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DATE: January 31, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 1399 (PCB HCC 02-04)
RELATING TO: Sentencing
SPONSOR(S): Council for Healthy Communities and Representative Kyle

TIED BILL(S):

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

- (1) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Chapter 99-188, Laws of Florida took effect on July 1, 1999. The act is cited as the "Three Strikes Violent Felony Offender Act". On January 23, 2002, the Second District Court of Appeal held that chapter 99-188 violated the constitutional provision that "[e]very law shall embrace but one subject and matter properly connected therewith". The Court also held that because the legislature has not reenacted the 1999 statutes, the window period for asserting a single subject challenge remains open.

The reenactment of the provisions contained in chapter 99-188 will close the window period for challenge of the act in the event that the Florida Supreme Court affirms the decision of the Second District Court of Appeal by finding that chapter 99-188 is a single subject violation. HB 1399 reenacts section 2 of chapter 99-188 which makes clarifying changes to the prison releasee reoffender statute and creates enhanced penalties for repeat sexual batterers. Eleven of the thirteen sections of the act are reenacted in this and in four other bills.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 99-188

CS/HB 121 passed the legislature on April 30, 1999. The bill became Chapter 99-188, Laws of Florida. The act took effect on July 1, 1999 and contains the following provisions:

Three-Time Felony Offender: The act creates an enhanced sentencing provision which requires a judge to impose a mandatory minimum term of imprisonment for a third violent felony. For a person to be sentenced as a third-time violent felony offender, the two prior offenses and the offense for which the person is being sentenced must be one of the following offenses: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person, disabled adult or a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion robbery; carjacking. The mandatory term of imprisonment for an offender being sentenced as a three-time violent felony offender is the statutory maximum for the offense as follows: a life sentence for a felony punishable by life; 30 years for a first degree felony; 15 years for a second degree felony and 5 years for a third degree felony. Further, the offender must serve 100 percent of his or her sentence.

The act also makes clarifying changes to the habitual felony offender, habitual violent felony offender and violent career criminal statutes.

Prison Release Reoffender: Section 2 of chapter 99-188 amends 775.082, F.S., to include a provision for enhanced penalties for any defendant designated a "Prison Release Reoffender." A judge must sentence a person as a Prison Releasee Reoffender to the statutory maximum if the following criteria are met: (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; car jacking, 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.

The amendment in Section 2 of the act made it clear that "prison release reoffender" includes any defendant attempting or committing one of the enumerated offenses while serving a prison sentence or on escape status. Further, the mandatory penalties can only be waived by the prosecutor under specified conditions.

Assault or Battery on Elderly: Section 784.08 provides penalties for aggravated assault and aggravated battery upon a person 65 years of age or older. Section 5 of Chapter 99-188 creates a three year minimum mandatory sentence for these offenses.

Assault or Battery of a Law Enforcement Officer: Section 784.07 provides penalties for aggravated assault and aggravated battery on a law enforcement officer. Section 4 of Chapter 99-188 creates a three year minimum mandatory sentence for aggravated assault of a law enforcement officer and a five year minimum mandatory sentence for aggravated battery of a law enforcement officer.¹

Repeat Sexual Batterer: Section 7 of Chapter 99-188 creates an enhanced penalty that requires a judge to impose a mandatory minimum prison term of 10 years if a person is charged with and has a previous conviction for a offense contained in a list of enumerated sexual offenses. The offense for which the repeat sexual batterer is to be sentenced must have occurred while the offender was serving a prison sentence or within 10 years of the offender's last sexual battery, or within ten years of the offenders release from prison or supervision.

Drug Offenses: Section 9 of Chapter 99-188 provides enhanced penalties for certain drug trafficking offenses. The act provides for a three year minimum mandatory sentence for the possession, sale or purchase of the following: 25 to 2000 pounds of cannabis plants; between 300 to 20000 cannabis plants; 28 to 200 grams of cocaine or 4 to 14 grams of heroin, opium, morphine or a related drug. The act provides for a seven year minimum mandatory sentence for the possession, sale or purchase of the following: 2,000 or more cannabis plants; 2,000 to 10,000 pounds of cannabis or 200 to 400 grams of cocaine. The act provides for a 15 year minimum mandatory sentence for the possession, sale or purchase of the following: 10,000 or more cannabis plants or 14 to 28 grams of opium, heroin or morphine. The act creates similar 3 and 7 year mandatory penalties for possession, purchase or sale of methaqualone, phencyclidine, amphetamines or flunitrazepam.

Alien Criminal Records: Section 11 of Chapter 99-188 provides that the clerk of court must provide copies of the judgment and sentence to the United States immigration officer in every case in which an alien is convicted of a crime.

Burglary of a Conveyance: Section 13 of Chapter 99-188 amends the definition of the term "conveyance" in the burglary statute to include railroad "vehicles". The definition previously included the term "railroad car".

¹ The section provides the minimum mandatory penalties for the aggravated assault and aggravated battery if the offenses are committed against a firefighter, emergency medical care provider or other specified officer.

Taylor v. State

On January 23, 2002 in Taylor v. State, No. 2D01-1751 (Fla. 2nd DCA January 23, 2002)(slip opinion), the Second District Court of Appeal held that chapter 99-188 violated the constitutional provision that “[e]very law shall embrace but one subject and matter properly connected therewith”. Article III, Sec. 6, Fla. Const. According to the Court, “Chapter 99-188 is a criminal law aimed primarily at imposing harsher sentences on violent felons, repeat felony offenders, and drug traffickers.” The Court recognized that 11 of the 13 sections in the act addressed a single subject and were “naturally and logically related to each other and to the legislatively stated purpose of the act.” However, the court held that section 13 of the act which amended the definition of the term “conveyance” in the burglary statute to include a ‘railroad vehicle” had “only an attenuated relationship to sentencing or to the other sections of the act” . The court further held that section 11 of the act which requires the court clerk to provide documents concerning an alien’s convictions to immigrations is a “purely administrative subject that is far afield of the act’s other provisions”.

The Court then determined the “window period” for asserting a single subject challenge to chapter 99-188. As the court explained:

Generally, the window period for challenging a statute based on a single subject violation closes on the effective date of the legislature’s biennial reenactment of the statutes affected by the legislation, which is deemed to cure single subject defects. But the legislature has never reenacted the 1999 statutes.....Because the legislature has not reenacted the 1999 statutes, we believe the window period for single subject rule challenges to chapter 99-188 is still open.

The Second District Court of Appeals ruling in Taylor v State is not final, and the determination that the Three-Strikes Violent Felony Offender Act violates the single subject rule could be modified by the District Court itself or by the Florida Supreme Court. However, in order to “close the window” period for further challenges based on single-subject violation of the Florida Constitution, the provisions set forth in eleven of the thirteen sections of Chapter 99-188, Laws of Florida, have been split into five separate bills to be reenacted.

C. EFFECT OF PROPOSED CHANGES:

The bill reenacts section 2 of chapter 99-188 which makes clarifying changes to the prison releasee reoffender statute and creates enhanced penalties for repeat sexual batterers as described above. The bill reenacts section 8 of chapter 99-188 which corrects several statutory cross-references.

The bill also reenacts section 12 of chapter 99-188 which requires the Executive Office of the Governor to “place public service announcements in visible local media throughout the state explaining the penalties provided” in the act.

The reenactment of these provisions will close the window period for challenge of the act in the event that the Florida Supreme Court affirms the decision of the Second District Court of Appeal by finding that chapter 99-188 is a violation of the single subject requirement.

The bill also provides that “[t]he provisions reenacted by this act shall be applied retroactively to July 1, 1999, or as soon thereafter as the Constitution of the State of Florida and the Constitution of the United States may permit.”

The bill contains “whereas clauses” which set out the history of the chapter law and explains the reason that the chapter law is being reenacted.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Reenacts section 2 of chapter 99-188 which amends s. 775.082, F.S. relating to prison releasee reoffender act; reenacts section 7 of chapter 99-188 which creates s. 794.0115, F.S. relating to repeat sexual batterers; reenacts section 8 of chapter 99-188 which corrects cross-reference in s. 794.011, F.S.; reenacts section 12 of chapter 99-188 relating to public service announcements.

Section 2: Amends subsection 9 of section 775.082.

Section 3: Provides that provisions reenacted by act shall be applied retroactively to July 1, 1999 or as soon thereafter as constitutional.

Section 4: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements 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 counties or 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Council for Healthy Communities adopted one technical amendment which was incorporated into the bill. The amendment corrected the effective date of one section of the bill. The directory language in Section 2 of the bill indicated an effective date of January 1, 2002. However, this provision took effect on July 1, 2001 with the passage of chapter 2001-239, Laws of Florida.

VII. SIGNATURES:

COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Trina Kramer / Kurt Ahrendt

David De La Paz