

By Senators Crist, Smith, Burt, Cowin, Silver, Villalobos, Futch, Posey, Campbell, Brown-Waite, Sebesta, Sanderson, Sullivan, Garcia, Latvala, Pruitt and Lee

13-1769-02

See HB

1                                   A bill to be entitled

2           An act relating to sentencing; reenacting

3           sections 2, 7, 8, and 12 of chapter 99-188,

4           Laws of Florida; amending s. 775.082, F.S.;

5           redefining the term "prison releasee

6           reoffender"; revising legislative intent;

7           creating s. 794.0115, F.S.; defining "repeat

8           sexual batterer"; providing within the

9           definition a category of enumerated felony

10          offenses in violation of s. 794.011, F.S.,

11          relating to sexual battery; requiring the court

12          to sentence a defendant as a repeat sexual

13          batterer and impose a 10-year mandatory minimum

14          term of imprisonment under specified

15          circumstances when the defendant is to be

16          sentenced for committing or attempting to

17          commit any of the enumerated felony violations

18          of s. 794.011, F.S., and the defendant has

19          previously been convicted of committing or

20          attempting to commit any one of certain

21          enumerated felony offenses involving sexual

22          battery; providing penalties; providing

23          procedures and criteria for court determination

24          if the defendant is a repeat sexual batterer;

25          providing for sentencing as a repeat sexual

26          batterer; providing for construction; amending

27          s. 794.011, F.S., to conform references to

28          changes made by the act; requiring the Governor

29          to place public service announcements

30          explaining the provisions of this act; further

31          amending s. 775.082, F.S., to incorporate the

1 amendments provided in chapter 2001-239, Laws  
2 of Florida, which redefined the term "prison  
3 releasee reoffender" to include a defendant who  
4 commits certain felonies within a specified  
5 period after being released from a correctional  
6 institution outside the state or while escaped  
7 from a correctional institution outside the  
8 state; providing requirements for sentencing a  
9 defendant if the state attorney proves by a  
10 preponderance of the evidence that the  
11 defendant is a prison releasee reoffender;  
12 providing for retroactive application of the  
13 reenacted provisions; providing effective  
14 dates.

15  
16 WHEREAS, in 1999 the Legislature adopted chapter  
17 99-188, Laws of Florida, with the primary motivation of  
18 reducing crime in this state and to protect the public from  
19 violent criminals through the adoption of enhanced and  
20 mandatory sentences for violent and repeat offenders, for  
21 persons involved in drug-related crimes, committing aggravated  
22 battery or aggravated assault on law enforcement personnel or  
23 the elderly, and for persons committing criminal acts while in  
24 prison or while having escaped from prison, and

25 WHEREAS, a three-judge panel of the District Court of  
26 Appeal of Florida, Second District, has issued a nonfinal  
27 opinion declaring chapter 99-188, Laws of Florida,  
28 unconstitutional as a violation of the requirement in Section  
29 6, Article III of the Florida Constitution that "every law  
30 shall embrace but one subject and matter properly connected  
31 therewith. . .", finding that the addition of two minor

1 provisions relating to burglary of railroad vehicles and the  
2 provision of sentencing documents relative to aliens to the  
3 Immigration and Naturalization Service were not matters  
4 properly connected with the subject of the 1999 act, which was  
5 "sentencing," and

6 WHEREAS, the nonfinal ruling on this matter was issued  
7 while the Legislature was in session, and

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

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

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

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

27 WHEREAS, the legislative action to correct the effect  
28 of this ruling forthwith is essential to public safety and  
29 cannot await a final resolution by the District Court of  
30 Appeal and the Florida Supreme Court, and

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

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

14  
15 Be It Enacted by the Legislature of the State of Florida:

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17           Section 1. Sections 2, 7, 8, and 12 of chapter 99-188,  
18 Laws of Florida, are reenacted to read:

19           Section 2. Paragraphs (a) and (d) of subsection (9) of  
20 section 775.082, Florida Statutes, 1998 Supplement, are  
21 amended to read.

22           775.082 Penalties; applicability of sentencing  
23 structures; mandatory minimum sentences for certain  
24 reoffenders previously released from prison.--

25           (9)(a)1. "Prison releasee reoffender" means any  
26 defendant who commits, or attempts to commit:

- 27           a. Treason;  
28           b. Murder;  
29           c. Manslaughter;  
30           d. Sexual battery;  
31           e. Carjacking;

- 1 f. Home-invasion robbery;  
2 g. Robbery;  
3 h. Arson;  
4 i. Kidnapping;  
5 j. Aggravated assault with a deadly weapon;  
6 k. Aggravated battery;  
7 l. Aggravated stalking;  
8 m. Aircraft piracy;  
9 n. Unlawful throwing, placing, or discharging of a  
10 destructive device or bomb;  
11 o. Any felony that involves the use or threat of  
12 physical force or violence against an individual;  
13 p. Armed burglary;  
14 q. Burglary of an occupied structure or dwelling; or  
15 r. Any felony violation of s. 790.07, s. 800.04, s.  
16 827.03, or s. 827.071;  
17  
18 within 3 years of being released from a state correctional  
19 facility operated by the Department of Corrections or a  
20 private vendor.  
21 2. "Prison releasee reoffender" also means any  
22 defendant who commits or attempts to commit any offense listed  
23 in subparagraph (a)1.a.-r. while the defendant was serving a  
24 prison sentence or on escape status from a state correctional  
25 facility operated by the Department of Corrections or a  
26 private vendor.  
27 ~~3.2.~~ If the state attorney determines that a defendant  
28 is a prison releasee reoffender as defined in subparagraph 1.,  
29 the state attorney may seek to have the court sentence the  
30 defendant as a prison releasee reoffender. Upon proof from the  
31 state attorney that establishes by a preponderance of the

1 evidence that a defendant is a prison releasee reoffender as  
2 defined in this section, such defendant is not eligible for  
3 sentencing under the sentencing guidelines and must be  
4 sentenced as follows:

5 a. For a felony punishable by life, by a term of  
6 imprisonment for life;

7 b. For a felony of the first degree, by a term of  
8 imprisonment of 30 years;

9 c. For a felony of the second degree, by a term of  
10 imprisonment of 15 years; and

11 d. For a felony of the third degree, by a term of  
12 imprisonment of 5 years.

13 (d)1. It is the intent of the Legislature that  
14 offenders previously released from prison who meet the  
15 criteria in paragraph (a) be punished to the fullest extent of  
16 the law and as provided in this subsection, unless the state  
17 attorney determines that ~~any of the following circumstances~~  
18 ~~exist:~~

19 a. ~~The prosecuting attorney does not have sufficient~~  
20 ~~evidence to prove the highest charge available;~~

21 b. ~~The testimony of a material witness cannot be~~  
22 ~~obtained;~~

23 c. ~~The victim does not want the offender to receive~~  
24 ~~the mandatory prison sentence and provides a written statement~~  
25 ~~to that effect; or~~

26 d. ~~other~~ extenuating circumstances exist which  
27 preclude the just prosecution of the offender, including  
28 whether the victim recommends that the offender not be  
29 sentenced as provided in this subsection.

30 2. For every case in which the offender meets the  
31 criteria in paragraph (a) and does not receive the mandatory

1 minimum prison sentence, the state attorney must explain the  
2 sentencing deviation in writing and place such explanation in  
3 the case file maintained by the state attorney. On a quarterly  
4 basis, each state attorney shall submit copies of deviation  
5 memoranda regarding offenses committed on or after the  
6 effective date of this subsection, to the president of the  
7 Florida Prosecuting Attorneys Association, Inc. The  
8 association must maintain such information, and make such  
9 information available to the public upon request, for at least  
10 a 10-year period.

11 Section 7. Section 794.0115, Florida Statutes, is  
12 created to read:

13 794.0115 Repeat sexual batterers; definition;  
14 procedure; enhanced penalties.--

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

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

22 1. Any felony offense in violation of s.  
23 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy  
24 to commit the felony offense.

25 2. A qualified offense as defined in s. 775.084(1)(e),  
26 if the elements of the qualified offense are substantially  
27 similar to the elements of a felony offense in violation of s.  
28 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy  
29 to commit the felony offense.

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

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

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

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

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

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

22           (a) The court shall obtain and consider a presentence  
23 investigation prior to the imposition of a sentence as a  
24 repeat sexual batterer.

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

30           (c) Except as provided in paragraph (a), all evidence  
31 presented shall be presented in open court with full rights of



1 confrontation, cross-examination, and representation by  
2 counsel.

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

7 (e) For the purpose of identification of a repeat  
8 sexual batterer, the court shall fingerprint the defendant  
9 pursuant to s. 921.241.

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

19 (3)(a) The court, in conformity with the procedure  
20 established in subsection (2), must sentence the repeat sexual  
21 batterer to a mandatory minimum term of 10 years'  
22 imprisonment.

23 (b) Nothing in this subsection shall prevent a court  
24 from imposing a greater sentence of incarceration as  
25 authorized by law.

26 Section 8. Section 794.011, Florida Statutes, is  
27 amended to read:

28 794.011 Sexual battery.--

29 (1) As used in this chapter:

30 (a) "Consent" means intelligent, knowing, and  
31 voluntary consent and does not include coerced submission.

1 "Consent" shall not be deemed or construed to mean the failure  
2 by the alleged victim to offer physical resistance to the  
3 offender.

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

7 (c) "Mentally incapacitated" means temporarily  
8 incapable of appraising or controlling a person's own conduct  
9 due to the influence of a narcotic, anesthetic, or  
10 intoxicating substance administered without his or her consent  
11 or due to any other act committed upon that person without his  
12 or her consent.

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

15 (e) "Physically helpless" means unconscious, asleep,  
16 or for any other reason physically unable to communicate  
17 unwillingness to an act.

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

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

23 (h) "Sexual battery" means oral, anal, or vaginal  
24 penetration by, or union with, the sexual organ of another or  
25 the anal or vaginal penetration of another by any other  
26 object; however, sexual battery does not include an act done  
27 for a bona fide medical purpose.

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

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1 (j) "Physically incapacitated" means bodily impaired  
2 or handicapped and substantially limited in ability to resist  
3 or flee.

4 (2)(a) A person 18 years of age or older who commits  
5 sexual battery upon, or in an attempt to commit sexual battery  
6 injures the sexual organs of, a person less than 12 years of  
7 age commits a capital felony, punishable as provided in ss.  
8 775.082 and 921.141.

9 (b) A person less than 18 years of age who commits  
10 sexual battery upon, or in an attempt to commit sexual battery  
11 injures the sexual organs of, a person less than 12 years of  
12 age commits a life felony, punishable as provided in s.  
13 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

14 (3) A person who commits sexual battery upon a person  
15 12 years of age or older, without that person's consent, and  
16 in the process thereof uses or threatens to use a deadly  
17 weapon or uses actual physical force likely to cause serious  
18 personal injury commits a life felony, punishable as provided  
19 in s. 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

20 (4) A person who commits sexual battery upon a person  
21 12 years of age or older without that person's consent, under  
22 any of the following circumstances, commits a felony of the  
23 first degree, punishable as provided in s. 775.082, s.  
24 775.083, ~~or~~ s. 775.084, or s. 794.0115:

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

26 (b) When the offender coerces the victim to submit by  
27 threatening to use force or violence likely to cause serious  
28 personal injury on the victim, and the victim reasonably  
29 believes that the offender has the present ability to execute  
30 the threat.

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1           (c) When the offender coerces the victim to submit by  
2 threatening to retaliate against the victim, or any other  
3 person, and the victim reasonably believes that the offender  
4 has the ability to execute the threat in the future.

5           (d) When the offender, without the prior knowledge or  
6 consent of the victim, administers or has knowledge of someone  
7 else administering to the victim any narcotic, anesthetic, or  
8 other intoxicating substance which mentally or physically  
9 incapacitates the victim.

10           (e) When the victim is mentally defective and the  
11 offender has reason to believe this or has actual knowledge of  
12 this fact.

13           (f) When the victim is physically incapacitated.

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

26           (5) A person who commits sexual battery upon a person  
27 12 years of age or older, without that person's consent, and  
28 in the process thereof does not use physical force and  
29 violence likely to cause serious personal injury commits a  
30 felony of the second degree, punishable as provided in s.  
31 775.082, s. 775.083, or s. 775.084, or s. 794.0115.

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

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

8           (8) Without regard to the willingness or consent of  
9 the victim, which is not a defense to prosecution under this  
10 subsection, a person who is in a position of familial or  
11 custodial authority to a person less than 18 years of age and  
12 who:

13           (a) Solicits that person to engage in any act which  
14 would constitute sexual battery under paragraph (1)(h) commits  
15 a felony of the third degree, punishable as provided in s.  
16 775.082, s. 775.083, or s. 775.084.

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

22           (c) Engages in any act with that person while the  
23 person is less than 12 years of age which constitutes sexual  
24 battery under paragraph (1)(h), or in an attempt to commit  
25 sexual battery injures the sexual organs of such person  
26 commits a capital or life felony, punishable pursuant to  
27 subsection (2).

28           (9) For prosecution under paragraph (4)(g),  
29 acquiescence to a person reasonably believed by the victim to  
30 be in a position of authority or control does not constitute  
31 consent, and it is not a defense that the perpetrator was not

1 actually in a position of control or authority if the  
2 circumstances were such as to lead the victim to reasonably  
3 believe that the person was in such a position.

4 (10) Any person who falsely accuses any person listed  
5 in paragraph (4)(g) or other person in a position of control  
6 or authority as an agent or employee of government of  
7 violating paragraph (4)(g) is guilty of a felony of the third  
8 degree, punishable as provided in s. 775.082, s. 775.083, or  
9 s. 775.084.

10 Section 12. In order to inform the public and to deter  
11 and prevent crime in the state, the Executive Office of the  
12 Governor shall place public service announcements in visible  
13 local media throughout the state explaining the penalties  
14 provided in this act.

15 Section 2. Effective January 1, 2002, paragraph (a) of  
16 subsection (9) of section 775.082, Florida Statutes, as  
17 amended by section 2 of chapter 99-188, Laws of Florida, and  
18 as reenacted by section 1 of this act, is further amended to  
19 read:

20 775.082 Penalties; applicability of sentencing  
21 structures; mandatory minimum sentences for certain  
22 reoffenders previously released from prison.--

23 (9)(a)1. "Prison releasee reoffender" means any  
24 defendant who commits, or attempts to commit:

- 25 a. Treason;  
26 b. Murder;  
27 c. Manslaughter;  
28 d. Sexual battery;  
29 e. Carjacking;  
30 f. Home-invasion robbery;  
31 g. Robbery;

- 1           h. Arson;
- 2           i. Kidnapping;
- 3           j. Aggravated assault with a deadly weapon;
- 4           k. Aggravated battery;
- 5           l. Aggravated stalking;
- 6           m. Aircraft piracy;
- 7           n. Unlawful throwing, placing, or discharging of a
- 8 destructive device or bomb;
- 9           o. Any felony that involves the use or threat of
- 10 physical force or violence against an individual;
- 11          p. Armed burglary;
- 12          q. Burglary of a dwelling or burglary of an occupied
- 13 structure ~~or dwelling~~; or
- 14          r. Any felony violation of s. 790.07, s. 800.04, s.
- 15 827.03, or s. 827.071;
- 16
- 17 within 3 years after ~~of~~ being released from a state
- 18 correctional facility operated by the Department of
- 19 Corrections or a private vendor or within 3 years after being
- 20 released from a correctional institution of another state, the
- 21 District of Columbia, the United States, any possession or
- 22 territory of the United States, or any foreign jurisdiction,
- 23 following incarceration for an offense for which the sentence
- 24 is punishable by more than 1 year in this state.
- 25          2. "Prison releasee reoffender" also means any
- 26 defendant who commits or attempts to commit any offense listed
- 27 in subparagraph (a)1.a.-r. while the defendant was serving a
- 28 prison sentence or on escape status from a state correctional
- 29 facility operated by the Department of Corrections or a
- 30 private vendor or while the defendant was on escape status
- 31 from a correctional institution of another state, the District

1 of Columbia, the United States, any possession or territory of  
2 the United States, or any foreign jurisdiction, following  
3 incarceration for an offense for which the sentence is  
4 punishable by more than 1 year in this state.

5           3. If the state attorney determines that a defendant  
6 is a prison releasee reoffender as defined in subparagraph 1.,  
7 the state attorney may seek to have the court sentence the  
8 defendant as a prison releasee reoffender. Upon proof from the  
9 state attorney that establishes by a preponderance of the  
10 evidence that a defendant is a prison releasee reoffender as  
11 defined in this section, such defendant is not eligible for  
12 sentencing under the sentencing guidelines and must be  
13 sentenced as follows:

14           a. For a felony punishable by life, by a term of  
15 imprisonment for life;

16           b. For a felony of the first degree, by a term of  
17 imprisonment of 30 years;

18           c. For a felony of the second degree, by a term of  
19 imprisonment of 15 years; and

20           d. For a felony of the third degree, by a term of  
21 imprisonment of 5 years.

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

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

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LEGISLATIVE SUMMARY

Reenacts provisions of chapter 99-188, Laws of Florida, relating to the sentencing of certain repeat offenders, which provide a minimum mandatory sentence for repeat sexual offenders and for persons committing crimes while in prison or while having escaped from prison. (See bill for details.)