

## House Bill No. 1399

An act relating to sentencing; reenacting sections 2, 7, 8, and 12 of chapter 99-188, Laws of Florida; amending s. 775.082, F.S.; redefining the term “prison releasee reoffender”; revising legislative intent; creating s. 794.0115, F.S.; defining “repeat sexual batterer”; providing within the definition a category of enumerated felony offenses in violation of s. 794.011, F.S., relating to sexual battery; requiring the court to sentence a defendant as a repeat sexual batterer and impose a 10-year mandatory minimum term of imprisonment under specified circumstances when the defendant is to be sentenced for committing or attempting to commit any of the enumerated felony violations of s. 794.011, F.S., and the defendant has previously been convicted of committing or attempting to commit any one of certain enumerated felony offenses involving sexual battery; providing penalties; providing procedures and criteria for court determination if the defendant is a repeat sexual batterer; providing for sentencing as a repeat sexual batterer; providing for construction; amending s. 794.011, F.S., to conform references to changes made by the act; requiring the Governor to place public service announcements explaining the provisions of this act; further amending s. 775.082, F.S., to incorporate the amendments provided in chapter 2001-239, Laws of Florida, which redefined the term “prison releasee reoffender” to include a defendant who commits certain felonies within a specified period after being released from a correctional institution outside the state or while escaped from a correctional institution outside the state; providing requirements for sentencing a defendant if the state attorney proves by a preponderance of the evidence that the defendant is a prison releasee reoffender; providing for retroactive application of the reenacted provisions; providing effective dates.

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

WHEREAS, a three-judge panel of the District Court of Appeal of Florida, Second District, has issued a nonfinal opinion declaring chapter 99-188, Laws of Florida, unconstitutional as a violation of the requirement in Section 6, Article III of the Florida Constitution that “every law shall embrace but one subject and matter properly connected therewith. . .”, finding that the addition of two minor provisions relating to burglary of railroad vehicles and the provision of sentencing documents relative to aliens to the Immigration and Naturalization Service were not matters properly connected with the subject of the 1999 act, which was “sentencing,” and

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

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

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

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

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

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

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

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

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

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

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

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

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

- a. Treason;
- b. Murder;
- c. Manslaughter;
- d. Sexual battery;
- e. Carjacking;
- f. Home-invasion robbery;
- g. Robbery;
- h. Arson;
- i. Kidnapping;
- j. Aggravated assault with a deadly weapon;
- k. Aggravated battery;
- l. Aggravated stalking;
- m. Aircraft piracy;
- n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- o. Any felony that involves the use or threat of physical force or violence against an individual;
- p. Armed burglary;
- q. Burglary of an occupied structure or dwelling; or
- r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor.

2. "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in subparagraph (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor.

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

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

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

- ~~a.—The prosecuting attorney does not have sufficient evidence to prove the highest charge available;~~
- ~~b.—The testimony of a material witness cannot be obtained;~~
- ~~c.—The victim does not want the offender to receive the mandatory prison sentence and provides a written statement to that effect; or~~
- ~~d.—other extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.~~

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information, and make such information available to the public upon request, for at least a 10-year period.

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

794.0115 Repeat sexual batterers; definition; procedure; enhanced penalties.—

(1) As used in this act, “repeat sexual 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 has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

794.011 Sexual battery.—

(1) As used in this chapter:

(a) “Consent” means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

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

(c) “Mentally incapacitated” means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) “Offender” means a person accused of a sexual offense in violation of a provision of this chapter.

(e) “Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

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

(g) “Serious personal injury” means great bodily harm or pain, permanent disability, or permanent disfigurement.

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

(i) “Victim” means a person who has been the object of a sexual offense.

(j) “Physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee.

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

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a

person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, ~~or s. 775.084,~~ or s. 794.0115.

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

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

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

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

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

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

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

(f) When the victim is physically incapacitated.

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

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

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

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

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

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

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

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

(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

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

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

Section 2. Effective July 1, 2001, paragraph (a) of subsection (9) of section 775.082, Florida Statutes, as amended by section 2 of chapter 99-188, Laws of Florida, and as reenacted by section 1 of this act, is further amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

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



- a. Treason;
  - b. Murder;
  - c. Manslaughter;
  - d. Sexual battery;
  - e. Carjacking;
  - f. Home-invasion robbery;
  - g. Robbery;
  - h. Arson;
  - i. Kidnapping;
  - j. Aggravated assault with a deadly weapon;
  - k. Aggravated battery;
  - l. Aggravated stalking;
  - m. Aircraft piracy;
  - n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - o. Any felony that involves the use or threat of physical force or violence against an individual;
  - p. Armed burglary;
  - q. Burglary of a dwelling or burglary of an occupied structure or dwelling;
- or
- r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years ~~after~~ after of being released from a state correctional facility operated by the Department of Corrections or a private vendor ~~or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.~~

2. “Prison releasee reoffender” also means any defendant who commits or attempts to commit any offense listed in subparagraph (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor ~~or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction,~~

following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

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

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

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

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

Approved by the Governor April 29, 2002.

Filed in Office Secretary of State April 29, 2002.