

By the Council for Healthy Communities and Representatives  
Fasano and Kottkamp

1                                   A bill to be entitled  
2           An act relating to sentencing; reenacting  
3           sections 1, 3, 6, and 12 of chapter 99-188,  
4           Laws of Florida; creating the "Three-Strike  
5           Violent Felony Offender Act"; amending s.  
6           775.084, F.S., relating to sentencing of  
7           habitual felony offenders, habitual violent  
8           felony offenders, and violent career criminals;  
9           redefining the terms "habitual felony  
10          offender," "habitual violent felony offender,"  
11          and "violent career criminal"; revising the  
12          alternative time periods within which the  
13          habitual felony offender, habitual violent  
14          felony offender, or violent career criminal  
15          could have committed the felony for which the  
16          sentence is to be imposed; providing that the  
17          felony for which the sentence is to be imposed  
18          could have been committed either while the  
19          defendant was serving a prison sentence or  
20          other sentence or supervision, or within 5  
21          years after the defendant's release from a  
22          prison sentence, probation, community control,  
23          or supervision or other sentence, under  
24          specified circumstances when the sentence was  
25          imposed as a result of a prior conviction for a  
26          felony, enumerated felony, or other qualified  
27          offense; removing certain references to  
28          "commitment" and otherwise conforming  
29          terminology; providing that the placing of a  
30          person on probation without an adjudication of  
31          guilt shall be treated as a prior conviction

1           regardless of when the subsequent offense was  
2           committed; defining "three-time violent felony  
3           offender"; providing a category of enumerated  
4           felony offenses within the definition;  
5           requiring the court to sentence a defendant as  
6           a three-time violent felony offender and impose  
7           certain mandatory minimum terms of imprisonment  
8           under specified circumstances when the  
9           defendant is to be sentenced for committing or  
10          attempting to commit any of the enumerated  
11          felony offenses and the defendant has  
12          previously been convicted of committing or  
13          attempting to commit any two of the enumerated  
14          felony offenses; providing penalties; providing  
15          procedures and criteria for court determination  
16          if the defendant is a three-time violent felony  
17          offender; providing for sentencing as a  
18          three-time violent felony offender; providing  
19          mandatory term of imprisonment for life when  
20          the three-time violent felony offense for which  
21          the defendant is to be sentenced is a felony  
22          punishable by life; providing mandatory prison  
23          term of 30 years when the three-time violent  
24          felony offense is a first degree felony;  
25          providing mandatory prison term of 15 years  
26          when the three-time violent felony offense is a  
27          second degree felony; providing mandatory  
28          prison term of 5 years when the three-time  
29          violent felony offense is a third degree  
30          felony; providing for construction; providing  
31          for ineligibility of a three-time violent

1 felony offender for parole, control release, or  
2 early release; amending s. 790.235, F.S.,  
3 relating to prohibitions against, and penalties  
4 for, unlawful possession or other unlawful acts  
5 involving firearm, electric weapon or device,  
6 or concealed weapon by a violent career  
7 criminal; conforming cross references to  
8 changes made by the act; requiring the Governor  
9 to place public service announcements  
10 explaining the provisions of this act;  
11 providing for retroactive application of the  
12 reenacted provisions; further amending s.  
13 775.084, F.S., to incorporate amendments  
14 contained in chapter 99-201, Laws of Florida;  
15 defining "violent career criminal"; providing  
16 effective dates.

17  
18 WHEREAS, in 1999 the Legislature adopted chapter  
19 99-188, Laws of Florida, with the primary motivation of  
20 reducing crime in this state and to protect the public from  
21 violent criminals through the adoption of enhanced and  
22 mandatory sentences for violent and repeat offenders, for  
23 persons involved in drug-related crimes, committing aggravated  
24 battery or aggravated assault on law enforcement personnel or  
25 the elderly, and for persons committing criminal acts while in  
26 prison or while having escaped from prison, and

27 WHEREAS, a three-judge panel of the District Court of  
28 Appeal of Florida, Second District, has issued a nonfinal  
29 opinion declaring chapter 99-188, Laws of Florida,  
30 unconstitutional as a violation of the requirement in Section  
31 6, Article III of the Florida Constitution that "every law

1 shall embrace but one subject and matter properly connected  
2 therewith. . .", finding that the addition of two minor  
3 provisions relating to burglary of railroad vehicles and the  
4 provision of sentencing documents relative to aliens to the  
5 Immigration and Naturalization Service were not matters  
6 properly connected with the subject of the 1999 act, which was  
7 "sentencing," and

8 WHEREAS, the nonfinal ruling on this matter was issued  
9 while the Legislature was in session, and

10 WHEREAS, the Attorney General, on behalf of the people  
11 of the State of Florida, has indicated a determination to seek  
12 rehearing, en banc, of this matter, and

13 WHEREAS, a final opinion by the District Court of  
14 Appeal of Florida, Second District, declaring chapter 99-188,  
15 Laws of Florida, to have been in violation of Section 6,  
16 Article III of the Florida Constitution would be subject to  
17 appeal by the state to the Florida Supreme Court, and

18 WHEREAS, in its nonfinal ruling, the panel of the  
19 District Court of Appeal of Florida, Second District, has  
20 certified its decision as passing on two questions of great  
21 public importance with respect to chapter 99-188, Laws of  
22 Florida, further invoking the jurisdiction of the Florida  
23 Supreme Court, and

24 WHEREAS, the final resolution as to the  
25 constitutionality of chapter 99-188, Laws of Florida, remains  
26 uncertain, and is unlikely to be finally determined by the  
27 judicial system, while the 2002 legislative session is in  
28 progress, and

29 WHEREAS, the legislative action to correct the effect  
30 of this ruling forthwith is essential to public safety and

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1 cannot await a final resolution by the District Court of  
2 Appeal and the Florida Supreme Court, and

3 WHEREAS, the Legislature, only out of an abundance of  
4 caution due to tentative posture of the law while it awaits  
5 final resolution by the District Court of Appeal and the  
6 Florida Supreme Court, has prepared five separate bills to  
7 reenact selected provisions of chapter 99-188, Laws of  
8 Florida, all of which relate to the single general issue of  
9 sentencing in criminal cases, and

10 WHEREAS, the Legislature does not intend the division  
11 of these bills relating to sentencing as any kind of  
12 legislative acknowledgement that said bills could not or  
13 should not be joined together in a single bill in full  
14 compliance with Section 6, Article III of the Florida  
15 Constitution, NOW THEREFORE,

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Sections 1, 3, 6, and 12 of chapter 99-188,  
20 Laws of Florida, are reenacted to read:

21 Section 1. This act may be cited as the "Three-Strike  
22 Violent Felony Offender Act."

23 Section 3. Section 775.084, Florida Statutes, 1998  
24 Supplement, is amended to read:

25 775.084 Violent career criminals; habitual felony  
26 offenders and habitual violent felony offenders; three-time  
27 violent felony offenders; definitions; procedure; enhanced  
28 penalties or mandatory minimum prison terms.--

29 (1) As used in this act:

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31

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

4 1. The defendant has previously been convicted of any  
5 combination of two or more felonies in this state or other  
6 qualified offenses.

7 2. The felony for which the defendant is to be  
8 sentenced was committed:

9 a. While the defendant was serving a prison sentence  
10 or other sentence, or court-ordered or lawfully imposed  
11 supervision that is ~~commitment~~ imposed as a result of a prior  
12 conviction for a felony or other qualified offense; or

13 b. Within 5 years of the date of the conviction of the  
14 defendant's last prior felony or other qualified offense, or  
15 within 5 years of the defendant's release from a prison  
16 sentence, probation, community control, control release,  
17 conditional release, parole or court-ordered or lawfully  
18 imposed supervision or other sentence that is ~~commitment~~  
19 imposed as a result of a prior conviction for a felony or  
20 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 with a deadly weapon;  
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, or court-ordered or lawfully imposed  
30 supervision that is ~~commitment~~ imposed as a result of a prior  
31 conviction for an enumerated felony; or

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, control release, conditional release,  
5 parole, or court-ordered or lawfully imposed supervision or  
6 other sentence that is ~~commitment~~ imposed as a result of a  
7 prior conviction for an enumerated felony, whichever is later.

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

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

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

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

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;  
10          p. Home invasion/robbery;  
11          q. Carjacking; or  
12          r. An offense which is in violation of a law of any  
13 other jurisdiction if the elements of the offense are  
14 substantially similar to the elements of any felony offense  
15 enumerated in sub-subparagraphs a.-q., or an attempt to commit  
16 any such felony offense.  
17           2. The felony for which the defendant is to be  
18 sentenced is one of the felonies enumerated in  
19 sub-subparagraphs 1.a.-q. and was committed:  
20           a. While the defendant was serving a prison sentence  
21 or other sentence imposed as a result of a prior conviction  
22 for any offense enumerated in sub-subparagraphs 1.a.-r.; or  
23           b. Within 5 years after the date of the conviction of  
24 the last prior offense enumerated in sub-subparagraphs  
25 1.a.-r., or within 5 years after the defendant's release from  
26 a prison sentence, probation, community control, or other  
27 sentence imposed as a result of a prior conviction for any  
28 offense enumerated in sub-subparagraphs 1.a.-r., whichever is  
29 later.  
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1           3. The defendant has not received a pardon on the  
2 ground of innocence for any crime that is necessary for the  
3 operation of this paragraph.

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

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

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

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

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

16           c. Aggravated child abuse, as described in s.  
17 827.03(2);

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

20           e. Lewd, lascivious, or indecent conduct, as described  
21 in s. 800.04;

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

23           g. A felony violation of chapter 790 involving the use  
24 or possession of a firearm.

25           2. The defendant has been incarcerated in a state  
26 prison or a federal prison.

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

30           a. While the defendant was serving a prison sentence  
31 or other sentence, or court-ordered or lawfully imposed

1 supervision that is ~~commitment~~ imposed as a result of a prior  
2 conviction for an enumerated felony; or

3         b. Within 5 years after the conviction of the last  
4 prior enumerated felony, or within 5 years after the  
5 defendant's release from a prison sentence, probation,  
6 community control, control release, conditional release,  
7 parole, or court-ordered or lawfully imposed supervision or  
8 other sentence that is ~~commitment~~ imposed as a result of a  
9 prior conviction for an enumerated felony, whichever is later.

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

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

16         ~~(e)(d)~~ "Qualified offense" means any offense,  
17 substantially similar in elements and penalties to an offense  
18 in this state, which is in violation of a law of any other  
19 jurisdiction, whether that of another state, the District of  
20 Columbia, the United States or any possession or territory  
21 thereof, or any foreign jurisdiction, that was punishable  
22 under the law of such jurisdiction at the time of its  
23 commission by the defendant by death or imprisonment exceeding  
24 1 year.

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

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1           (3)(a) In a separate proceeding, the court shall  
2 determine if the defendant is a habitual felony offender or a  
3 habitual violent felony offender. The procedure shall be as  
4 follows:

5           1. The court shall obtain and consider a presentence  
6 investigation prior to the imposition of a sentence as a  
7 habitual felony offender or a habitual violent felony  
8 offender.

9           2. Written notice shall be served on the defendant and  
10 the defendant's attorney a sufficient time prior to the entry  
11 of a plea or prior to the imposition of sentence in order to  
12 allow the preparation of a submission on behalf of the  
13 defendant.

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

18           4. Each of the findings required as the basis for such  
19 sentence shall be found to exist by a preponderance of the  
20 evidence and shall be appealable to the extent normally  
21 applicable to similar findings.

22           5. For the purpose of identification of a habitual  
23 felony offender or a habitual violent felony offender, the  
24 court shall fingerprint the defendant pursuant to s. 921.241.

25           6. For an offense committed on or after October 1,  
26 1995, if the state attorney pursues a habitual felony offender  
27 sanction or a habitual violent felony offender sanction  
28 against the defendant and the court, in a separate proceeding  
29 pursuant to this paragraph, determines that the defendant  
30 meets the criteria under subsection (1) for imposing such  
31 sanction, the court must sentence the defendant as a habitual

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

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

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

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

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

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1           4. Each of the findings required as the basis for such  
2 sentence shall be found to exist by a preponderance of the  
3 evidence and shall be appealable to the extent normally  
4 applicable to similar findings.

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

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

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

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

26           2. All evidence presented shall be presented in open  
27 court with full rights of confrontation, cross-examination,  
28 and representation by counsel.

29           3. Each of the findings required as the basis for such  
30 sentence shall be found to exist by a preponderance of the  
31

1 evidence and shall be appealable only as provided in paragraph  
2 ~~(d)(c)~~.

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

5           5. For an offense committed on or after October 1,  
6 1995, if the state attorney pursues a violent career criminal  
7 sanction against the defendant and the court, in a separate  
8 proceeding pursuant to this paragraph, determines that the  
9 defendant meets the criteria under subsection (1) for imposing  
10 such sanction, the court must sentence the defendant as a  
11 violent career criminal, subject to imprisonment pursuant to  
12 this section unless the court finds that such sentence is not  
13 necessary for the protection of the public. If the court  
14 finds that it is not necessary for the protection of the  
15 public to sentence the defendant as a violent career criminal,  
16 the court shall provide written reasons; a written transcript  
17 of orally stated reasons is permissible, if filed by the court  
18 within 7 days after the date of sentencing. Each month, the  
19 court shall submit to the Office of Economic and Demographic  
20 Research of the Legislature the written reasons or transcripts  
21 in each case in which the court determines not to sentence a  
22 defendant as a violent career criminal as provided in this  
23 subparagraph.

24           ~~(d)(c)~~1. A person sentenced under paragraph (4)~~(d)(c)~~  
25 as a violent career criminal has the right of direct appeal,  
26 and either the state or the defendant may petition the trial  
27 court to vacate an illegal sentence at any time. However, the  
28 determination of the trial court to impose or not to impose a  
29 violent career criminal sentence is presumed appropriate and  
30 no petition or motion for collateral or other postconviction  
31 relief may be considered based on an allegation either by the

1 state or the defendant that such sentence is inappropriate,  
2 inadequate, or excessive.

3           2. It is the intent of the Legislature that, with  
4 respect to both direct appeal and collateral review of violent  
5 career criminal sentences, all claims of error or illegality  
6 be raised at the first opportunity and that no claim should be  
7 filed more than 2 years after the judgment and sentence became  
8 final, unless it is established that the basis for the claim  
9 could not have been ascertained at the time by the exercise of  
10 due diligence. Technical violations and mistakes at trials and  
11 sentencing proceedings involving violent career criminals that  
12 do not affect due process or fundamental fairness are not  
13 appealable by either the state or the defendant.

14           3. It is the intent of the Legislature that no funds,  
15 resources, or employees of the state or its political  
16 subdivisions be used, directly or indirectly, in appellate or  
17 collateral proceedings based on violent career criminal  
18 sentencing, except when such use is constitutionally or  
19 statutorily mandated.

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

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

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

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

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



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

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

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

10           (c)1. The court, in conformity with the procedure  
11 established in paragraph (3)(b), must sentence the three-time  
12 violent felony offender to a mandatory minimum term of  
13 imprisonment, as follows:

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

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

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

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

22           2. Nothing in this subsection shall prevent a court  
23 from imposing a greater sentence of incarceration as  
24 authorized by law.

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

28           1. In the case of a life felony or a felony of the  
29 first degree, for life.

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

4           3. In the case of a felony of the third degree, for a  
5 term of years not exceeding 15, with a mandatory minimum term  
6 of 10 years' imprisonment.

7           ~~(e)(d)~~ If the court finds, pursuant to paragraph  
8 (3)(a) or paragraph (3)(c)~~(b)~~, that it is not necessary for  
9 the protection of the public to sentence a defendant who meets  
10 the criteria for sentencing as a habitual felony offender, a  
11 habitual violent felony offender, or a violent career  
12 criminal, with respect to an offense committed on or after  
13 October 1, 1995, sentence shall be imposed without regard to  
14 this section.

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

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

21           ~~(h)(g)~~ A sentence imposed under this section is not  
22 subject to s. 921.002.

23           ~~(i)(h)~~ The provisions of this section do not apply to  
24 capital felonies, and a sentence authorized under this section  
25 does not preclude the imposition of the death penalty for a  
26 capital felony.

27           ~~(j)(i)~~ The provisions of s. 947.1405 shall apply to  
28 persons sentenced as habitual felony offenders and persons  
29 sentenced as habitual violent felony offenders.

30           ~~(k)(j)~~1. A defendant sentenced under this section as a  
31 habitual felony offender, a habitual violent felony offender,

1 or a violent career criminal is eligible for gain-time granted  
2 by the Department of Corrections as provided in s.  
3 944.275(4)(b).

4 2. For an offense committed on or after October 1,  
5 1995, a defendant sentenced under this section as a violent  
6 career criminal is not eligible for any form of discretionary  
7 early release, other than pardon or executive clemency, or  
8 conditional medical release granted pursuant to s. 947.149.

9 3. For an offense committed on or after July 1, 1999,  
10 a defendant sentenced under this section as a three-time  
11 violent felony offender shall be released only by expiration  
12 of sentence and shall not be eligible for parole, control  
13 release, or any form of early release.

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

19 (6) The purpose of this section is to provide uniform  
20 punishment for those crimes made punishable under this  
21 section, and to this end, a reference to this section  
22 constitutes a general reference under the doctrine of  
23 incorporation by reference.

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

26 790.235 Possession of firearm by violent career  
27 criminal unlawful; penalty.--

28 (1) Any person who meets the violent career criminal  
29 criteria under s. 775.084(1)(d)~~(e)~~, regardless of whether such  
30 person is or has previously been sentenced as a violent career  
31 criminal, who owns or has in his or her care, custody,

1 possession, or control any firearm or electric weapon or  
2 device, or carries a concealed weapon, including a tear gas  
3 gun or chemical weapon or device, commits a felony of the  
4 first degree, punishable as provided in s. 775.082, s.  
5 775.083, or s. 775.084. A person convicted of a violation of  
6 this section shall be sentenced to a mandatory minimum of 15  
7 years' imprisonment; however, if the person would be sentenced  
8 to a longer term of imprisonment under s. 775.084(4)~~(d)(e)~~,  
9 the person must be sentenced under that provision. A person  
10 convicted of a violation of this section is not eligible for  
11 any form of discretionary early release, other than pardon,  
12 executive clemency, or conditional medical release under s.  
13 947.149.

14 (2) For purposes of this section, the previous felony  
15 convictions necessary to meet the violent career criminal  
16 criteria under s. 775.084(1)~~(d)(e)~~ may be convictions for  
17 felonies committed as an adult or adjudications of delinquency  
18 for felonies committed as a juvenile. In order to be counted  
19 as a prior felony for purposes of this section, the felony  
20 must have resulted in a conviction sentenced separately, or an  
21 adjudication of delinquency entered separately, prior to the  
22 current offense, and sentenced or adjudicated separately from  
23 any other felony that is to be counted as a prior felony.

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

26 Section 12. In order to inform the public and to deter  
27 and prevent crime in the state, the Executive Office of the  
28 Governor shall place public service announcements in visible  
29 local media throughout the state explaining the penalties  
30 provided in this act.

31

1 Section 2. Effective October 1, 1999, paragraph (c) of  
2 subsection (1) of section 775.084, Florida Statutes, which was  
3 redesignated as paragraph (d) of said subsection by section 3  
4 of chapter 99-188, Laws of Florida, and as reenacted by  
5 section 1 of this act, is further amended to read:

6 775.084 Violent career criminals; habitual felony  
7 offenders and habitual violent felony offenders; three-time  
8 violent felony offenders; definitions; procedure; enhanced  
9 penalties or mandatory minimum prison terms.--

10 (1) As used in this act:

11 (d) "Violent career criminal" means a defendant for  
12 whom the court must impose imprisonment pursuant to paragraph  
13 (4)(d), if it finds that:

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

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

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

20 c. Aggravated child abuse, as described in s.  
21 827.03(2);

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

24 e. Lewd or lascivious battery, lewd or lascivious  
25 molestation, lewd or lascivious conduct, or lewd or lascivious  
26 exhibition, lascivious, or indecent conduct,as described in  
27 s. 800.04;

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

29 g. A felony violation of chapter 790 involving the use  
30 or possession of a firearm.

31

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

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

6           a. While the defendant was serving a prison sentence  
7 or other sentence, or court-ordered or lawfully imposed  
8 supervision that is imposed as a result of a prior conviction  
9 for an enumerated felony; or

10           b. Within 5 years after the conviction of the last  
11 prior enumerated felony, or within 5 years after the  
12 defendant's release from a prison sentence, probation,  
13 community control, control release, conditional release,  
14 parole, or court-ordered or lawfully imposed supervision or  
15 other sentence that is imposed as a result of a prior  
16 conviction for an enumerated felony, whichever is later.

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

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

23           Section 3. Except as specifically provided otherwise  
24 in this act, the provisions reenacted by this act shall be  
25 applied retroactively to July 1, 1999, or as soon thereafter  
26 as the Constitution of the State of Florida and the  
27 Constitution of the United States may permit.

28           Section 4. Except as otherwise provided herein, this  
29 act shall take effect upon becoming a law.

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HOUSE SUMMARY

Reenacts provisions of chapter 99-188, Laws of Florida,  
which created the "Three-Strike Violent Felony Offender  
Act." See bill for details.