

STORAGE NAME: h0121.cp

DATE: February 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 121

RELATING TO: Three Strike Violent Felony Offender

SPONSOR(S): Representative Crist

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2) CORRECTIONS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

- ◆ The bill amends section 775.084 to create a new enhanced penalty in addition to habitual felony offender, habitual violent felony offender, and career criminal enhanced penalties that are already provided for by that section. The enhanced penalty created by the bill requires a judge to impose a mandatory minimum term of imprisonment for a third violent felony. The title of the bill, "Three-Strike Violent Felony Offender Act," is derived from this portion of the bill.
- ◆ Section 775.084(5) F.S., currently provides that prior felonies are counted only if they were sentenced on separate occasions. The bill removes this method of counting prior felonies, thus allowing cases, or even all counts, sentenced on the same day to be counted towards the number necessary to authorize the imposition of habitual felony offender, habitual violent felony offender, career criminal, or the three-strikes penalties.
- ◆ The bill provides that any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum mandatory prison term of three years, and any person convicted of aggravated battery upon a law enforcement officer must receive a minimum sentence of five years in prison. The bill also provides for a three year minimum mandatory penalty that a judge must impose on a person convicted of aggravated assault or aggravated battery against a person over 65 years of age.
- ◆ The bill creates a new enhanced penalty that requires a judge to impose a mandatory minimum prison term of 10 years if a person is charged and has a previous conviction for sexual battery or an attempt to commit sexual battery.

It is anticipated that the sponsor will offer a strike-everything amendment that adds to the bill minimum mandatory penalties for drug trafficking. Substantially, the same minimum mandatory penalties relating to drug trafficking were a part of Florida law prior to their removal by SB 26-B, otherwise known as the "Safe Streets Initiative of 1994."

STORAGE NAME: h0121.cp

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PAGE 2

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Violent Career Criminal

A judge must sentence a person as a violent career criminal if the offender meets the following criteria:

1. The offender has been previously been convicted three or more times of any of the following offenses:

Burglary; aggravated assault; aggravated battery aggravated stalking; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; lewd lascivious or indecent conduct; escape; possession of a concealed firearm; possession of a firearm by a convicted felon; possession of a short-barrel shotgun; robbery carjacking sexual battery; manslaughter; murder; treason; home invasion robbery; and any other felony which involves the use or threat of physical force or violence against any individual;
2. The offense for which the offender is to be sentenced is for one of the crimes enumerated above;
3. The prior convictions were sentenced on separate occasions;
4. The crime for which the offender is being sentenced was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison whichever was later; and
5. The offender has previously been incarcerated in state or federal prison.

If a judge elects to designate an offender as a violent career criminal, then the court must sentence the violent career criminal as follows:

1. In the case of a life felony or a felony of the first degree, for life;
2. In the case of a felony of the second degree, for a term of years not exceeding 40, with a mandatory minimum term of 30 years' imprisonment; and
3. In the case of a felony of the third degree, for a term of years not exceeding 15, with a mandatory minimum term of 10 years' imprisonment.

Section 775.084(4)(d) F.S., gives judges discretion to decide whether a person should be designated as a habitual offender, habitual violent offender, or violent career criminal:

(d) If the court finds ... that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent

career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

Other Enhanced Penalties

Habitual Felony Offender

A judge has the complete discretion under section 775.084 F.S., to sentence a person as a habitual felony offender if the following criteria are met:

1. The offender has been convicted of two prior felonies. [A withhold of adjudication counts as a conviction for the purposes of enhanced penalties.]
2. The prior convictions were sentenced on separate occasions.
3. The charge for which the offender is being sentenced is a felony.
4. The crime for which the offender is being sentenced was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison whichever was later.
5. The pending offense and one of the priors were not third degree felonies for possession controlled substances such as cocaine. [Possession with intent to sell or trafficking are qualifying offenses.]

If a judge designates a qualifying person as a habitual felony offender, the judge may impose a sentence which is double the statutory maximum. For example, a habitual offender being sentenced for a third degree felony such as auto theft may be sentenced to ten years in prison. A habitual offender may be sentenced for a maximum of thirty years in prison for a second degree felony such as burglary of a dwelling or possession of cocaine with intent to sell. A habitual offender may receive a life sentence for committing a first degree felony.

Habitual Violent Felony Offender

A judge has the complete discretion under section 775.084 F.S., to sentence a person as a habitual violent felony offender if the following criteria are met:

1. A person has previously been convicted for one of the following crimes or for an attempt to commit one of the following crimes:

Arson; sexual battery; robbery; kidnaping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.
2. The crime for which the offender is being sentenced is any felony that was committed within 5 years of the date of the conviction for the offender's last prior

felony, or within 5 years of the defendant's release from prison whichever was later.

If a judge designates a qualifying person as a habitual violent felony offender, the judge may impose a sentence that is double the statutory maximum; thus, the enhanced penalty authorized by the habitual violent felony offender statute is the same as the enhanced penalty authorized by the habitual felony offender law. State v. Hudson, 698 So.2d 831 (Fla.1997).

Section 775.084(3)(a)6., F.S., provides that a judge must sentence a qualifying person as habitual felony offender or habitual violent felony offender unless the judge finds that such a sentence is not necessary for the protection of the public. The statute further requires a judge to file a report every time a qualifying offender is not sentenced as a habitual felony offender or a habitual violent felony offender. The State Court Administrator's Office has indicated that these reporting requirements are rarely complied with. Furthermore, it is lawful for a judge to designate a person as a habitual felony offender or as a habitual violent felony offender and sentence the person to probation with no term of incarceration.

Prison Releasee Reoffender

A judge must sentence a person to the statutory maximum if:

1. A state attorney decides to seek to have a person sentenced as a prison releasee reoffender;
2. The offender has committed or attempted to commit one of the following crimes:

Treason; murder; Manslaughter; sexual battery; carjacking; home-invasion robbery; robbery arson; kidnaping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing; placing; or discharging of a destructive device or bomb; any felony that involves the use or threat of physical force or violence against an individual; armed burglary; burglary of an occupied structure or dwelling; any felony violation of s. 790.07(relating to felonies committed with firearms), s. 800.04(Lewd, lascivious, or indecent assault) s. 827.03 (aggravated abuse of a child or the disabled) or s. 827.071 (sexual performance by a child), F.S.; and
3. The offender committed one of the enumerated offenses within 3 years of being released from prison.

Section 775.082(8)(d), F.S. requires that a state attorney file a report explaining the sentence for every case in which a qualifying offender does not receive the statutory maximum sentence.

The Florida Punishment Code

The Florida Punishment Code came into effect for crimes committed after October 1, 1998. The Code establishes a lowest permissible sentence for felony offenses by establishing a method of scoring the severity of the offense and the severity of an offender's criminal history. A judge may not sentence a person below the lowest

permissible sentence without a mitigating reason which is authorized by statute or case law. An example of a mitigating reason to impose a sentence below the lowest permissible sentence is the young age of the offender. Under the new Florida Punishment Code, a judge has complete discretion to sentence an offender to any sentence that is above the lowest permissible sentence and below the statutory maximum. Thus, the Punishment Code sets a floor to a judge's sentencing options, but not a ceiling, and even a first offender could receive the statutory maximum. The statutory maximum periods of incarceration established in section 775.082 F.S., are as follows:

Second degree misdemeanor - 60 days in jail.

First degree misdemeanor - 1 year in jail

Third degree felony - 5 years in prison

Second degree felony - 15 years in prison

First degree felony - 30 years in prison

Life felony or first degree felony punishable by life - life in prison.

The Punishment Code does not apply to the sentencing of an offender for a misdemeanor, and a judge may impose any sentence for a misdemeanor up to the statutory maximum.

Minimum Mandatory Sentences for Crimes with Firearms

Section 775.087(2), F.S., requires a judge to impose a minimum term of imprisonment of **3** years for any person who possess a firearm at any time during the course of one of the violent felony listed in the statute.

The Crime and Punishment Committee recently reported out HB 113 which requires a judge to impose a minimum term of imprisonment of **10** years instead of the current 3 years, for any person who possess a firearm at any time during the course of one of the enumerated offenses or during an attempt to commit one of the enumerated offenses. The 10 year minimum mandatory authorized by CS/HB is increased to 20 years if a firearm is discharged and if great bodily harm is inflicted the mandatory minimum is 25 years to life.

Minimum mandatory sentences are not reduced by gain time and the offender must spend the entire mandatory term in prison.

Reclassification of Crimes Committed Against Law Enforcement Officers and Others

Section 784.07, F.S., provides for the reclassification of certain violent crimes to the next higher degree if committed against any off the following:

law enforcement officers, firefighters, emergency medical care providers, traffic accident investigation officers, traffic infraction

enforcement officers, traffic infraction enforcement officers, parking enforcement specialist, and certain security officers.

The offenses are reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Assault is a threat by word or act to do violence to another coupled with the ability to do so, which creates a well-founded fear that the violence is imminent. Aggravated assault is an assault with a deadly weapon.

Battery is a touch or a striking of another against that person's will. Aggravated battery is either a battery committed with a deadly weapon, or a battery causing serious bodily harm.

B. EFFECT OF PROPOSED CHANGES:

Three-Time Felony Offender

The bill amends section 775.084 to create a new enhanced penalty in addition to habitual felony offender, habitual violent felony offender, and career criminal enhanced penalties that are already provided for by that section. The enhanced penalty created by the bill requires a judge to impose a mandatory minimum term of imprisonment for a third violent felony. The title of the bill, "Three-Strike Violent Felony Offender Act," is derived from this portion of the bill.

The mandatory term of imprisonment is the same as the statutory maximum except that the offender must serve 100% of his or her sentence. The mandatory sentences depend on the degree of the offense for which the person is being sentenced and are as follows:

Life felony	mandatory life sentence
First degree felony	mandatory 30 year sentence
Second degree felony	mandatory 15 year sentence
Third degree felony	mandatory 5 year sentence

For a person to be sentenced as a three-time felony offender, the two prior offenses and the offense for which the person is being sentenced as a three-time felony offender all must be one of the following crimes or an attempt to commit one of the following crimes:

- a. Arson;
- b. Sexual battery;
- c. Robbery;
- d. Kidnapping;
- e. Aggravated child abuse;
- f. Aggravated abuse of an elderly person or disabled adult;
- g. Aggravated assault;
- h. Murder;
- l. Manslaughter;
- j. Aggravated manslaughter of an elderly person or disabled adult;
- k. Aggravated manslaughter of a child;
- l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- m. Armed burglary;
- n. Aggravated battery; or
- o. Aggravated Stalking.

Section 775.084(5) F.S., currently provides that prior felonies are counted only if they were sentenced on separate occasions. The bill removes this method of counting prior felonies, thus allowing cases or even all counts sentenced on the same day to be counted towards the number necessary to authorize the imposition of habitual felony offender, habitual violent felony offender, career criminal, or the three-strikes penalties.

The bill provides that the mandatory penalties authorized by the three-strikes provision do not prevent a court from imposing a greater sentence as authorized by law. Thus, the greater penalties authorized by the habitual felony offender, habitual violent felony offender, and the career criminal enhancements are not thwarted by the mandatory minimums penalties imposed by the three-strikes enhanced penalty.

Habitual Felony Offender and Habitual Violent Felony Offender

Enhanced penalties are currently authorized under the habitual felony offender, the habitual violent felony offender, and the career criminal provisions in section 775.084 F.S., if the crime for which the offender is to be sentenced occurred while the offender was serving a sentence, or within 5 years of the date of the conviction of the defendant's last qualifying felony, or within 5 years of the defendant's release from a prison

sentence or other commitment imposed as a result of a conviction for a qualifying felony. The bill amends the underlined language to read:

within 5 years of the defendant's release from a prison sentence, **probation, community control, or other sentence** imposed...

This change was made in response to a court decisions which held that the phrase "other commitment" did not include release from probation. Bacon v. State, 620 So.2d 1084, (1st DCA 1993). It is anticipated that a strike-everything amendment will be offered to include release from all other forms of supervision such as parole as the event that begins the 5 year window period during which the repeat offender is subject to the enhanced penalties.

Minimum Mandatory for Violent Crimes Committed Against Law Enforcement Officers and Persons Over 65 years of age

The bill provides that any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum mandatory prison term of three years, and any person convicted of aggravated battery upon a law enforcement officer must receive a minimum sentence of 5 years in prison. The bill also provides for a three year minimum mandatory penalty that a judge must impose on a person convicted of aggravated assault or aggravated battery against a person over 65 years of age.

Enhanced Penalties for Repeat Sexual Batterers

The bill creates a new enhanced penalty that requires a judge to impose a mandatory minimum prison term of 10 years if a person is charged and has a previous conviction for any of the following offenses or an attempt to commit any of the following:

1. Sexual battery by a person less than 18 years of age committed against a person less than 12.
2. Sexual battery committed against a person over 12 years of age if the offender uses or threatens to use physical force likely to cause serious personal injury.
3. Sexual battery committed against a person over 12 if one of the following applies:
 - (a) When the victim is physically helpless to resist.
 - (b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.
 - (c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(f) When the victim is physically incapacitated.

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

4. Sexual battery upon a person less than 12 without that persons consent, and no physical force or violence likely to cause serious injury is used. [This is the standard rape charge that only requires a lack of consent by a victim over 12.]

The offense for which the repeat sexual batterer is to be sentenced must have occurred while the offender is serving a prison sentence or within 10 years of the persons last sexual battery, or within 10 years of the offenders release from prison or supervision.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

N/A

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s.775.082, 775.084, 921.002, 784.07, 784.08, 790.235, 794.0115, 794.011, 397.451(7), 782.04(4), 893.1351(1), 903.133, 907.041(4)(b), 921.0022(3)(g), 921.0024(1)(b), 921.142(2), 943.0585, 943.059, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet estimated the cost of the bill to the state prison system.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The three-strikes penalty, which provides for a mandatory sentence for a third violent felony, will be applicable to far more cases than the current penalties for career criminal, which may be imposed for a fourth violent felony. However, the three strikes provision will not entirely displace the career criminal penalties. Section 774.084(4)(c), F.S., provides for a mandatory minimum penalty of *twice* the statutory maximum for career criminals as opposed to the three-strikes' mandatory minimum prison sentence that is equal to the statutory maximum. Furthermore, the career criminal enhanced penalty allows more types of offenses to be counted towards the number of priors necessary before the enhanced penalty may be imposed. The crimes that may be counted under career criminal but not three-strikes include: burglary, escape, possession of a firearm by a convicted felon, and lewd, lascivious, or indecent assault upon or in the presence of a child.

Strike-Everything Amendment

It is anticipated that the sponsor will offer a strike-everything amendment that adds to the bill minimum mandatory penalties for drug trafficking. The substantially same minimum mandatory penalties relating to drug trafficking were a part of Florida law prior to their removal by SB 26-B, otherwise known as the "Safe Streets Initiative of 1994." The amendment makes other clarifying changes as well.

- ◆ The amendment provides for a 3 year minimum mandatory for possession or sale of more than 25 pounds of cannabis, (marijuana). [Prior to 1994 the minimum mandatory was for 100 to 2,000 pounds.]
- ◆ The amendment adds a seven year minimum mandatory prison sentence for the possession or sale of between 2,000 and 10,000 cannabis plants. [Prior to 1994 the minimum mandatory for this offense was 5 years.]
- ◆ The amendment provides for a 3 year minimum mandatory for the possession or sale of between four and 14 grams of various controlled substances including morphine, opium, and heroin. The amendment makes it a 15 year minimum

STORAGE NAME: h0121.cp

DATE: February 1, 1999

PAGE 16

mandatory to sell or possess 14 to 28 grams of these controlled substances [Prior to 1994, the law provided for a 10 year minimum mandatory for sale or possession of between 14 and 28 grams of these illegal drugs.]

- ◆ The amendment provides for a 3 year minimum mandatory prison sentence for possession or sale of between 28 and 200 grams of cocaine. More than 200 grams of cocaine is punishable by a minimum mandatory sentence of seven years in prison. [Prior law provided for a five year minimum mandatory sentence for possession of more than 200 grams of cocaine.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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