

By the Committee on Criminal Justice; and Senators Crist, Smith, Burt, Cowin, Silver, Villalobos, Futch, Posey, Campbell, Brown-Waite, Sebesta, Sanderson, Sullivan, Garcia, Latvala, Pruitt and Lee

307-1904-02

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:

16
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;
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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 July 1, 2001, 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;
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- 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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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1964

The amendatory clause of Section 2 of the bill contained a bill drafting error. Chapter 2001-239, Laws of Florida, amended s. 775.082, F.S., during the 2001 Legislative Session. The amendment became effective July 1, 2001, and that date is now accurately reflected in the amendatory clause.