



HB 0077

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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:~~



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28           1. ~~Any felony offense in violation of s. 794.011(2)(b),~~  
29 ~~(3), (4), or (5), or an attempt or conspiracy to commit the~~  
30 ~~felony offense.~~

31           2. ~~A qualified offense as defined in s. 775.084(1)(c), if~~  
32 ~~the elements of the qualified offense are substantially similar~~  
33 ~~to the elements of a felony offense in violation of s.~~  
34 ~~794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy to~~  
35 ~~commit the felony offense.~~

36           (c) ~~(b)~~ The felony for which the defendant is to be  
37 sentenced is one of the felonies enumerated in paragraph (b) and  
38 is committed after the date of the offense of the last prior  
39 felony enumerated in paragraph (b) subparagraph (a)1. or  
40 subparagraph (a)2. and was committed:

41           1. ~~While the defendant was serving a prison sentence or~~  
42 ~~other sentence imposed as a result of a prior conviction for any~~  
43 ~~offense enumerated in subparagraph (a)1. or subparagraph (a)2.;~~  
44 ~~or~~

45           2. ~~Within 10 years after the date of the conviction of the~~  
46 ~~last prior offense enumerated in subparagraph (a)1. or~~  
47 ~~subparagraph (a)2., or within 10 years after the defendant's~~  
48 ~~release from a prison sentence, probation, community control, or~~  
49 ~~other sentence imposed as a result of a prior conviction for any~~  
50 ~~offense enumerated in subparagraph (a)1. or subparagraph (a)2.,~~  
51 ~~whichever is later.~~

52           (d) ~~(e)~~ The defendant has not received a pardon on the  
53 ground of innocence for any crime that is necessary for the  
54 operation of this subsection.



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55        (e)~~(d)~~ A conviction of a crime necessary to the operation  
56 of this subsection has not been set aside in any postconviction  
57 proceeding.

58        (2) In a separate proceeding, the court shall determine if  
59 the defendant is a repeat sexual offender ~~batterer~~. The  
60 procedure shall be as follows:

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

64        (b) Written notice shall be served on the defendant and  
65 the defendant's attorney a sufficient time prior to the entry of  
66 a plea or prior to the imposition of sentence in order to allow  
67 the preparation of a submission on behalf of the defendant.

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

71        (d) Each of the findings required as the basis for such  
72 sentence shall be found to exist beyond a reasonable doubt ~~by a~~  
73 ~~preponderance of the evidence~~ and shall be appealable to the  
74 extent normally applicable to similar findings.

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

78        (f) For an offense committed on or after the effective  
79 date of this act, if the state attorney pursues a repeat sexual  
80 offender ~~batterer~~ sanction against the defendant and the court,  
81 in a separate proceeding pursuant to this subsection, determines  
82 that the defendant meets the criteria under subsection (1) for  
83 imposing such sanction, the court must sentence the defendant as



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84 a repeat sexual offender ~~batterer~~, subject to imprisonment  
85 pursuant to this section as provided in subsection (3).

86 (3) (a) The court, in conformity with the procedure  
87 established in subsection (2) and notwithstanding the provisions  
88 of s. 775.082(3) or any provision of chapter 958, must sentence  
89 the repeat sexual offender ~~batterer~~ to a mandatory minimum term  
90 of 25 10 years' imprisonment up to a mandatory maximum term of  
91 life in prison.

92 (b) Nothing in this subsection shall prevent a court from  
93 imposing a greater sentence of incarceration as authorized by  
94 law. If the minimum mandatory terms of imprisonment imposed  
95 pursuant to this section exceed the maximum sentences authorized  
96 by ss. 775.082 or 775.084, or the Criminal Punishment Code under  
97 chapter 921, then the mandatory minimum sentence must be  
98 imposed. If the mandatory minimum terms of imprisonment pursuant  
99 to this section are less than the sentences that could be  
100 imposed as authorized by ss. 775.082 or 775.084, or the Criminal  
101 Punishment Code under chapter 921, then the sentence imposed by  
102 the court must include the mandatory minimum term of  
103 imprisonment as required in this section.

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