

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 1970

SPONSOR: Senator Crist and others

SUBJECT: Sentencing

DATE: January 27, 2002

REVISED: _____

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

I. Summary:

This bill reenacts sections 1, 3, 6 and 12 of Chapter 99-188, Laws of Florida, as well as an amendment thereto enacted in Chapter 99-201, Laws of Florida, which created the “Three-Strike Violent Felony Offender Act.” The bill redefines the terms “habitual felony offender,” “habitual violent felony offender,” and “violent career criminal.” The bill provides that enhanced penalties be imposed upon the three time violent felony offender, based upon the nature of the current offense and his or her prior record. 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 775.084 and 790.235 of the Florida Statutes (1998 Sup.). 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.

A more complete summary of the Act is as follows:

Chapter 99-188, Laws of Florida amended s. 775.084, F.S., relating to various repeat offender penalties, to create a new repeat offender classification called the “three-time violent felony offender.” A defendant qualifies for classification and sentencing as a three-time violent felony offender if the defendant’s current felony offense and at least two prior felony offenses are 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 to commit any of the enumerated felony offenses.

The current offense must have been committed or attempted while the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any of the enumerated felony offenses, or within 5 years after the date of conviction of the last prior, enumerated felony offense, or within 5 years after the defendant’s release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior, enumerated felony offense, whichever is later. This construction of the applicable time period relevant to qualifying offenses is also applied to the provisions in s. 775.084, F.S., relating to the habitual felony offender, habitual violent felony offender, and violent career criminal.

The Act also specified that the three-time violent felony offender provisions do not apply to any crime for which a defendant has received a pardon on the ground of innocence or which has been set aside in any postconviction proceeding.

It also provided that, in a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure is patterned on the procedure for determining whether a defendant is a habitual felony offender or habitual violent felony offender. However, unlike disposition of cases involving these repeat offender classifications, the court has no discretion in whether to sentence a defendant as a three-time violent felony offender, if the state attorney pursues such sanction and the defendant is determined to meet the criteria for imposing such sanction.

The penalty imposed is based upon the felony degree of the current offense: for a life felony, a sentence of life imprisonment; for a first degree felony, a 30-year term of imprisonment; for a second degree felony, a 15-year term of imprisonment; and for a third degree felony, a 5-year term of imprisonment. However, it is also provided that nothing in this penalty provision shall prevent a court from imposing a greater sentence of incarceration as authorized by law. The three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Relevant to all repeat offender classifications in s. 775.084, F.S., the Act provided that the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

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. 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.

Section 1 of Chapter 99-188, Laws of Florida, is reenacted by the bill. This section states that the act may be cited as the “Three-Strike Violent Felony Offender Act.”

Reenacting Section 3, Chapter 99-188, Laws of Florida, and an amendment thereto contained in Chapter 99-201, Laws of Florida

The bill amends s. 775.084, F.S. (1998 Supp.), to create a new repeat offender category referred to as the “three time-violent felony offender.” Four similar categories existed pre-July 1, 1999: the habitual felony offender; the habitual violent felony offender; the violent career criminal; and the prison releasee reoffender.

The three-time violent felony offender (for brevity, abbreviated here as the “3-strikes offender”) is a defendant for whom the court must impose a mandatory term of imprisonment if it finds that:

- The defendant has previously been convicted as an adult two or more times of a felony and two or more of such convictions were for committing, or attempting or conspiring to commit, any of the following offenses or a combination of such offenses:

- ▶ arson;
 - ▶ sexual battery;
 - ▶ robbery;
 - ▶ kidnapping;
 - ▶ aggravated child abuse;
 - ▶ aggravated abuse of the an elderly person or a disabled adult;
 - ▶ aggravated assault;
 - ▶ murder;
 - ▶ manslaughter;
 - ▶ aggravated manslaughter of an elderly person or a disabled adult;
 - ▶ aggravated manslaughter of a child;
 - ▶ unlawful throwing, placing, or discharging of a destructive device or bomb;
 - ▶ armed burglary;
 - ▶ aggravated battery;
 - ▶ aggravated stalking; or
 - ▶ an offense that is in violation of a law of any other jurisdiction if the elements are substantially similar to the enumerated offenses, or an attempt or conspiracy to commit any such felony;
- The felony for which the defendant is to be sentenced is one of these felonies and was committed:
 - ▶ while the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any of these felonies; or
 - ▶ within 5 years after the date of conviction of the last prior offense that is one of these felonies, or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for these offenses; and
 - The defendant has not received a pardon or had a conviction set aside for any crime necessary to the operation of this provision.

The bill provides for a separate proceeding to determine if the defendant is a 3-strikes offender and sets forth procedures for that proceeding that are identical to the proceeding in the violent habitual offender provision.

If the court determines that the 3-strikes offender meets the criteria set forth in the bill, the 3-strikes offender is sentenced as follows:

FELONY	PENALTY
Life	For Life
First	For a term not exceeding 30 years
Second	For a term not exceeding 15 years
Third	For a term not exceeding 5 years

The 3-strikes offender is required to serve 100 percent of the sentence imposed. The penalties mirror those of the penalty provisions regarding prison releasee reoffenders.

The most significant change to the pre-July 1, 1999, habitual offender law, other than the creation of the new repeat offender category, is the significant potential extension of the application of the repeat offender categories as a result of the amendment of the prior criminal record definition. The bill provides that all prior convictions can be counted separately as long as the conviction date is prior to the current date. In contrast, the pre-July 1, 1999, definition is limited to prior convictions sentenced separately from other prior conviction sentencing events.

The bill changes another provision in the habitual offender law which authorizes enhanced penalties under the habitual felony offender, the habitual violent felony offender, and the violent career criminal provisions if the crime for which the offender is to be sentenced occurred “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 strikes the quoted language and substitutes: “within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision. . . .” The change appears to be in response to the holding in *Bacon v. State*, 620 So.2d 1084, (Fla. 1st DCA 1993) that “other commitment” did not include release from probation.

The bill changes another provision in the pre-July 1, 1999, law that provides that, for purposes of the section, the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction “if the subsequent offense for which the person is to be sentenced was committed during this period of probation or community control.” The bill strikes through this qualifier, thereby expanding the application by having any prior period of probation or community control with adjudication withheld qualify as a prior.

The bill amends s. 775.084 (1)(c), F.S. (1998 Supp.), to add the following offenses to the enumerated offenses that qualify a defendant for violent career criminal sanctions: lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct and lewd or lascivious exhibition, as enacted in Chapter 99-201, Laws of Florida.

The bill deletes pre-July 1, 1999, language relating to the application of the Criminal Punishment Code in relation to sentencing under s. 775.084, F.S. (1998 Supp.).

Reenacting Section 6, Chapter 99-188, Laws of Florida

The bill amends s. 790.235, F.S., relating to possession of a firearm by a violent career criminal, solely to make a cross-reference to s. 775.084, F.S., consistent with the numbering of the violent career criminal provision which is changed by the creation of the new 3-strikes offender provisions.

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. 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 1968, 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.
