

By Senator Cowin

20-784-03

See HB 77

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A bill to be entitled
An act relating to repeat sexual offenders;
amending s. 794.0115, F.S.; providing for
additional offenses to be included as
permissible criteria for qualification for
enhanced penalties; increasing the penalties
for repeated sexual offenses; providing an
effective date.

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

Section 1. Section 794.0115, Florida Statutes, is
amended to read:

794.0115 Repeat sexual offenders ~~batterers~~;
definition; procedure; enhanced penalties.--

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

(a) The defendant is 18 years of age or older when he
or she committed the crime.

~~(b)~~(a) The defendant has previously been convicted of
a felony or an attempt or conspiracy to commit any of the
felony offenses proscribed in the following statutes in this
state or similar offenses in another jurisdiction: s.
794.011(2)-(8); s. 800.04(4) or (5); s. 827.071; s. 847.0145;
or any similar offense committed in this state which has been
redesignated from a former statute number to one of those
listed in this paragraph ~~a felony and one or more of such~~
~~convictions was for:~~

1 ~~1. Any felony offense in violation of s.~~
2 ~~794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy~~
3 ~~to commit the felony offense.~~
4 ~~2. A qualified offense as defined in s. 775.084(1)(e),~~
5 ~~if the elements of the qualified offense are substantially~~
6 ~~similar to the elements of a felony offense in violation of s.~~
7 ~~794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy~~
8 ~~to commit the felony offense.~~
9 (c)~~(b)~~ The felony for which the defendant is to be
10 sentenced is one of the felonies enumerated in paragraph (b)
11 and is committed after the date of the offense of the last
12 prior felony enumerated in paragraph (b) subparagraph (a)1. or
13 subparagraph (a)2. and was committed:
14 ~~1. While the defendant was serving a prison sentence~~
15 ~~or other sentence imposed as a result of a prior conviction~~
16 ~~for any offense enumerated in subparagraph (a)1. or~~
17 ~~subparagraph (a)2.; or~~
18 ~~2. Within 10 years after the date of the conviction of~~
19 ~~the last prior offense enumerated in subparagraph (a)1. or~~
20 ~~subparagraph (a)2., or within 10 years after the defendant's~~
21 ~~release from a prison sentence, probation, community control,~~
22 ~~or other sentence imposed as a result of a prior conviction~~
23 ~~for any offense enumerated in subparagraph (a)1. or~~
24 ~~subparagraph (a)2., whichever is later.~~
25 (d)~~(c)~~ The defendant has not received a pardon on the
26 ground of innocence for any crime that is necessary for the
27 operation of this subsection.
28 (e)~~(d)~~ A conviction of a crime necessary to the
29 operation of this subsection has not been set aside in any
30 postconviction proceeding.
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1 (2) In a separate proceeding, the court shall
2 determine if the defendant is a repeat sexual offender
3 ~~batterer~~. The procedure shall be as follows:

4 (a) The court shall obtain and consider a presentence
5 investigation prior to the imposition of a sentence as a
6 repeat sexual offender ~~batterer~~.

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

12 (c) Except as provided in paragraph (a), all evidence
13 presented shall be presented in open court with full rights of
14 confrontation, cross-examination, and representation by
15 counsel.

16 (d) Each of the findings required as the basis for
17 such sentence shall be found to exist beyond a reasonable
18 doubt ~~by a preponderance of the evidence~~ and shall be
19 appealable to the extent normally applicable to similar
20 findings.

21 (e) For the purpose of identification of a repeat
22 sexual offender ~~batterer~~, the court shall fingerprint the
23 defendant pursuant to s. 921.241.

24 (f) For an offense committed on or after the effective
25 date of this act, if the state attorney pursues a repeat
26 sexual offender ~~batterer~~ sanction against the defendant and
27 the court, in a separate proceeding pursuant to this
28 subsection, determines that the defendant meets the criteria
29 under subsection (1) for imposing such sanction, the court
30 must sentence the defendant as a repeat sexual offender
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1 ~~batterer~~, subject to imprisonment pursuant to this section as
2 provided in subsection (3).

3 (3)(a) The court, in conformity with the procedure
4 established in subsection (2) and notwithstanding the
5 provisions of s. 775.082(3) or any provision of chapter 958,
6 must sentence the repeat sexual offender ~~batterer~~ to a
7 mandatory minimum term of 25 to years' imprisonment up to a
8 mandatory maximum term of life in prison.

9 (b) Nothing in this subsection shall prevent a court
10 from imposing a greater sentence of incarceration as
11 authorized by law. If the minimum mandatory terms of
12 imprisonment imposed pursuant to this section exceed the
13 maximum sentences authorized by ss. 775.082 or 775.084, or the
14 Criminal Punishment Code under chapter 921, then the mandatory
15 minimum sentence must be imposed. If the mandatory minimum
16 terms of imprisonment pursuant to this section are less than
17 the sentences that could be imposed as authorized by ss.
18 775.082 or 775.084, or the Criminal Punishment Code under
19 chapter 921, then the sentence imposed by the court must
20 include the mandatory minimum term of imprisonment as required
21 in this section.

22 Section 2. This act shall take effect July 1, 2003.
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