

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: SB 1968

SPONSOR: Senator Crist and others

SUBJECT: Sentencing

DATE: January 25, 2002

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill reenacts sections 5 and 12 of Chapter 99-188, Laws of Florida. It provides for a minimum mandatory three-year prison sentence for a person who is convicted of aggravated assault or aggravated battery upon a person 65 years of age or older, and requires the Executive Office of the Governor to inform the public of the penalties provided for in the bill.

This bill substantially amends section 784.08 of the 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.

The Act amended s. 784.08, F.S., which reclassifies the felony degree of aggravated assault or aggravated battery, if such assault or battery was upon a person 65 years of age or older. It provided that a defendant whose aggravated assault or aggravated battery offense is reclassified under that section shall also be sentenced to a 3-year mandatory minimum term of imprisonment. Further, 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. 2nd 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.

The bill provides for a minimum mandatory three-year prison sentence for a person who is convicted of aggravated assault or aggravated battery upon a person 65 years of age or older, and 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. 2nd 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:

Fiscal Year	Projected Additional Annual Prison Beds Required	Annual Operating Costs	Annual Fixed Capital Outlay Costs	Total Annual Funds
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
TOTAL	441	\$16,450,593	\$15,126,073	\$31,576,667

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 1964, SB 1966, SB 1970, and SB 1972.

VIII. Amendments:

None.

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