

By Representative Crist

1 A bill to be entitled
2 An act relating to punishment of felons;
3 creating the "Three-Strike Violent Felony
4 Offender Act"; amending s. 775.084, F.S.,
5 relating to sentencing of habitual felony
6 offenders, habitual violent felony offenders,
7 and violent career criminals; redefining the
8 terms "habitual felony offender" and "habitual
9 violent felony offender"; revising the
10 alternative time periods within which the
11 habitual felony offender or habitual violent
12 felony offender could have committed the felony
13 to be sentenced; providing that the felony to
14 be sentenced could have been committed either
15 while the defendant was serving a prison
16 sentence or other sentence, or within 5 years
17 of the defendant's release from a prison
18 sentence, probation, community control, or
19 other sentence, under specified circumstances
20 when the sentence was imposed as a result of a
21 prior conviction for a felony, enumerated
22 felony, or other qualified offense; removing
23 certain references to "commitment" and
24 otherwise conforming terminology; revising
25 criteria for a prior conviction or a prior
26 felony for purposes of sentencing as a habitual
27 felony offender, habitual violent offender, or
28 violent career criminal; providing that the
29 placing of a person on probation without an
30 adjudication of guilt shall be treated as a
31 prior conviction regardless of when the

1 subsequent offense was committed; removing
2 certain requirements that, in order to be
3 counted as a prior felony, the felony must have
4 resulted in prior conviction sentenced
5 separately from any other felony conviction
6 counted as a prior felony; defining "three-time
7 violent felony offender"; providing a category
8 of enumerated felony offenses within the
9 definition, including arson, sexual battery,
10 robbery, kidnapping, aggravated child abuse,
11 aggravated abuse of an elderly person or
12 disabled adult, aggravated assault, murder,
13 manslaughter, aggravated manslaughter of an
14 elderly person or disabled adult, aggravated
15 manslaughter of a child, unlawful throwing,
16 placing, or discharging of a destructive device
17 or bomb, armed burglary, aggravated battery,
18 aggravated stalking, or certain qualified
19 offenses; requiring the court to sentence a
20 defendant as a three-time violent felony
21 offender and impose certain mandatory minimum
22 terms of imprisonment under specified
23 circumstances when the defendant is to be
24 sentenced for committing, or conspiring or
25 attempting to commit, any of the enumerated
26 felony offenses and the defendant has
27 previously been convicted of committing, or
28 conspiring or attempting to commit, any two of
29 the enumerated felony offenses; providing
30 penalties; providing procedures and criteria
31 for court determination if the defendant is a

1 three-time violent felony offender; providing
2 for sentencing as a three-time violent felony
3 offender; providing mandatory term of
4 imprisonment for life when the three-time
5 violent felony offense for which the defendant
6 is to be sentenced is a felony punishable by
7 life; providing mandatory prison term of 30
8 years when the three-time violent felony
9 offense is a first degree felony; providing
10 mandatory prison term of 15 years when the
11 three-time violent felony offense is a second
12 degree felony; providing mandatory prison term
13 of 5 years when the three-time violent felony
14 offense is a third degree felony; providing for
15 construction; providing that certain sentences
16 imposed before July 1, 1999, are not subject to
17 s. 921.002, F.S., relating to the Criminal
18 Punishment Code; requiring a three-time violent
19 felony offender to serve 100 percent of the
20 court-imposed sentence; providing for
21 ineligibility of a three-time violent felony
22 offender for parole, control release, or early
23 release; amending ss. 784.07 and 784.08, F.S.;
24 providing minimum terms of imprisonment for
25 persons convicted of aggravated assault or
26 aggravated battery of a law enforcement officer
27 or a person 65 years of age or older; amending
28 s. 790.235, F.S., relating to prohibitions
29 against, and penalties for, unlawful possession
30 or other unlawful acts involving firearm,
31 electric weapon or device, or concealed weapon

1 by a violent career criminal; conforming cross
2 references to changes made by the act; creating
3 s. 794.0115, F.S.; defining "repeat sexual
4 batterer"; providing within the definition a
5 category of enumerated felony offenses in
6 violation of s. 794.011, F.S., relating to
7 sexual battery; requiring the court to sentence
8 a defendant as a repeat sexual batterer and
9 impose a 10-year mandatory minimum term of
10 imprisonment under specified circumstances when
11 the defendant is to be sentenced for
12 committing, or conspiring or attempting to
13 commit, any of the enumerated felony violations
14 of s. 794.011, F.S., and the defendant has
15 previously been convicted of committing, or
16 conspiring or attempting to commit, any one of
17 certain enumerated felony offenses involving
18 sexual battery; providing penalties; providing
19 procedures and criteria for court determination
20 if the defendant is a repeat sexual batterer;
21 providing for sentencing as a repeat sexual
22 batterer; providing for construction; amending
23 s. 794.011, F.S., to conform references to
24 changes made by the act; providing an effective
25 date.

26
27 WHEREAS, in 1996, Florida had the highest violent crime
28 rate of any state in the nation, exceeding the national
29 average by 66 percent, and

30 WHEREAS, although this state possessed the highest
31 state violent crime rate in 1996 in the nation, the

1 incarceration rate in this state in 1996 was less than the
2 incarceration rate in at least eleven other states, all of
3 which had a lower violent crime rate than the rate in this
4 state, and

5 WHEREAS, since 1988, criminals in this state have
6 committed at least 1.6 million violent crimes against
7 Floridians and visitors to this state, and

8 WHEREAS, the per capita violent crime rate has
9 increased 86 percent in this state in the last 25 years, and

10 WHEREAS, in fiscal year 1996-1997, over 16,000 violent
11 felons in this state were sentenced to probation, community
12 control, and other punishments that did not incarcerate the
13 violent felon for the maximum prison term authorized by law,
14 and

15 WHEREAS, during that same fiscal year, less than 9,900
16 violent felons were sentenced to prison, while during that
17 same period criminals committed approximately 150,000 violent
18 felonies, and

19 WHEREAS, in this state, as of June 30, 1997, more
20 violent felons were on probation, community control, control
21 release, or parole, than were in state prison, and

22 WHEREAS, in 1997, only 15.6 percent of all persons
23 convicted of a felony were sentenced to state prison, the
24 second lowest rate of incarcerated felons since 1984, and

25 WHEREAS, the rate of incarcerated felons has declined
26 seven out of the last eight years, and

27 WHEREAS, since fiscal year 1993-1994, the per capita
28 prison population rate in this state has increased 10 percent
29 and the proportion of violent offenders incarcerated in state
30 prison has increased 5 percent, and

31

1 WHEREAS, since 1995, the Florida Legislature has
2 enacted stronger criminal punishment laws, including requiring
3 all prisoners to serve 85 percent of their court-imposed
4 sentences, and

5 WHEREAS, since 1994, the violent crime rate in this
6 state has decreased 9.8 percent, and

7 WHEREAS, the Legislature previously has found that a
8 substantial and disproportionate number of serious crimes are
9 committed in this state by a relatively small number of repeat
10 and violent felony offenders, that priority should be given to
11 the incarceration of career criminals for extended prison
12 terms, and that, in the case of violent career criminals, such
13 extended terms must include substantial minimum terms of
14 imprisonment, and

15 WHEREAS, as of June 30, 1997, only 71 designated
16 "violent career criminals" have been sentenced to mandatory
17 prison terms, out of a prison population of over 65,000 state
18 inmates; and this number does not approach the true number of
19 repeat violent felony offenders in this state, and

20 WHEREAS, to be sentenced as a "violent career
21 criminal," a felon must be convicted of at least four violent,
22 forcible, or serious felonies and must have served a prison
23 term, and

24 WHEREAS, current law does not require the courts to
25 impose mandatory prison terms on violent felons who commit
26 three violent felonies, and these three-time violent felony
27 offenders should be sentenced to mandatory maximum prison
28 terms to protect citizens of this state and visitors, and

29 WHEREAS, studies such as the recent report issued by
30 the National Center for Policy Analysis, "Does punishment
31

1 deter?", indicate that recent crime rates have declined
2 because of the increasing number of incarcerated felons, and

3 WHEREAS, since California enacted "three strike"
4 legislation in 1994 that requires courts to impose mandatory
5 prison terms on repeat felony offenders convicted of three
6 serious crimes, that state has experienced significant
7 reductions in violent crime, and overall crime rates, and

8 WHEREAS, a study by the RAND Corporation estimates that
9 the enforcement of this California legislation will reduce
10 serious crime in California committed by adults between 22 and
11 34 percent, and

12 WHEREAS, the enactment and enforcement of legislation
13 in Florida that requires courts to impose mandatory prison
14 terms on three-time violent felony offenders will improve
15 public safety by incapacitating repeat offenders who are most
16 likely to murder, rape, rob, or assault innocent victims in
17 our communities, and

18 WHEREAS, imposing mandatory prison terms on three-time
19 violent felony offenders will prevent such offenders from
20 committing more crimes in our communities, and likely
21 accelerate recent declines in the violent crime rate in this
22 state, NOW, THEREFORE,

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. This act may be cited as the "Three-Strike
27 Violent Felony Offender Act."

28 Section 2. Section 775.084, Florida Statutes, 1998
29 Supplement, is amended to read:

30 775.084 Violent career criminals; habitual felony
31 offenders and habitual violent felony offenders; three-time

1 violent felony offenders; definitions; procedure; enhanced
2 penalties or mandatory minimum prison terms.--

3 (1) As used in this act:

4 (a) "Habitual felony offender" means a defendant for
5 whom the court may impose an extended term of imprisonment, as
6 provided in paragraph (4)(a), if it finds that:

7 1. The defendant has previously been convicted of any
8 combination of two or more felonies in this state or other
9 qualified offenses.

10 2. The felony for which the defendant is to be
11 sentenced was committed:

12 a. While the defendant was serving a prison sentence
13 or other sentence commitment imposed as a result of a prior
14 conviction for a felony or other qualified offense; or

15 b. Within 5 years of the date of the conviction of the
16 defendant's last prior felony or other qualified offense, or
17 within 5 years of the defendant's release from a prison
18 sentence, probation, community control, or other sentence
19 commitment imposed as a result of a prior conviction for a
20 felony or other qualified offense, whichever is later.

21 3. The felony for which the defendant is to be
22 sentenced, and one of the two prior felony convictions, is not
23 a violation of s. 893.13 relating to the purchase or the
24 possession of a controlled substance.

25 4. The defendant has not received a pardon for any
26 felony or other qualified offense that is necessary for the
27 operation of this paragraph.

28 5. A conviction of a felony or other qualified offense
29 necessary to the operation of this paragraph has not been set
30 aside in any postconviction proceeding.

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1 (b) "Habitual violent felony offender" means a
2 defendant for whom the court may impose an extended term of
3 imprisonment, as provided in paragraph (4)(b), if it finds
4 that:
5 1. The defendant has previously been convicted of a
6 felony or an attempt or conspiracy to commit a felony and one
7 or more of such convictions was for:
8 a. Arson;
9 b. Sexual battery;
10 c. Robbery;
11 d. Kidnapping;
12 e. Aggravated child abuse;
13 f. Aggravated abuse of an elderly person or disabled
14 adult;
15 g. Aggravated assault;
16 h. Murder;
17 i. Manslaughter;
18 j. Aggravated manslaughter of an elderly person or
19 disabled adult;
20 k. Aggravated manslaughter of a child;
21 l. Unlawful throwing, placing, or discharging of a
22 destructive device or bomb;
23 m. Armed burglary;
24 n. Aggravated battery; or
25 o. Aggravated stalking.
26 2. The felony for which the defendant is to be
27 sentenced was committed:
28 a. While the defendant was serving a prison sentence
29 or other sentence ~~commitment~~ imposed as a result of a prior
30 conviction for an enumerated felony; or
31

1 b. Within 5 years of the date of the conviction of the
2 last prior enumerated felony, or within 5 years of the
3 defendant's release from a prison sentence, probation,
4 community control, or other sentence ~~commitment~~ imposed as a
5 result of a prior conviction for an enumerated felony,
6 whichever is later.

7 3. The defendant has not received a pardon on the
8 ground of innocence for any crime that is necessary for the
9 operation of this paragraph.

10 4. A conviction of a crime necessary to the operation
11 of this paragraph has not been set aside in any postconviction
12 proceeding.

13 (c) "Three-time violent felony offender" means a
14 defendant for whom the court must impose a mandatory minimum
15 term of imprisonment, as provided in paragraph (4)(c), if it
16 finds that:

17 1. The defendant has previously been convicted as an
18 adult two or more times of a felony or an attempt or
19 conspiracy to commit a felony and two or more of such
20 convictions were for committing, or attempting or conspiring
21 to commit, any of the following offenses or combination
22 thereof:

- 23 a. Arson;
24 b. Sexual battery;
25 c. Robbery;
26 d. Kidnapping;
27 e. Aggravated child abuse;
28 f. Aggravated abuse of an elderly person or disabled
29 adult;
30 g. Aggravated assault;
31 h. Murder;

- 1 i. Manslaughter;
2 j. Aggravated manslaughter of an elderly person or
3 disabled adult;
4 k. Aggravated manslaughter of a child;
5 l. Unlawful throwing, placing, or discharging of a
6 destructive device or bomb;
7 m. Armed burglary;
8 n. Aggravated battery;
9 o. Aggravated stalking; or
10 p. A qualified offense if the elements of the
11 qualified offense are substantially similar to the elements of
12 any felony offense enumerated in sub-subparagraphs a.-o., or
13 an attempt or conspiracy to commit any such felony offense.
14 2. The felony for which the defendant is to be
15 sentenced is one of the felonies enumerated in
16 sub-subparagraphs 1.a.-o. and was committed:
17 a. While the defendant was serving a prison sentence
18 or other sentence imposed as a result of a prior conviction
19 for any offense enumerated in sub-subparagraphs 1.a.-p.; or
20 b. Within 5 years after the date of the conviction of
21 the last prior offense enumerated in sub-subparagraphs
22 1.a.-p., or within 5 years after the defendant's release from
23 a prison sentence, probation, community control, or other
24 sentence imposed as a result of a prior conviction for any
25 offense enumerated in sub-subparagraphs 1.a.-p., whichever is
26 later.
27 3. The defendant has not received a pardon on the
28 ground of innocence for any crime that is necessary for the
29 operation of this paragraph.
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1 4. A conviction of a crime necessary to the operation
2 of this paragraph has not been set aside in any postconviction
3 proceeding.

4 (d)~~(c)~~ "Violent career criminal" means a defendant for
5 whom the court must impose imprisonment pursuant to paragraph
6 (4)(d)~~(c)~~, if it finds that:

7 1. The defendant has previously been convicted as an
8 adult three or more times for an offense in this state or
9 other qualified offense that is:

10 a. Any forcible felony, as described in s. 776.08;

11 b. Aggravated stalking, as described in s. 784.048(3)
12 and (4);

13 c. Aggravated child abuse, as described in s.
14 827.03(2);

15 d. Aggravated abuse of an elderly person or disabled
16 adult, as described in s. 825.102(2);

17 e. Lewd, lascivious, or indecent conduct, as described
18 in s. 800.04;

19 f. Escape, as described in s. 944.40; or

20 g. A felony violation of chapter 790 involving the use
21 or possession of a firearm.

22 2. The defendant has been incarcerated in a state
23 prison or a federal prison.

24 3. The primary felony offense for which the defendant
25 is to be sentenced is a felony enumerated in subparagraph 1.
26 and was committed on or after October 1, 1995, and:

27 a. While the defendant was serving a prison sentence
28 or other sentence ~~commitment~~ imposed as a result of a prior
29 conviction for an enumerated felony; or

30 b. Within 5 years after the conviction of the last
31 prior enumerated felony, or within 5 years after the

1 defendant's release from a prison sentence, probation,
2 community control, or other sentence ~~commitment~~ imposed as a
3 result of a prior conviction for an enumerated felony,
4 whichever is later.

5 4. The defendant has not received a pardon for any
6 felony or other qualified offense that is necessary for the
7 operation of this paragraph.

8 5. A conviction of a felony or other qualified offense
9 necessary to the operation of this paragraph has not been set
10 aside in any postconviction proceeding.

11 (e)~~(d)~~ "Qualified offense" means any offense,
12 substantially similar in elements and penalties to an offense
13 in this state, which is in violation of a law of any other
14 jurisdiction, whether that of another state, the District of
15 Columbia, the United States or any possession or territory
16 thereof, or any foreign jurisdiction, that was punishable
17 under the law of such jurisdiction at the time of its
18 commission by the defendant by death or imprisonment exceeding
19 1 year.

20 (2) For the purposes of this section, the placing of a
21 person on probation or community control without an
22 adjudication of guilt shall be treated as a prior conviction
23 ~~if the subsequent offense for which the person is to be~~
24 ~~sentenced was committed during such period of probation or~~
25 ~~community control.~~

26 (3)(a) In a separate proceeding, the court shall
27 determine if the defendant is a habitual felony offender or a
28 habitual violent felony offender. The procedure shall be as
29 follows:

30 1. The court shall obtain and consider a presentence
31 investigation prior to the imposition of a sentence as a

1 habitual felony offender or a habitual violent felony
2 offender.

3 2. Written notice shall be served on the defendant and
4 the defendant's attorney a sufficient time prior to the entry
5 of a plea or prior to the imposition of sentence in order to
6 allow the preparation of a submission on behalf of the
7 defendant.

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

12 4. Each of the findings required as the basis for such
13 sentence shall be found to exist by a preponderance of the
14 evidence and shall be appealable to the extent normally
15 applicable to similar findings.

16 5. For the purpose of identification of a habitual
17 felony offender or a habitual violent felony offender, the
18 court shall fingerprint the defendant pursuant to s. 921.241.

19 6. For an offense committed on or after October 1,
20 1995, if the state attorney pursues a habitual felony offender
21 sanction or a habitual violent felony offender sanction
22 against the defendant and the court, in a separate proceeding
23 pursuant to this paragraph, determines that the defendant
24 meets the criteria under subsection (1) for imposing such
25 sanction, the court must sentence the defendant as a habitual
26 felony offender or a habitual violent felony offender, subject
27 to imprisonment pursuant to this section unless the court
28 finds that such sentence is not necessary for the protection
29 of the public. If the court finds that it is not necessary
30 for the protection of the public to sentence the defendant as
31 a habitual felony offender or a habitual violent felony

1 offender, the court shall provide written reasons; a written
2 transcript of orally stated reasons is permissible, if filed
3 by the court within 7 days after the date of sentencing. Each
4 month, the court shall submit to the Office of Economic and
5 Demographic Research of the Legislature the written reasons or
6 transcripts in each case in which the court determines not to
7 sentence a defendant as a habitual felony offender or a
8 habitual violent felony offender as provided in this
9 subparagraph.

10 (b) In a separate proceeding, the court shall
11 determine if the defendant is a three-time violent felony
12 offender. The procedure shall be as follows:

13 1. The court shall obtain and consider a presentence
14 investigation prior to the imposition of a sentence as a
15 three-time violent felony offender.

16 2. Written notice shall be served on the defendant and
17 the defendant's attorney a sufficient time prior to the entry
18 of a plea or prior to the imposition of sentence in order to
19 allow the preparation of a submission on behalf of the
20 defendant.

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

25 4. Each of the findings required as the basis for such
26 sentence shall be found to exist by a preponderance of the
27 evidence and shall be appealable to the extent normally
28 applicable to similar findings.

29 5. For the purpose of identification of a three-time
30 violent felony offender, the court shall fingerprint the
31 defendant pursuant to s. 921.241.

1 6. For an offense committed on or after the effective
2 date of this act, if the state attorney pursues a three-time
3 violent felony offender sanction against the defendant and the
4 court, in a separate proceeding pursuant to this paragraph,
5 determines that the defendant meets the criteria under
6 subsection (1) for imposing such sanction, the court must
7 sentence the defendant as a three-time violent felony
8 offender, subject to imprisonment pursuant to this section as
9 provided in paragraph (4)(c).

10 ~~(c)(b)~~ In a separate proceeding, the court shall
11 determine whether the defendant is a violent career criminal
12 with respect to a primary offense committed on or after
13 October 1, 1995. The procedure shall be as follows:

14 1. Written notice shall be served on the defendant and
15 the defendant's attorney a sufficient time prior to the entry
16 of a plea or prior to the imposition of sentence in order to
17 allow the preparation of a submission on behalf of the
18 defendant.

19 2. All evidence presented shall be presented in open
20 court with full rights of confrontation, cross-examination,
21 and representation by counsel.

22 3. Each of the findings required as the basis for such
23 sentence shall be found to exist by a preponderance of the
24 evidence and shall be appealable only as provided in paragraph
25 ~~(d)(e)~~.

26 4. For the purpose of identification, the court shall
27 fingerprint the defendant pursuant to s. 921.241.

28 5. For an offense committed on or after October 1,
29 1995, if the state attorney pursues a violent career criminal
30 sanction against the defendant and the court, in a separate
31 proceeding pursuant to this paragraph, determines that the

1 defendant meets the criteria under subsection (1) for imposing
2 such sanction, the court must sentence the defendant as a
3 violent career criminal, subject to imprisonment pursuant to
4 this section unless the court finds that such sentence is not
5 necessary for the protection of the public. If the court
6 finds that it is not necessary for the protection of the
7 public to sentence the defendant as a violent career criminal,
8 the court shall provide written reasons; a written transcript
9 of orally stated reasons is permissible, if filed by the court
10 within 7 days after the date of sentencing. Each month, the
11 court shall submit to the Office of Economic and Demographic
12 Research of the Legislature the written reasons or transcripts
13 in each case in which the court determines not to sentence a
14 defendant as a violent career criminal as provided in this
15 subparagraph.

16 (d)~~(c)~~1. A person sentenced under paragraph (4)(d)~~(c)~~
17 as a violent career criminal has the right of direct appeal,
18 and either the state or the defendant may petition the trial
19 court to vacate an illegal sentence at any time. However, the
20 determination of the trial court to impose or not to impose a
21 violent career criminal sentence is presumed appropriate and
22 no petition or motion for collateral or other postconviction
23 relief may be considered based on an allegation either by the
24 state or the defendant that such sentence is inappropriate,
25 inadequate, or excessive.

26 2. It is the intent of the Legislature that, with
27 respect to both direct appeal and collateral review of violent
28 career criminal sentences, all claims of error or illegality
29 be raised at the first opportunity and that no claim should be
30 filed more than 2 years after the judgment and sentence became
31 final, unless it is established that the basis for the claim

1 could not have been ascertained at the time by the exercise of
2 due diligence. Technical violations and mistakes at trials and
3 sentencing proceedings involving violent career criminals that
4 do not affect due process or fundamental fairness are not
5 appealable by either the state or the defendant.

6 3. It is the intent of the Legislature that no funds,
7 resources, or employees of the state or its political
8 subdivisions be used, directly or indirectly, in appellate or
9 collateral proceedings based on violent career criminal
10 sentencing, except when such use is constitutionally or
11 statutorily mandated.

12 (4)(a) The court, in conformity with the procedure
13 established in paragraph (3)(a), may sentence the habitual
14 felony offender as follows:

15 1. In the case of a life felony or a felony of the
16 first degree, for life.

17 2. In the case of a felony of the second degree, for a
18 term of years not exceeding 30.

19 3. In the case of a felony of the third degree, for a
20 term of years not exceeding 10.

21 (b) The court, in conformity with the procedure
22 established in paragraph (3)(a), may sentence the habitual
23 violent felony offender as follows:

24 1. In the case of a life felony or a felony of the
25 first degree, for life, and such offender shall not be
26 eligible for release for 15 years.

27 2. In the case of a felony of the second degree, for a
28 term of years not exceeding 30, and such offender shall not be
29 eligible for release for 10 years.

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1 3. In the case of a felony of the third degree, for a
2 term of years not exceeding 10, and such offender shall not be
3 eligible for release for 5 years.

4 (c)1. The court, in conformity with the procedure
5 established in paragraph (3)(c), must sentence the three-time
6 violent felony offender to a mandatory minimum term of
7 imprisonment, as follows:

8 a. In the case of a felony punishable by life, to a
9 term of imprisonment for life;

10 b. In the case of a felony of the first degree, to a
11 term of imprisonment of 30 years;

12 c. In the case of a felony of the second degree, to a
13 term of imprisonment of 15 years; or

14 d. In the case of a felony of the third degree, to a
15 term of imprisonment of 5 years.

16 2. Nothing in this subsection shall prevent a court
17 from imposing a greater sentence of incarceration as
18 authorized by law.

19 ~~(d)(c)~~ The court, in conformity with the procedure
20 established in paragraph (3)~~(c)(b)~~, shall sentence the violent
21 career criminal as follows:

22 1. In the case of a life felony or a felony of the
23 first degree, for life.

24 2. In the case of a felony of the second degree, for a
25 term of years not exceeding 40, with a mandatory minimum term
26 of 30 years' imprisonment.

27 3. In the case of a felony of the third degree, for a
28 term of years not exceeding 15, with a mandatory minimum term
29 of 10 years' imprisonment.

30 ~~(e)(d)~~ If the court finds, pursuant to paragraph
31 (3)(a) or paragraph (3)~~(c)(b)~~, that it is not necessary for

1 the protection of the public to sentence a defendant who meets
2 the criteria for sentencing as a habitual felony offender, a
3 habitual violent felony offender, or a violent career
4 criminal, with respect to an offense committed on or after
5 October 1, 1995, sentence shall be imposed without regard to
6 this section.

7 ~~(f)(e)~~ At any time when it appears to the court that
8 the defendant is eligible for sentencing under this section,
9 the court shall make that determination as provided in
10 paragraph (3)(a) or paragraph (3)~~(c)~~~~(b)~~.

11 ~~(g)(f)~~ A sentence imposed under this section shall not
12 be increased after such imposition.

13 ~~(h)(g)~~ A sentence imposed under this section for an
14 offense committed before July 1, 1999, is not subject to s.
15 921.002.

16 ~~(i)(h)~~ The provisions of this section do not apply to
17 capital felonies, and a sentence authorized under this section
18 does not preclude the imposition of the death penalty for a
19 capital felony.

20 ~~(j)(i)~~ The provisions of s. 947.1405 shall apply to
21 persons sentenced as habitual felony offenders and persons
22 sentenced as habitual violent felony offenders.

23 ~~(k)(j)~~1. A defendant sentenced under this section as a
24 habitual felony offender, a habitual violent felony offender,
25 or a violent career criminal is eligible for gain-time granted
26 by the Department of Corrections as provided in s.
27 944.275(4)(b).

28 2. For an offense committed on or after October 1,
29 1995, a defendant sentenced under this section as a violent
30 career criminal is not eligible for any form of discretionary
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1 early release, other than pardon or executive clemency, or
2 conditional medical release granted pursuant to s. 947.149.

3 3. For an offense committed on or after July 1, 1999,
4 a defendant sentenced under this section as a three-time
5 violent felony offender shall be released only by expiration
6 of sentence and shall not be eligible for parole, control
7 release, or any form of early release. Any person sentenced as
8 a three-time violent felony offender must serve 100 percent of
9 the court-imposed sentence.

10 ~~(5) In order to be counted as a prior felony for~~
11 ~~purposes of sentencing under this section, the felony must~~
12 ~~have resulted in a conviction sentenced separately prior to~~
13 ~~the current offense and sentenced separately from any other~~
14 ~~felony conviction that is to be counted as a prior felony.~~

15 (5)(6) The purpose of this section is to provide
16 uniform punishment for those crimes made punishable under this
17 section, and to this end, a reference to this section
18 constitutes a general reference under the doctrine of
19 incorporation by reference.

20 Section 3. Paragraphs (c) and (d) of subsection (2) of
21 section 784.07, Florida Statutes, 1998 Supplement, are amended
22 to read:

23 784.07 Assault or battery of law enforcement officers,
24 firefighters, emergency medical care providers, public transit
25 employees or agents, or other specified officers;
26 reclassification of offenses; minimum sentences.--

27 (2) Whenever any person is charged with knowingly
28 committing an assault or battery upon a law enforcement
29 officer, a firefighter, an emergency medical care provider, a
30 traffic accident investigation officer as described in s.
31 316.640, a traffic infraction enforcement officer as described

1 in s. 318.141, a parking enforcement specialist as defined in
2 s. 316.640, or a security officer employed by the board of
3 trustees of a community college, while the officer,
4 firefighter, emergency medical care provider, intake officer,
5 traffic accident investigation officer, traffic infraction
6 enforcement officer, parking enforcement specialist, public
7 transit employee or agent, or security officer is engaged in
8 the lawful performance of his or her duties, the offense for
9 which the person is charged shall be reclassified as follows:

10 (c) In the case of aggravated assault, from a felony
11 of the third degree to a felony of the second degree.

12 Notwithstanding any other provision of law, any person
13 convicted of aggravated assault upon a law enforcement officer
14 shall be sentenced to a minimum term of imprisonment of 3
15 years.

16 (d) In the case of aggravated battery, from a felony
17 of the second degree to a felony of the first degree.

18 Notwithstanding any other provision of law, any person
19 convicted of aggravated battery of a law enforcement officer
20 shall be sentenced to a minimum term of imprisonment of 5
21 years.

22 Section 4. Subsection (1) of section 784.08, Florida
23 Statutes, is amended to read:

24 784.08 Assault or battery on persons 65 years of age
25 or older; reclassification of offenses; minimum sentence.--

26 (1) A person who is convicted of an aggravated assault
27 or aggravated battery upon a person 65 years of age or older
28 shall be sentenced to a minimum term of imprisonment of 3
29 years ~~pursuant to the Criminal Punishment Code~~ and fined not
30 more than \$10,000 and shall also be ordered by the sentencing
31 judge to make restitution to the victim of such offense and to

1 perform up to 500 hours of community service work.
2 Restitution and community service work shall be in addition to
3 any fine or sentence which may be imposed and shall not be in
4 lieu thereof.

5 Section 5. Section 790.235, Florida Statutes, is
6 amended to read:

7 790.235 Possession of firearm by violent career
8 criminal unlawful; penalty.--

9 (1) Any person who meets the violent career criminal
10 criteria under s. 775.084(1)(d)~~(c)~~, regardless of whether such
11 person is or has previously been sentenced as a violent career
12 criminal, who owns or has in his or her care, custody,
13 possession, or control any firearm or electric weapon or
14 device, or carries a concealed weapon, including a tear gas
15 gun or chemical weapon or device, commits a felony of the
16 first degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084. A person convicted of a violation of
18 this section shall be sentenced to a mandatory minimum of 15
19 years' imprisonment; however, if the person would be sentenced
20 to a longer term of imprisonment under s. 775.084(4)(d)~~(c)~~,
21 the person must be sentenced under that provision. A person
22 convicted of a violation of this section is not eligible for
23 any form of discretionary early release, other than pardon,
24 executive clemency, or conditional medical release under s.
25 947.149.

26 (2) For purposes of this section, the previous felony
27 convictions necessary to meet the violent career criminal
28 criteria under s. 775.084(1)(d)~~(c)~~ may be convictions for
29 felonies committed as an adult or adjudications of delinquency
30 for felonies committed as a juvenile. In order to be counted
31 as a prior felony for purposes of this section, the felony

1 must have resulted in a conviction sentenced separately, or an
2 adjudication of delinquency entered separately, prior to the
3 current offense, and sentenced or adjudicated separately from
4 any other felony that is to be counted as a prior felony.

5 (3) This section shall not apply to a person whose
6 civil rights and firearm authority have been restored.

7 Section 6. Section 794.0115, Florida Statutes, is
8 created to read:

9 794.0115 Repeat sexual batterers; definition;
10 procedure; enhanced penalties.--

11 (1) As used in this act, "repeat sexual batterer"
12 means a defendant for whom the court must impose a mandatory
13 minimum term of imprisonment, as provided in subsection (3),
14 if it finds that:

15 (a) The defendant has previously been convicted of a
16 felony or an attempt or conspiracy to commit a felony and one
17 or more of such convictions was for:

18 1. Any felony offense in violation of s.
19 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
20 to commit the felony offense.

21 2. A qualified offense as defined in s. 775.084(1)(e),
22 if the elements of the qualified offense are substantially
23 similar to the elements of a felony offense in violation of s.
24 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
25 to commit the felony offense.

26 (b) The felony for which the defendant is to be
27 sentenced is one of the felonies enumerated in subparagraph
28 (a)1. or 2. and was committed:

29 1. While the defendant was serving a prison sentence
30 or other sentence imposed as a result of a prior conviction
31 for any offense enumerated in subparagraph (a)1. or 2.; or

1 2. Within 10 years after the date of the conviction of
2 the last prior offense enumerated in subparagraph (a)1. or 2.,
3 or within 10 years after the defendant's release from a prison
4 sentence, probation, community control, or other sentence
5 imposed as a result of a prior conviction for any offense
6 enumerated in subparagraph (a)1. or 2., whichever is later.

7 (c) The defendant has not received a pardon on the
8 ground of innocence for any crime that is necessary for the
9 operation of this subsection.

10 (d) A conviction of a crime necessary to the operation
11 of this subsection has not been set aside in any
12 postconviction proceeding.

13 (2) In a separate proceeding, the court shall
14 determine if the defendant is a repeat sexual batterer. The
15 procedure shall be as follows:

16 (a) The court shall obtain and consider a presentence
17 investigation prior to the imposition of a sentence as a
18 repeat sexual batterer.

19 (b) Written notice shall be served on the defendant
20 and the defendant's attorney a sufficient time prior to the
21 entry of a plea or prior to the imposition of sentence in
22 order to allow the preparation of a submission on behalf of
23 the defendant.

24 (c) Except as provided in paragraph (a), all evidence
25 presented shall be presented in open court with full rights of
26 confrontation, cross-examination, and representation by
27 counsel.

28 (d) Each of the findings required as the basis for
29 such sentence shall be found to exist by a preponderance of
30 the evidence and shall be appealable to the extent normally
31 applicable to similar findings.

1 (e) For the purpose of identification of a repeat
2 sexual batterer, the court shall fingerprint the defendant
3 pursuant to s. 921.241.

4 (f) For an offense committed on or after the effective
5 date of this act, if the state attorney pursues a repeat
6 sexual batterer sanction against the defendant and the court,
7 in a separate proceeding pursuant to this subsection,
8 determines that the defendant meets the criteria under
9 subsection (1) for imposing such sanction, the court must
10 sentence the defendant as a repeat sexual batterer, subject to
11 imprisonment pursuant to this section as provided in
12 subsection (3).

13 (3)(a) The court, in conformity with the procedure
14 established in subsection (2), must sentence the repeat sexual
15 batterer to a mandatory minimum term of 10 years'
16 imprisonment.

17 (b) Nothing in this subsection shall prevent a court
18 from imposing a greater sentence of incarceration as
19 authorized by law.

20 Section 7. Section 794.011, Florida Statutes, is
21 amended to read:

22 794.011 Sexual battery.--

23 (1) As used in this chapter:

24 (a) "Consent" means intelligent, knowing, and
25 voluntary consent and does not include coerced submission.
26 "Consent" shall not be deemed or construed to mean the failure
27 by the alleged victim to offer physical resistance to the
28 offender.

29 (b) "Mentally defective" means a mental disease or
30 defect which renders a person temporarily or permanently
31 incapable of appraising the nature of his or her conduct.

1 (c) "Mentally incapacitated" means temporarily
2 incapable of appraising or controlling a person's own conduct
3 due to the influence of a narcotic, anesthetic, or
4 intoxicating substance administered without his or her consent
5 or due to any other act committed upon that person without his
6 or her consent.

7 (d) "Offender" means a person accused of a sexual
8 offense in violation of a provision of this chapter.

9 (e) "Physically helpless" means unconscious, asleep,
10 or for any other reason physically unable to communicate
11 unwillingness to an act.

12 (f) "Retaliation" includes, but is not limited to,
13 threats of future physical punishment, kidnapping, false
14 imprisonment or forcible confinement, or extortion.

15 (g) "Serious personal injury" means great bodily harm
16 or pain, permanent disability, or permanent disfigurement.

17 (h) "Sexual battery" means oral, anal, or vaginal
18 penetration by, or union with, the sexual organ of another or
19 the anal or vaginal penetration of another by any other
20 object; however, sexual battery does not include an act done
21 for a bona fide medical purpose.

22 (i) "Victim" means a person who has been the object of
23 a sexual offense.

24 (j) "Physically incapacitated" means bodily impaired
25 or handicapped and substantially limited in ability to resist
26 or flee.

27 (2)(a) A person 18 years of age or older who commits
28 sexual battery upon, or in an attempt to commit sexual battery
29 injures the sexual organs of, a person less than 12 years of
30 age commits a capital felony, punishable as provided in ss.
31 775.082 and 921.141.

1 (b) A person less than 18 years of age who commits
2 sexual battery upon, or in an attempt to commit sexual battery
3 injures the sexual organs of, a person less than 12 years of
4 age commits a life felony, punishable as provided in s.
5 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

6 (3) A person who commits sexual battery upon a person
7 12 years of age or older, without that person's consent, and
8 in the process thereof uses or threatens to use a deadly
9 weapon or uses actual physical force likely to cause serious
10 personal injury commits a life felony, punishable as provided
11 in s. 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

12 (4) A person who commits sexual battery upon a person
13 12 years of age or older without that person's consent, under
14 any of the following circumstances, commits a felony of the
15 first degree, punishable as provided in s. 775.082, s.
16 775.083, ~~or~~ s. 775.084, or s. 794.0115:

17 (a) When the victim is physically helpless to resist.

18 (b) When the offender coerces the victim to submit by
19 threatening to use force or violence likely to cause serious
20 personal injury on the victim, and the victim reasonably
21 believes that the offender has the present ability to execute
22 the threat.

23 (c) When the offender coerces the victim to submit by
24 threatening to retaliate against the victim, or any other
25 person, and the victim reasonably believes that the offender
26 has the ability to execute the threat in the future.

27 (d) When the offender, without the prior knowledge or
28 consent of the victim, administers or has knowledge of someone
29 else administering to the victim any narcotic, anesthetic, or
30 other intoxicating substance which mentally or physically
31 incapacitates the victim.

1 (e) When the victim is mentally defective and the
2 offender has reason to believe this or has actual knowledge of
3 this fact.

4 (f) When the victim is physically incapacitated.

5 (g) When the offender is a law enforcement officer,
6 correctional officer, or correctional probation officer as
7 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
8 is certified under the provisions of s. 943.1395 or is an
9 elected official exempt from such certification by virtue of
10 s. 943.253, or any other person in a position of control or
11 authority in a probation, community control, controlled
12 release, detention, custodial, or similar setting, and such
13 officer, official, or person is acting in such a manner as to
14 lead the victim to reasonably believe that the offender is in
15 a position of control or authority as an agent or employee of
16 government.

17 (5) A person who commits sexual battery upon a person
18 12 years of age or older, without that person's consent, and
19 in the process thereof does not use physical force and
20 violence likely to cause serious personal injury commits a
21 felony of the second degree, punishable as provided in s.
22 775.082, s. 775.083, or s. 775.084, or s. 794.0115.

23 (6) The offense described in subsection (5) is
24 included in any sexual battery offense charged under
25 subsection (3) or subsection (4).

26 (7) A person who is convicted of committing a sexual
27 battery on or after October 1, 1992, is not eligible for basic
28 gain-time under s. 944.275. This subsection may be cited as
29 the "Junny Rios-Martinez, Jr. Act of 1992."

30 (8) Without regard to the willingness or consent of
31 the victim, which is not a defense to prosecution under this

1 subsection, a person who is in a position of familial or
2 custodial authority to a person less than 18 years of age and
3 who:

4 (a) Solicits that person to engage in any act which
5 would constitute sexual battery under paragraph (1)(h) commits
6 a felony of the third degree, punishable as provided in s.
7 775.082, s. 775.083, or s. 775.084.

8 (b) Engages in any act with that person while the
9 person is 12 years of age or older but less than 18 years of
10 age which constitutes sexual battery under paragraph (1)(h)
11 commits a felony of the first degree, punishable as provided
12 in s. 775.082, s. 775.083, or s. 775.084.

13 (c) Engages in any act with that person while the
14 person is less than 12 years of age which constitutes sexual
15 battery under paragraph (1)(h), or in an attempt to commit
16 sexual battery injures the sexual organs of such person
17 commits a capital or life felony, punishable pursuant to
18 subsection (2).

19 (9) For prosecution under paragraph (4)(g),
20 acquiescence to a person reasonably believed by the victim to
21 be in a position of authority or control does not constitute
22 consent, and it is not a defense that the perpetrator was not
23 actually in a position of control or authority if the
24 circumstances were such as to lead the victim to reasonably
25 believe that the person was in such a position.

26 (10) Any person who falsely accuses any person listed
27 in paragraph (4)(g) or other person in a position of control
28 or authority as an agent or employee of government of
29 violating paragraph (4)(g) is guilty of a felony of the third
30 degree, punishable as provided in s. 775.082, s. 775.083, or
31 s. 775.084.

1 Section 8. This act shall take effect July 1, 1999.

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HOUSE SUMMARY

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Creates the "Three-Strike Violent Felony Offender Act."

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Redefines the terms "habitual felony offender" and "habitual violent felony offender." Revises the alternative time periods within which the habitual felony offender or habitual violent felony offender could have committed the felony to be sentenced. Revises criteria for a prior conviction or a prior felony for purposes of sentencing as a habitual felony offender, habitual violent offender, or violent career criminal. Provides that the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction regardless of when the subsequent offense was committed. Removes certain requirements that, in order to be counted as a prior felony, the felony must have resulted in prior conviction sentenced separately from any other felony conviction counted as a prior felony. Specifies minimum terms of imprisonment for convictions of aggravated assault or aggravated battery of a law enforcement officer and for aggravated assault or battery on a person 65 years of age or older.

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Defines "three-time violent felony offender" and "repeat sexual batterer." Requires the court to sentence a defendant as a three-time violent felony offender or repeat sexual batterer and impose certain mandatory minimum terms of imprisonment under specified circumstances. Provides procedures and penalties. Provides for ineligibility of a three-time violent felony offender for parole, control release, or early release. Conforms references. See bill for details.

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