly 40% of the initial sexual battery counts that ultimately resulted in a conviction

were convicted of an offense other than sexual battery. Of the convictions in the “Other” category, *battery/felony battery* was the most frequent offense, followed by the offense of *sexual performance by a child*, which is in Chapter 827 relating to the abuse of children. However, the high frequency of convictions for *sexual performance by a child* is only observed in 2004, not the earlier years.

Table 6.4
Filed Counts that Resulted in a Guilty Disposition at the
Court Phase
Three year average (FY 2001-02 through FY 2003-04)

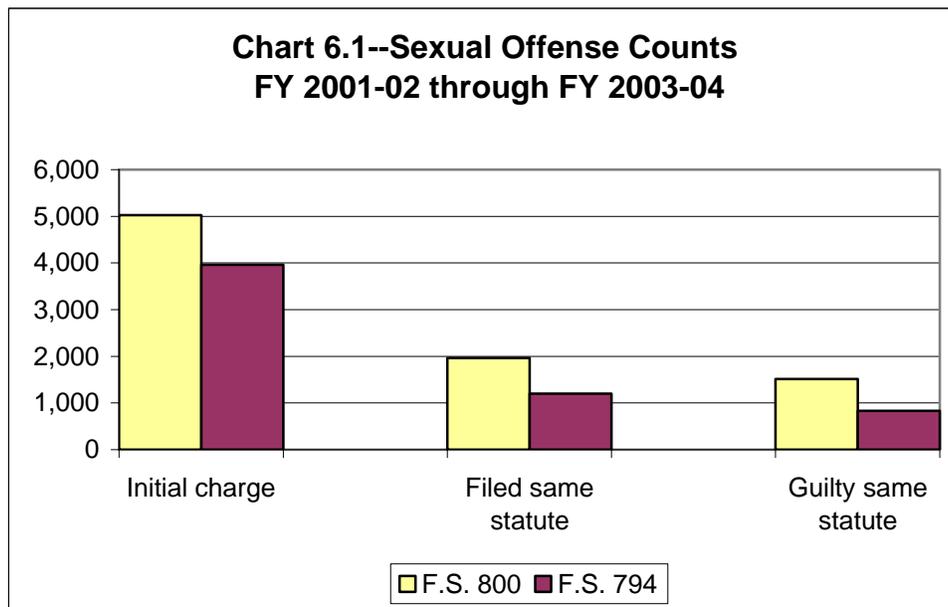
	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Statutory Charge	Number	
F.S. 794	830	23
F.S. 800	196	1,517
Other	322	423
Total	1,348	1,963
Statutory Charge	Guilty Rate--Guilty Counts as Percent of Filed Counts	
F.S. 794	84.1%	81.4%
F.S. 800	91.3%	90.5%
Other	97.9%	99.1%
Total	88.1%	92.1%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

For all counts with an initial charge for lewd or lascivious offenses that resulted in a filing by the prosecutor, 92.1% resulted in a guilty disposition. On average 77.3% of convictions were for a lewd or lascivious offense, while 1.2% were for a sexual battery and 21.5% were for other offenses. The other offenses were most frequently *battery/felony battery*, followed by *abuse of children*.

Finally, 34% of all initial charges for sexual battery ultimately resulted in a guilty disposition for any offense, and 39.1% of the initial lewd or lascivious charges resulted in a conviction for some offense.

As shown in Chart 6.1, for the three fiscal years studied in this analysis, the 5,000 initial charges involving lewd or lascivious behavior resulted in about 2,000 lewd or lascivious filings (40% of initial charges), and about 1,500 lewd or lascivious guilty dispositions (30% of initial charges). For the 4,000 sexual battery initial charges, about 1,200 (30%) resulted in sexual battery filings, and about 800 (21%) resulted in sexual battery guilty dispositions.



EDR undertook a similar tracking through phases based on the number of defendants (Table 6.5). For the three years there was an average of 2,039 defendants with an initial charge of sexual battery with an average of 1.94 counts per defendant. Just over half (50.6%) of the defendants had at least one charge filed at the prosecutor phase. Of the defendants with a filing, 90% or 928 defendants led to a guilty disposition. Looking back to the initial phase, only 45.5% were ultimately found guilty. For initial lewd or lascivious offenses, there was an average of 2,423 defendants per year with an

average of 2.1 counts per defendant. Of this group, 62.1% or 1,505 defendants were filed against in the prosecutor phase. Of the defendants with filings, 94.1% were found guilty. Looking back to the initial phase, only 58.5% were ultimately found guilty of some offense. This difference reflects the large number of defendants who have all charges dismissed prior to filing, or are acquitted.

Table 6.5
Sexual Offense Defendants
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)
Number of defendants (Completed counts)	2,039	2,423
Counts per defendant	1.94	2.07
Filings	1,031	1,505
Percent of Defendants with Counts Filed	50.6%	62.1%
Defendants with Guilty Dispositions¹	928	1,417
Percent of Defendants with counts Filed that have Guilty Dispositions	90.0%	94.2%
Percent of Defendants with Guilty Dispositions	45.5%	58.5%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

¹ Includes adjudication withheld dispositions.

As elsewhere in this study, the sexual offense category was then compared to another offense category with some similar characteristics, robbery, and to all offense categories to see what is unique and what is common to them all (see Table 6.6). As offenders with a charge of robbery in the initial phase move to the prosecutor phase and have charges filed against them, 93.2% of the charges were still for robbery, while 3.3% were for another Chapter 812 offense (theft and related crimes), and 3.5% were for other offenses. This is similar to the lewd or lascivious offenses where 92% were for a lewd or lascivious offense, and greater than the sexual battery category, where only 78.6% of the

initial counts were eventually filed as sexual battery cases. Of the total robbery counts in the initial phase, 50.9% led to a filing for some offense. This is clearly higher than for the sexual offenses, where 38.7% of sexual battery counts led to a filing and 42.5% of lewd or lascivious counts resulted in a filing. For all offenses, 49.3% led to a filing, so robbery offenses were even slightly higher than the overall rate.

Table 6.6
Comparison of Sexual and Robbery Offenses
Three year average (FY 2001-02 through FY 2003-04)

	With Initial Charge of Sexual Battery (F.S. 794)	With Initial Charge of Lewd or Lascivious (F.S. 800)	With Initial Charge of Robbery (F.S. 812)	All offenses
Percent of counts where filed offense is the same as initial offense	78.6%	92.0%	93.2%	NA
Percent of counts that resulted in a filing for some offense (not necessarily the same as the initial offense)	38.7%	42.5%	50.9%	49.3%
Percent of initial counts adjudicated guilty	34.0%	39.1%	47.9%	46.5%
Average counts per defendant	1.9	2.1	1.4	3.1
Percent of defendants adjudicated guilty	45.5%	58.5%	52.8%	61.7%

Source: Datafile obtained from the Office of the State Courts Administrator, December 2005.

In the court phase, 47.9% of the robbery counts in the initial phase were ultimately adjudicated guilty of some offense, compared to 34.0% of the sexual battery and 39.1% of the lewd or lascivious counts. For all offenses, 46.5% of counts resulted in a guilty disposition.

When the view is shifted to the defendants, the picture changes. Robbery defendants at the initial phase had an average of 1.4 completed counts, compared to 1.9 completed counts per sexual battery offender, 2.1 counts per lewd or lascivious offender, and 3.1 counts for all offenders. Overall, 52.8% of initial robbery defendants were found guilty, 45.5% of sexual battery defendants, and 58.5% of lewd or lascivious defendants. Again, the pattern is that sexual offenders in the initial phase have more counts, but fewer

counts lead to convictions. Nevertheless, they are convicted of more counts per defendant, and defendants are found guilty at a rate comparable to robbery defendants. Both conviction rates trail the rates for all offenses combined, where 61.7% of defendants are convicted.

CHAPTER 7-- CHILD HEARSAY

One unique aspect of sexual offenses is that the victims are so often children. In the Ryce referral data, victims were under twelve years of age in 38% of the 15,532 cases. The age of the victims presents special problems in prosecuting these cases. Young children may not understand that some kinds of touching are wrong and may not report criminal behavior—especially if the perpetrator is a family member or other trusted person. Or the child may be too embarrassed to report incidents when they occur. When the offenses are reported, the children may have forgotten some details, such as the exact date when the offense occurred. Their recall of details is often weak. These issues present a special challenge in proving charges beyond a reasonable doubt.

If the defendant is the father or stepfather, a dynamic may emerge similar to other domestic violence situations, where the spouse feels financially or emotionally dependant and unable to escape an abusive relationship. In such cases the spouse may question the validity of her child's accusations. This lack of support by the non-abusive parent may lead to the child recanting the accusations in an effort to please the parent. One survey respondent noted,

- Public education about the dynamics of denial within families for a variety of reasons is critical. When some of the dysfunctional family members support the perpetrator reasonable doubt is created.

Sometimes the sexual offense charges emerge during acrimonious divorce proceedings, and questions arise concerning whether the children are being used as pawns in this conflict. Because of their dependency upon adults, children can be influenced by them. Their vulnerability can lead to their being manipulated.

Furthermore, children are by nature imaginative, and at times do not distinguish well between fantasy and reality.

There is concern that the legal proceedings necessary to convict the offender may compound the trauma to the victim by repeatedly revisiting the details of the sexual offense. A judge responding to EDR's survey noted that for children, "The forum is intimidating. The legal process takes too long. Repeated interrogation is stressful and confusing."

Chapter 90 of the Florida Statutes deals with the evidence code, and s. 90.803(23), F.S. carves out an exception to the general prohibition against hearsay evidence for statements of child victims. An out-of-court statement by a child victim with a physical, mental, emotional, or developmental age of 11 or less is admissible unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness. However, certain conditions must be met as specified in the Statutes:

- 90.803(23)(a)1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and
 2. The child either:
 - a. Testifies; or
 - b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).

The key point here is that the out-of-court statement by the child victim, including a videotaped statement, is admissible only if the child testifies in court, or; if the child is

unavailable to testify, which includes the fact that testifying would cause severe harm to the child, then there must be other corroborative evidence. Absent corroborating evidence, it is the word of one party against the other. The Sixth Amendment to the U.S. Constitution contains the Confrontation Clause, which provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witness against him.” Florida law tries to balance the principal of allowing a defendant to confront an accuser in a legal proceeding against the need to protect victims who are children. As in all compromises, the result is not ideal for either party. Whether this is the best compromise available in this situation is unknown. But the result is that unless there is corroborating evidence, victims less than twelve years old have to testify before a conviction can be achieved. Even though testifying may be harmful to the victim, the prosecution cannot proceed without it. Furthermore, several survey respondents mentioned that the recent U.S. Supreme Court opinion in *Crawford v. Washington*, 124 S. Ct. 1354 (2004) will further restrict the use of the child hearsay exception.

Other survey respondents raise the possibility of law changes which would facilitate the successful introduction of child testimony. A Judge commented:

- Legislative changes are overdue in the area of child victims and their testimony. A task force should be created to draft laws that require 1) children to be videotaped anytime they are making a statement to Law Enforcement in order to decrease the need for repeated statements & depositions, 2) anybody taking the statement of a child as to sex crimes should be certified by the Supreme Court or the Florida Bar, 3) any school counseling or psychological counseling session of a child in any case where sex crimes are alleged should be pursuant to court order and under the court’s jurisdiction, 4) criteria should be established to protect the credibility of the child while balancing the defendants right to confrontation and a jury trial.

A Prosecutor wants statutory changes:

- [Give] more opportunity for child victims' hearsay statements to be admitted. [Curb] the effects of (requirements) Crawford. Or in the alternative, if we were allowed to treat a deposition (of the child victim) taken on behalf of the defendant (and following statutory criteria) as meeting the requirements of Crawford, so as to allow child hearsay statements admitted without actually requiring the child victim to take the stand at trial.

CHAPTER 8—FINDINGS AND RECOMMENDATIONS

Offender Characteristics

- 98.3% of sex offenders are male, the highest proportion of any offense category
- 64.7% of sex offenders are white, the highest share of any category except robbery
- Sex offenders were the same average age at the time of their offense as all offenders. But the specific sex offenses with the highest average age of the offenders involved victims under 12
- Sex offenders are less likely to have a prior felony conviction than any other offense group.

Victim Characteristics

- 82.5% of Ryce referral victims were under 16. The average age was 13.4 years.
- 84.8% of victims knew the offenders. For victims under 15 or younger, 90% knew the offender.
- 28.4% of all victims were related to the offender and nearly 46% of victims under 12 were related to the offender.

Sentencing

- In 2004, sex offenders had the second highest incarceration rate, below that of murder and above that of robbery
- The incarceration rate for sex offenders has changed the most of any category, rising from 49.4% in 2002 to 59.2% in 2004.
- Sex offenders have the second longest sentences, below those of murder and above those of robbery.
- Sex offenders have the highest sanction mitigation rate at 33.1%.
- Sex offenders have the highest sentence length mitigation rate at 48.2% in 2004.

- Sex offenders have the second highest share of offenders receiving points for victim injury at 67.6% in 2004, with murder the highest at 84.1%
- The share of victim injury points of total points is second highest for sex offenders at 44.5%, with the share for murder the highest at 53.2%.
- Out of 20 cases sentenced to prison in 2002-2004 with a conviction for murder and a sexual offense, only one offender had a prior commitment for a sexual offense.

Criminal Processing

- 19.7% of sex offense defendants had their charges dismissed or were acquitted during FY 2001-02 through FY 2003-04 —the highest percentage of six major offense categories.
- 39.6% of sex offense counts were dismissed or resulted in an acquittal during FY 2001-02 through FY 2003-04—the highest percentage of six major offense categories.

Charge Processing

- 38.7% of sexual battery counts and 42.5% of lewd or lascivious counts resulted in a filing.
- 88.1% of **filed** sexual battery counts and 92.1% of **filed** lewd or lascivious counts resulted in a guilty disposition.

Sex offenses share some characteristics with other serious offenses such as murder and robbery. The defendants face potentially lengthy prison terms. Therefore, defendants are motivated to fight the charges with whatever resources are at their disposal. The trial rates are highest for these three offenses. Law enforcement and prosecutorial resources gravitate towards these most serious cases. With the attention and time devoted to these cases, any problems with the evidence or proceedings associated with the case are more likely to be revealed and utilized by the defense.

But sex offenses are also different from other offenses. Sanction and length mitigation is high. High proportions of defendants have at least some counts dismissed. Data from the various sources as well as the survey responses from Judges and Prosecutors point to unique difficulties in the prosecution and conviction of sexual offenses. Foremost is the young age of most of the victims. From the Ryce data, the average age of the victims was 13.4 years old. Eighty-three percent were 15 or younger. The second key factor is that 85% of the victims knew the offender. For successful prosecution, unless there is corroborative evidence, the child must testify in court. The prospect of having a child victim of a sexual crime testify in a public trial is daunting. The victims and their families may consider the trauma of repeatedly revisiting the crimes in a public forum too difficult. A child does not possess the intellectual and emotional skills necessary for the adversarial confrontation with the defense. Faced with these challenges, the prosecution often finds the best outcome may be to offer a plea bargain involving a mitigated sanction or sentence length, hence the high mitigation rates found for sexual crimes. Frequent law changes with stricter sanctions may cause mitigations back toward historical sentence lengths. With a conviction, even if the sanction is not as strict as the prosecution desired, the offender may qualify to be registered as a sex offender.

Survey respondents had several suggestions for facilitating children's testimony. Child Advocacy Centers, Victim's Witness Assistance Programs or other programs can provide support and assistance to child victims in their dealings with the criminal justice system. Moreover, a task force should study potential changes to the laws to enable child

hearsay statements. Several respondents suggested training and certification for prosecutors and judges involved with sexual offense cases.

RECOMMENDATIONS

- (1) The Department of Corrections should ensure that form DC-203 is accurately completed for all sex offenders and the information entered into an electronic database (see Appendix E.) The form provides much more detailed information about the sex crimes committed and their victims than is available from any other source but it is not consistently completed and the information is only available on paper documents. The information would be valuable to the Legislature and others interested in future research to guide policy in this difficult area.
- (2) Information presented in this study should be updated next year to highlight any changes after implementation of the Jessica Lunsford Act.

APPENDICES

APPENDIX A—SENTENCING EVENTS

**Table A.1
Total Sentencing Events**

Offense group ¹	2002	2003	2004
Murder/Manslaughter	600	680	637
Sexual/Lewd Behavior	1,903	2,078	1,859
Robbery	3,155	3,089	2,898
Violent, Other	14,974	15,479	14,849
Burglary	10,610	11,350	10,776
Property Theft/Fraud/Damage	25,143	26,326	25,187
Drugs	38,509	40,607	42,154
Weapons	2,135	2,287	2,313
Other	12,948	15,066	16,617
Total	109,977	116,962	117,290

Source: Criminal Code database, updated 7/1/2005.

Note: these numbers have not been adjusted for non-compliance in the preparation of criminal code scoresheets. The Department of Corrections prepares a compliance report each fiscal year and in recent years, compliance has been between 61% and 71%.

¹Criminal code scoresheets are only prepared for non-capital offenses.

Table A.2
Total Sentencing Events--Sex Offenses

Offense	2002	2003	2004
Sexual battery by adult, victim under 12 ¹	85	100	63
Sexual battery, threat with deadly weapon	54	49	49
Sexual battery without physical force likely to cause serious injury	129	154	155
Adult 24 or older --sex with 16-17 year old	96	104	109
Lewd lascivious battery, victim 12-15	348	516	431
Lewd lascivious molestation, victim under 12/offender 18 or older	156	178	203
Lewd lascivious molestation, victim 12-15/offender 18 or older	103	180	180
Lewd lascivious conduct, victim under 16/offender 18 or older	132	146	154
Lewd lascivious exhibitionism, victim under 16/offender 18 or older	99	127	95
All other sex offenses	701	524	420
Total	1,903	2,078	1,859

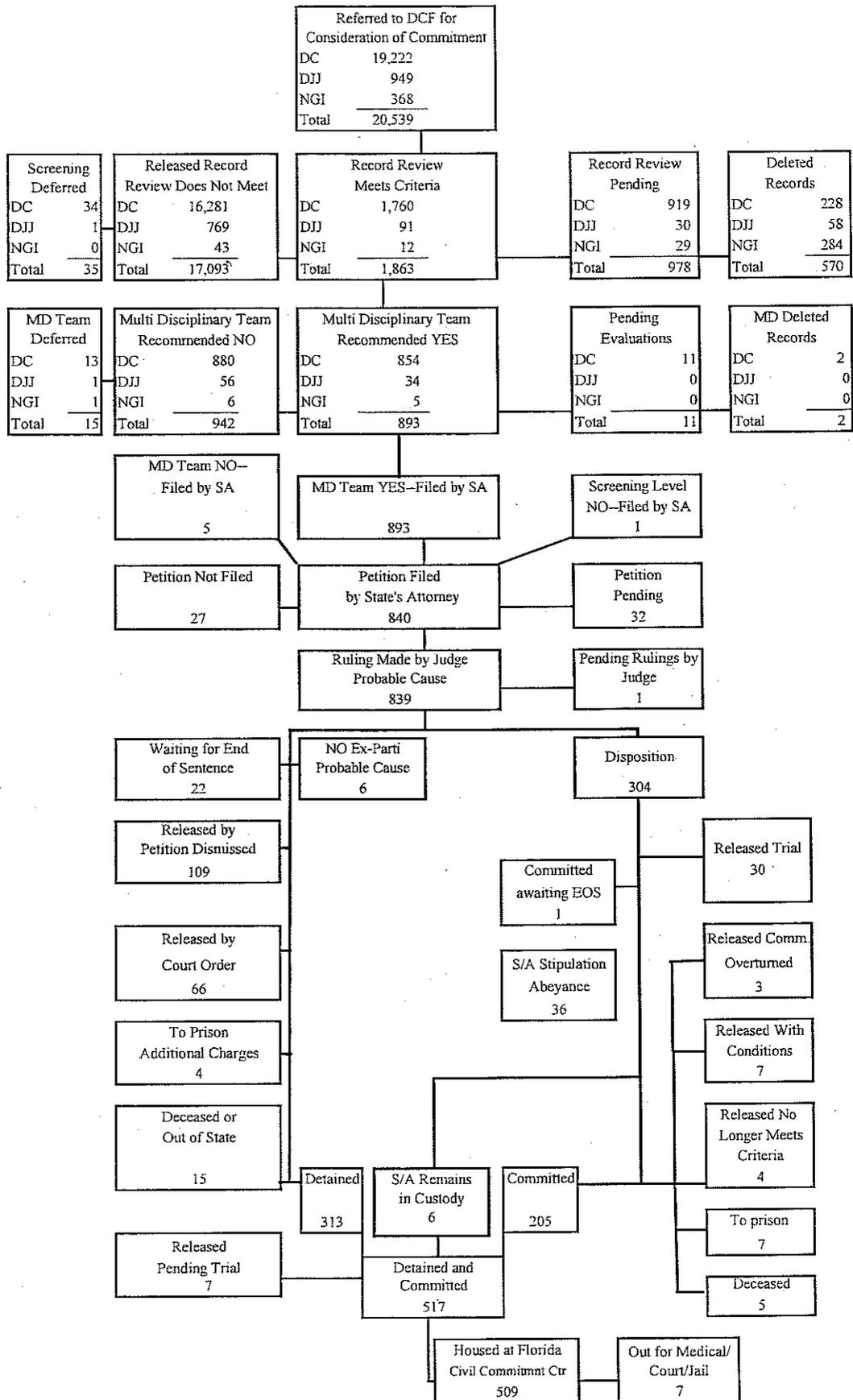
Source: Criminal Code database, updated 7/1/2005.

Note: these numbers have not been adjusted for non-compliance in the preparation of criminal code scoresheets. The Department of Corrections prepares a compliance report each fiscal year and in recent years, compliance has been between 61% and 71%.

¹Criminal code scoresheets are only prepared for non-capital offenses so the sexual battery by adult/victim under 12 cases here would be "attempts" which are down-graded to a first degree felony.

**APPENDIX B
STATUS OF ADULTS REFERRED FOR**

COMMITMENT TO SVPP THROUGH DECEMBER 31, 2005



APPENDIX C-- LEWD OR LASCIVIOUS OFFENSES

	Statute	Age of Victim	Age of Perpetrator	Felony Degree	Offense severity level
Pre-1999					
Lewdly fondle or assault, commit or simulate sexual acts on or in presence of a child under 16 in a lewd, lascivious or indecent manner	800.04	Under 16	Any age	2	7
Current					
Lewd or Lascivious Battery					
Sexual Activity--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 (excluding an act done for a bona fide medical purpose)	800.04(4)(a)	12 - 15	Any age	2	8
Encourages, forces or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity	800.04(4)(a)	Under 16	Any age	2	8
Lewd or Lascivious Molestation					
Intentionally touches in a lewd or lascivious manner the breast, genitals, genital area, or buttocks, or the clothing covering them or entices child to so touch the perpetrator.	800.04(5)(b)	Less than 12	18 or older	Life ¹	9
	800.04(5)(c)1.	Less than 12	Under 18	2	7
	800.04(5)(c)2.	12 - 15	18 or older	2	7
	800.04(5)(d)	12 - 15	Under 18	3	6
Lewd or Lascivious Conduct					
Intentionally touches in a lewd or lascivious manner or solicits a person to commit a lewd or lascivious act	800.04(6)(b)	Under 16	18 or older	2	6
	800.04(6)(c)	Under 16	Under 18	3	5
Lewd or Lascivious Exhibition					
Intentionally masturbates; intentionally exposes the genitals in a lewd or lascivious manner; or 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 in the presence of a victim under 16 years of age. Includes live transmission over the internet.	800.04(7)(c)	Under 16	18 or older	2	5
	800.04(7)(d)	Under 16	Under 18	3	4

¹ Per the Jessica Lunsford Act, passed in 2005, conviction of this offense requires a term of imprisonment for life or a split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life.

APPENDIX D--CURRENT SEX OFFENSES RANKED BY SEVERITY¹

						NOTE: SEXUAL PREDATOR MUST BE DESIGNATED BY A COURT FINDING	
Statute	Description	Criminal Code Offense Severity Level	Felony degree	Sex Offender Qualifying Offense	Sex Predator "Once is Enough" Qualifying Offense	"Second strike sexual predator"	
						Qualifying primary offense	AND qualifying prior offense
794.011(2)(a)	Sexual battery; offender 18 or older commits sexual battery or, in an attempt to commit sexual battery, injures the sex organs of a victim less than 12 years of age	NA	C	YES	YES	YES	NO
787.01(3)(a)	Kidnapping; child under 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition	10	L	YES	YES	YES	YES
794.011(3)	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury	10	L	YES	YES	YES	YES
794.011(2)(b)	Sexual battery; offender younger than 18 years commits sexual battery or, in an attempt to commit sexual battery, injures the sex organs of a victim less than 12 years of age	9	L	YES	YES	YES	NO
800.04(5)(b)	Lewd or lascivious molestation; victim less than 12 years of age; offender 18 years or older	9	L	YES	YES	YES	YES
787.02(3)(a)	False imprisonment; child under 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition	9	1, PBL	YES	YES	YES	YES
794.011(2)	Attempted sexual battery; victim less than 12 years of age	9	1	YES	YES	YES	NO
794.011(4)(a)	Sexual battery, victim 12 years or older and physically helpless	9	1	YES	YES	YES	YES
794.011(4)(b)	Sexual battery, victim 12 years or older; offender coerces victim by threat of force or violence	9	1	YES	YES	YES	YES
794.011(4)(c)	Sexual battery, victim 12 years or older; offender coerces victim by use of retaliation threats	9	1	YES	YES	YES	YES
794.011(4)(d)	Sexual battery, victim 12 years or older; offender administers to victim without consent narcotic or other intoxicating substance	9	1	YES	YES	YES	YES
794.011(4)(e)	Sexual battery, victim 12 years or older and mentally defective	9	1	YES	YES	YES	YES
794.011(4)(f)	Sexual battery, victim 12 years or older and physically incapacitated	9	1	YES	YES	YES	YES
794.011(4)(g)	Sexual battery by a law enforcement officer, victim 12 years or older	9	1	YES	YES	YES	YES
794.011(8)(b)	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority	9	1	YES	YES	YES	YES
847.0145(1)	Selling, or otherwise transferring custody or control, of a minor	9	1	YES	YES	YES	YES
847.0145(2)	Purchasing, or otherwise obtaining custody or control, of a minor	9	1	YES	YES	YES	YES
794.011(5)	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury	8	2	YES	NO	YES	YES

APPENDIX D--CURRENT SEX OFFENSES RANKED BY SEVERITY¹

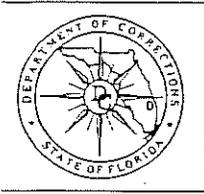
						NOTE: SEXUAL PREDATOR MUST BE DESIGNATED BY A COURT FINDING	
Statute	Description	Criminal Code Offense Severity Level	Felony degree	Sex Offender Qualifying Offense	Sex Predator "Once is Enough" Qualifying Offense	"Second strike sexual predator"	
						Qualifying primary offense	AND qualifying prior offense
800.04(4)(a)	Lewd or lascivious battery, sexual activity with victim 12-15 years of age	8	2	YES	NO	YES	YES
800.04(4)(b)	Lewd or lascivious battery, encourages, forces, or entices victim under 16 to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity	8	2	YES	NO	YES	YES
825.1025(2)	Lewd or lascivious battery upon an elderly person or disabled adult	8	2	YES	NO	YES	YES
796.03	Procuring any person under 18 years for prostitution	7	2	YES	NO	YES	YES
800.04(5)(c) (1)	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years	7	2	YES	NO	YES	YES
800.04(5)(c)(2)	Lewd or lascivious molestations; victim 12-15 years of age; offender 18 years or older	7	2	YES	NO	YES	YES
847.0135(3)	Solicitation of a child, via a computer service, to commit an unlawful sex act	7	3	YES	NO	NO	YES
794.05(1)	Adult aged 24 or older engaging in sex with a minor aged 16 or 17	6	2	YES	NO	YES	YES
800.04(6)(b)	Lewd or lascivious conduct; offender 18 years of age or older	6	2	YES	NO	YES	YES
827.071(2) & (3)	Use or induce a child in a sexual performance, or promote or direct such performance	6	2	YES	NO	YES	YES
794.011(8)(a)	Solicitation of minor to participate in sexual activity by custodial parent	6	3	YES	NO	YES	YES
800.04(5)(d)	Lewd or lascivious molestation; victim 12 - 15 years of age; offender younger than 18 years	6	3	YES	NO	YES	YES
825.1025(3)	Lewd or lascivious molestation of an elderly person or disabled adult	6	3	YES	NO	NO	YES
847.0135(2)	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct	6	3	YES	NO	NO	YES
800.04(7)(c)	Lewd or lascivious exhibition; offender 18 years or older	5	2	YES	NO	YES	YES
827.071(4)	Possess with intent to promote any photographic material, motion picture, etc. which includes sexual conduct by a child	5	2	YES	NO	YES	YES
800.04(6)(c)	Lewd or lascivious conduct; offender less than 18 years of age	5	3	YES	NO	YES	YES
825.1025(4)	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult	5	3	YES	NO	NO	YES

APPENDIX D--CURRENT SEX OFFENSES RANKED BY SEVERITY¹

						NOTE: SEXUAL PREDATOR MUST BE DESIGNATED BY A COURT FINDING	
Statute	Description	Criminal Code Offense Severity Level	Felony degree	Sex Offender Qualifying Offense	Sex Predator "Once is Enough" Qualifying Offense	"Second strike sexual predator"	
						Qualifying primary offense	AND qualifying prior offense
827.071(5)	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child	5	3	YES	NO	YES	YES
847.0137(2) & (3)	Transmission of pornography by electronic device or equipment	5	3	YES	NO	NO	NO
847.0138(2) & (3)	Transmission of material harmful to minors to a minor by electronic device or equipment	5	3	YES	NO	NO	NO
800.04(7)(d)	Lewd or lascivious exhibition; offender less than 18 years	4	3	YES	NO	YES	YES
787.025	Luring a child into a building or car with intent to commit a felony (when offender has a prior conviction for a chapter 794 or 800 offense)	1	3	YES	NO	YES	YES
794.065(1)	Sex offender (with victim under 16) residing within 1,000 feet of any school, day care center, park or playground.	1	3	YES	NO	YES	NO
847.0133	Provide obscene material to a minor	1	3	YES	NO	NO	YES

¹This list includes offenses identified in Chapter 794 or Chapter 800, Florida Statutes. In addition, it includes offenses which are in other chapters but which are considered sex offender registration qualifying offenses. Information on the sex offender and sex predator qualifying offenses was obtained from the Florida Department of Law Enforcement publication, "2004 Guidelines to Florida Sex Offender Laws".

APPENDIX E



STATE OF FLORIDA DEPARTMENT OF CORRECTIONS

SEXUAL PREDATOR/PSIA OFFENDER REGISTRATION

Mail completed sexual predator packet as outlined in procedures to: Florida Department of Law Enforcement, Sexual Offender/Predator Unit, Post Office Box 1489, Tallahassee, Florida 32302

SECTION A - Status <input type="checkbox"/> Sex/PSIA Offender <input type="checkbox"/> Sex Predator <small>(Court Order Required)</small> <hr/> <input type="checkbox"/> New Registration <input type="checkbox"/> Modify Data <input type="checkbox"/> Add Address	SECTION B - Contributing Agency Information Reporting Officers Name: _____ Reporting Institution/Probation Office Name: _____ Address: _____ <small style="display: flex; justify-content: space-between; width: 100%;"> Street Address (Physical Location) City County State Zip </small> Phone Number: () _____ FAX: () _____ Checked for Warrants: Local System <input type="checkbox"/> FCIC/NCIC System <input type="checkbox"/> CCH for Sex Offense: YES <input type="checkbox"/> NO <input type="checkbox"/>
SECTION C - Registrant Information Name: _____ SS#: _____ FDC#: _____ <small style="display: flex; justify-content: space-between; width: 100%;"> LAST FIRST MIDDLE </small> Alias: _____ Florida Driver's License # _____ State: _____ FDLE# _____ Race: _____ Sex: _____ DOB: _____ Height: _____ Weight: _____ Hair: _____ Eyes: _____ Scars, Marks, Tattoos: _____ Occupation (type of work): _____ Currently Incarcerated?: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Anticipated Date of Prison Release: _____ Currently On Supervision?: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Anticipated Date of Termination: _____	
SECTION D Address Permanent Address: _____ <small>P.O. BOX NOT ACCEPTABLE (Street, Apt #)</small> <hr/> City _____ County _____ <hr/> State _____ Zip _____ Home Phone: () _____	Address Temporary 1 Address: _____ <small>P.O. BOX NOT ACCEPTABLE (Street, Apt #)</small> <hr/> City _____ County _____ <hr/> State _____ Zip _____ Home Phone: () _____
Address Temporary 2 Address: _____ <small>P.O. BOX NOT ACCEPTABLE (Street, Apt #)</small> <hr/> City _____ County _____ <hr/> State _____ Zip _____ Home Phone: () _____	Name of Closest Living Relative: _____ <small>(Street, Apt #)</small> <hr/> City _____ County _____ State _____ Zip _____ Relationship: _____ Phone Number: () _____

Distribution: Institution: Central Office (White)
 FDLE (Green)
 File (Yellow)
 Sheriff's Office (Pink)
 Offender (Goldenrod)

Probation: FDLE (Original)
 P & P Offender File (Copy)
 Offender (Copy)

Name: _____
LAST FIRST MIDDLE

FDC# _____

SECTION E – Vehicle, Mobile Home, Trailer or Manufactured Home
Vehicle # _____ License Tag # _____
Registration # _____
Description (including color scheme): _____

Vessel, Live-Aboard Vessel, or Houseboat
Hull ID# _____ Name of Vessel: _____
Manufacturer's Serial # _____
Description (including color scheme): _____

SECTION F – Employment Employed Unemployed
Employer: _____ Contact: _____ Phone Number: () _____
Address: _____
City County State Zip

SECTION G - Offense Information VICTIM - Minor Adult
Date of Offense: _____ Offense: _____ Statute Number: _____ Offense Location: (Include City & State)
1) _____
2) _____
3) _____
4) _____

Victim 1 Age: _____ Race: _____ Sex: _____
Victim 2 Age: _____ Race: _____ Sex: _____
Victim 3 Age: _____ Race: _____ Sex: _____
Victim 4 Age: _____ Race: _____ Sex: _____

CRIME COMMITTED
1 2 3 4
 Attempted murder
 Exposed genitals
 Fondled victim
 Murder
 Victim forced to perform anal penetration on offender
 Offender forced victim to masturbate him/her
 Offender forced victim to masturbate self
 Offender forced victim to perform oral sex
 Penetrated victim with an object
 Penetrated victim with finger/toe
 Performed anal penetration on victim
 Performed oral sex act on victim
 Performed penis/vaginal penetration on victim
 Other (explain on supplemental form)

WEAPON USED
1 2 3 4
 Blunt object
 Chemical/mace
 Firearm
 Hands/fists/feet
 Knife/cutting instrument
 Threat/intimidation
 Other (explain on supplemental form)

OFFENDER'S ACTION (Continued)
1 2 3 4
 Abducted victim
 Bit victim
 Blindfolded victim
 Cleaned/washed before act
 Cleaned/washed after act
 Condom used
 Cut/forced clothing removal
 Defecated on victim
 Disguise used
 Evidence conscious
 Ejaculated on victim
 Followed victim
 Gagged victim
 Hit/beat victim
 Induced drugs/alcohol
 Offender under the influence of drugs/alcohol
 Lubricant used
 Ransacked premises
 Requested specific position/language
 Restrained/tied victim
 Shaved victim
 Showed pornographic material to victim
 Spanked victim
 Stalked victim
 Took photographs/videos
 Took clothing/trophy from scene
 Tortured victim
 Trickery/deceit/impersonate
 Unable to achieve erection
 Urinated on victim
 Other (explain on supplemental form)

OFFENDER'S ACTION (Continued)
FORCED VICTIM TO
1 2 3 4
 Act out scenario
 Clean/wash before act
 Clean/wash after act
 Consume liquor/drugs
 Disrobe completely
 Disrobe partially
 Disrobe offender
 Remain silent
 Use condom
 Use lubricant
 Other (explain on supplemental form)

VICTIM CHOSEN BECAUSE
1 2 3 4
 Age
 Availability
 Known to offender
 Unknown to offender
 Physical appearance
 Profession/occupation
 Race
 Runaway
 Selected randomly
 Other (explain on supplemental form)

Distribution: Institution: Central Office (White)
FDLE (Green)
File (Yellow)
Sheriff's Office (Pink)
Offender (Goldenrod)

Probation: FDLE (Original)
P & P Offender File (Copy)
Offender (Copy)