

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1964

SPONSOR: Criminal Justice Committee and Senator Crist and others

SUBJECT: Sentencing

DATE: February 12, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.				
3.				
4.				
5.				
6.				

## I. Summary:

This bill reenacts sections 2, 7, 8 and 12 of Chapter 99-188, Laws of Florida, as well as amendments thereto found in Chapter 01-239, Laws of Florida. It provides an expanded definition of a “prison releasee reoffender,” and further reflects legislative intent that these offenders receive the maximum prescribed punishment unless the state attorney determines that extenuating circumstances exist. The bill creates a category of repeat offender referred to as the “repeat sexual batterer” and requires a ten-year minimum mandatory sentence if the court finds certain criteria are met. The sexual battery statute is amended to include references to the newly created repeat sexual batterer statute. The bill also requires the Executive Office of the Governor to inform the public of the penalties provided for in the bill.

This bill substantially amends sections 775.082 and 794.011 of the Florida Statutes, and creates section 794.0115, Florida Statutes. It becomes effective upon becoming law, but specifies that the provisions reenacted by the bill shall be applied retroactively to July 1, 1999, or as soon thereafter as appropriate under the Constitutions of Florida and the United States.

## II. Present Situation:

In 1999 the Legislature enacted Committee Substitute for House Bill 121 (Chapter 99-188 Laws of Florida) which was commonly referred to as the “Three Strikes” law. The provisions of the bill became effective July 1, 1999.

The bill consisted of thirteen substantive sections which amended various sentencing provisions as well as created new repeat offender classifications called the “three-time violent felony offender” and the “repeat sexual batterer.” Additionally, the bill revised some drug trafficking provisions, provided for mandatory minimum sentences upon conviction of certain offenses

against law enforcement officers or the elderly, amended the definition of “conveyance” as it relates to the burglary statute, and required the Clerks of the Court to notify the Immigration and Naturalization Service of the disposition of criminal cases wherein aliens are the defendants.

Chapter 99-188, Laws of Florida, also amended s. 775.082, F.S., to expand the type of offenders eligible for enhanced penalties under the prison releasee reoffender classification to include a defendant who commits or attempts to commit specified violent offenses while the defendant was serving a prison sentence or on escape status from a state correctional facility.

The Act also deleted most reasons for not prosecuting a person as a prison releasee reoffender, except for extenuating circumstances which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be prosecuted as a prison releasee reoffender. It is also specified that the state attorney determines whether such extenuating circumstances exist.

The Act created an additional repeat offender classification called a “repeat sexual batterer.” A defendant qualifies for classification and sentencing as a repeat sexual batterer if the defendant’s current felony offense and at least one prior felony offense is any of the violent felony offenses enumerated in this provision, including an offense which is a violation of any other jurisdiction, if the elements of such offense are substantially similar to any of the enumerated felony offenses. Qualifying felony offenses include the attempt or conspiracy to commit any of the enumerated felony offenses.

There is provided a separate proceeding for determining whether a defendant is a repeat sexual batterer. This proceeding, and the procedures relevant thereto, are identical to those provided for determining whether a defendant is a three-time violent felony offender. Further, the court must impose a repeat sexual batterer sanction, which is a 10-year mandatory minimum term of imprisonment, if the state attorney pursues such sanction and the defendant is determined to meet the criteria for imposing such sanction.

The construction of the applicable time period relevant to qualifying felony offenses for the repeat sexual batterer sanction is similar to the construction applied to other repeat offender classifications, except that there is a 10-year time span rather than the 5-year time span applicable to other repeat offender classifications. The repeat sexual batterer provisions are also similar to the three-time violent felony offender provisions in exempting from such sanction offenses pardoned on the ground of innocence and offenses set aside in a postconviction proceeding, and providing that the penalty provision does not prevent the court from imposing a greater sentence under any other law.

Finally, the Executive Office of the Governor was required by the Act to place public service announcements throughout the state explaining the penalties provided by the Act.

In an opinion filed January 23, 2002, the Second District Court of Appeals found that Chapter 99-188, Laws of Florida, violated the constitutional prohibition against enacting a law that includes more than a single subject. The single-subject rule provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” *Art. III, s. 6, Fla. Const.*

The Court found that the section of the Act that amended the definition of “conveyance” (section 13) was not “naturally or logically connected to the act’s other sections.” The Court further opined that section 11 of the Act, which required the Clerks of the Court to provide documents concerning an alien’s criminal convictions to the Immigration and Naturalization Service, “bears even less relationship to the [A]ct’s other provisions.” *Taylor v. State*, Case No. 2D01-1751, Fla. 2<sup>nd</sup> DCA, opinion issued January 23, 2002.

The Court also found that the window for challenging the statutes enacted in Chapter 99-188, Laws of Florida, has not yet closed. Generally the window of opportunity closes upon the biennial reenactment of the statutes, but the Court found that the reenactment of the 1999 statutes did not occur.

### **III. Effect of Proposed Changes:**

The bill provides ten “whereas” clauses which describe the history of Chapter 99-188, Laws of Florida, and specifies the legislative intent to correct the effect of the Second District Court of Appeals’ ruling in the *Taylor* case explained above.

#### ***Reenacting Section 2, Chapter 99-188, Laws of Florida, and subsequent amendments thereto***

Section 775.082, F.S. (1998 Supp.), is amended to expand the definition of a “prison releasee reoffender” to include any defendant who commits or attempts to commit any of the enumerated offenses relevant to the prison releasee reoffender definition while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections (DOC) or a private vendor.

Section 775.082 (9)(a), F.S. (1999), is amended by the bill to add burglary of a dwelling to the list of enumerated offenses, and to include offenders who were incarcerated, escaped or released for less than three years from a federal, state or foreign prison, as enacted by Chapter 01-239, Laws of Florida.

The bill removes most of the circumstances in the pre-July 1, 1999, law that may be offered against punishing a prison releasee reoffender to “the fullest extent of the law” as provided in the penalty provisions relating to this offender. The text is further amended so that legislative intent is to apply the maximum prescribed punishment unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender be sentenced as provided under the penalty provisions relating to the prison release reoffender.

***Reenacting Section 7, Chapter 99-188, Laws of Florida***

The bill reenacts a section of the Florida statutes which creates a new category of repeat offender referred to as a “repeat sexual batterer.” A repeat sexual batterer is a person for whom the judge must impose a mandatory minimum term of imprisonment of 10 years if the judge finds that the following criteria are met:

- The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for any sexual battery under s. 794.011, F.S., that is not a capital felony, a solicitation to engage in sexual battery, or sexual battery by a person in who is in a position of familial or custodial authority over the victim;
- The current offense occurred:
  - ▶ while the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for a qualifying offense; or
  - ▶ within 10 years after the date of the conviction of the last prior qualifying offense, or within 10 years after the defendant’s release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior qualifying offense; and
- The defendant has not received a pardon “on the ground of innocence” for any crime that is necessary for the operation of this section, or such crime has not been set aside.

The bill provides that the determination that a person is a repeat sexual batterer is made in a separate proceeding. This proceeding and the procedures prescribed are identical to those found in the violent habitual felony offender provisions.

***Reenacting Section 8, Chapter 99-188, Laws of Florida***

The bill amends s. 794.011, F.S., the sexual battery statute, to include references to the newly created repeat sexual batterer statute for purposes of noting this section as applicable to the punishment of various sexual battery offenses.

***Reenacting Section 12, Chapter 99-188, Laws of Florida; effective date***

The bill requires the Executive Office of the Governor to inform the public of the penalties provided for in the bill. It becomes effective upon becoming law, but specifies that the provisions reenacted by the bill shall be applied retroactively to July 1, 1999, or as soon thereafter as appropriate under the Constitutions of Florida and the United States.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

As noted above, in the *Taylor* opinion issued on January 23, 2002, the Second District Court of Appeals found that Chapter 99-188, Laws of Florida, violated the single subject rule set forth in the Florida Constitution and that the window of opportunity for challenging the law on those grounds remains open.

The Florida Supreme Court has been asked by the Second District Court of Appeals to answer the following questions it deems questions of great public importance:

- 1) Does Chapter 99-188, Laws of Florida, violate Article III, Section 6, Florida Constitution, which provides that every law shall embrace but one subject and matter properly connected therewith?
- 2) If so, what is the window period for challenging the act based on that constitutional infirmity?

Until the Florida Supreme Court rules on these questions, or until another District Court makes a contrary ruling on the questions before the *Taylor* court, the ruling of the Second District Court of Appeals in *Taylor v. State* (Case No. 2D01-1751, Fla. 2<sup>nd</sup> DCA, opinion issued January 23, 2002) is controlling law in Florida.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Although the Criminal Justice Estimating Conference reviewed the bill that was passed by the Legislature in 1999 and became Chapter 99-188, Laws of Florida, no recent fiscal analysis has been completed at this time. The estimate of the fiscal impact in 1999 was as follows:

<b>Fiscal Year</b>	<b>Projected Additional Annual Prison Beds Required</b>	<b>Annual Operating Costs</b>	<b>Annual Fixed Capital Outlay Costs</b>	<b>Total Annual Funds</b>
1999-00	7	\$67,402	\$1,125,840	\$1,193,242
2000-01	45	\$582,942	\$3,261,445	\$3,844,387
2001-02	127	\$2,342,758	\$3,852,373	\$6,195,131
2002-03	146	\$5,251,884	\$3,146,522	\$8,398,406
2003-04	116	\$8,205,607	\$3,739,893	\$11,945,500
<b>TOTAL</b>	<b>441</b>	<b>\$16,450,593</b>	<b>\$15,126,073</b>	<b>\$31,576,667</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill is one of five bills which will reenact Chapter 99-188, Laws of Florida, except for sections 11 and 13, which the Second District Court of Appeals found violated the single subject rule. The other four bills are: SB 1966, SB 1968, SB 1970, and SB 1972.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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