

By Senator Silver

38-519-98

1 A bill to be entitled
2 An act relating to enhanced penalties for
3 certain felony offenses; amending s. 775.084,
4 F.S.; revising the requirements for the court
5 with respect to sentencing a defendant as a
6 habitual felony offender or a habitual violent
7 felony offender; providing an effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Paragraph (a) of subsection (3) of section
12 775.084, Florida Statutes, as amended by section 12 of chapter
13 97-194, Laws of Florida, is republished, and paragraphs (a)
14 and (b) of subsection (4) of that section are amended to read:

15 775.084 Violent career criminals; habitual felony
16 offenders and habitual violent felony offenders; definitions;
17 procedure; enhanced penalties.--

18 (3)(a) In a separate proceeding, the court shall
19 determine if the defendant is a habitual felony offender or a
20 habitual violent felony offender. The procedure shall be as
21 follows:

22 1. The court shall obtain and consider a presentence
23 investigation prior to the imposition of a sentence as a
24 habitual felony offender or a habitual violent felony
25 offender.

26 2. Written notice shall be served on the defendant and
27 the defendant's attorney a sufficient time prior to the entry
28 of a plea or prior to the imposition of sentence in order to
29 allow the preparation of a submission on behalf of the
30 defendant.

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1 3. Except as provided in subparagraph 1., all evidence
2 presented shall be presented in open court with full rights of
3 confrontation, cross-examination, and representation by
4 counsel.

5 4. Each of the findings required as the basis for such
6 sentence shall be found to exist by a preponderance of the
7 evidence and shall be appealable to the extent normally
8 applicable to similar findings.

9 5. For the purpose of identification of a habitual
10 felony offender or a habitual violent felony offender, the
11 court shall fingerprint the defendant pursuant to s. 921.241.

12 6. For an offense committed on or after October 1,
13 1995, if the state attorney pursues a habitual felony offender
14 sanction or a habitual violent felony offender sanction
15 against the defendant and the court, in a separate proceeding
16 pursuant to this paragraph, determines that the defendant
17 meets the criteria under subsection (1) for imposing such
18 sanction, the court must sentence the defendant as a habitual
19 felony offender or a habitual violent felony offender, subject
20 to imprisonment pursuant to this section unless the court
21 finds that such sentence is not necessary for the protection
22 of the public. If the court finds that it is not necessary
23 for the protection of the public to sentence the defendant as
24 a habitual felony offender or a habitual violent felony
25 offender, the court shall provide written reasons; a written
26 transcript of orally stated reasons is permissible, if filed
27 by the court within 7 days after the date of sentencing.

28 (4)(a) The court, in conformity with the procedure
29 established in paragraph (3)(a), shall ~~may~~ sentence the
30 habitual felony offender as follows:

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- 1 1. In the case of a life felony or a felony of the
2 first degree, for life.
- 3 2. In the case of a felony of the second degree, for a
4 term of years not exceeding 30.
- 5 3. In the case of a felony of the third degree, for a
6 term of years not exceeding 10.
- 7 (b) The court, in conformity with the procedure
8 established in paragraph (3)(a), shall ~~may~~ sentence the
9 habitual violent felony offender as follows:
- 10 1. In the case of a life felony or a felony of the
11 first degree, for life, and such offender shall not be
12 eligible for release for 15 years.
- 13 2. In the case of a felony of the second degree, for a
14 term of years not exceeding 30, and such offender shall not be
15 eligible for release for 10 years.
- 16 3. In the case of a felony of the third degree, for a
17 term of years not exceeding 10, and such offender shall not be
18 eligible for release for 5 years.

19 Section 2. This act shall take effect July 1, 1998.

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SENATE SUMMARY

In order to conform to similar provisions elsewhere in the law, revises provisions that authorize the court, under certain circumstances, to sentence a defendant as a habitual felony offender or a habitual violent felony offender.