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****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
FINAL ANALYSIS**

BILL #: CS/HB 121 (Chapter 99-188 Laws of Florida)

RELATING TO: Three Strike Violent Felony Offender

SPONSOR(S): Corrections and Rep. Crist

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 1
 - (2) CORRECTIONS YEAS 5 NAYS 2
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. FINAL ACTION STATUS:

On May 21, 1999, CS/HB 121 was approved by Governor and is now Chapter 99-188, Laws of Florida.

II. SUMMARY:

CS/HB 121 amends s. 775.084 F.S., to create a new "three time violent felony offender" enhanced penalty in addition to habitual felony offender, habitual violent felony offender, and career criminal enhanced penalties currently provided for within that section. Under the provisions of the bill, a judge must impose maximum sentences for "three-time violent felony offenders" who qualify by having at least two prior felonies with at least two prior felonies being an enumerated violent felony. The "three time violent felony offender" falls between a habitual violent felony offender and a violent career criminal category. An offender that has one felony from the enumerated list may qualify as an habitual violent felony offender. A violent career felon has at least three prior felonies with a prior prison incarceration. A "three time violent offender" sentenced under the bill must serve 100 percent of the sentence imposed.

Section 775.084(5) F.S., currently provides that prior felonies are counted only if they were sentenced on separate occasions. The bill amends this method of counting prior felonies and allows cases, or even all counts, sentenced on the same day to be counted towards the number necessary to authorize the imposition of habitual felony offender, habitual violent felony offender, career criminal, or the three-strikes penalties.

The bill provides that any person convicted of aggravated assault or aggravated battery upon a law enforcement officer must be sentenced to a minimum mandatory prison term of three years or five years respectively. The bill provides for a three year minimum mandatory penalty for aggravated assault or aggravated battery against a person 65 years of age or older. The bill requires a minimum mandatory prison sentence of 10 years for a defendant charged with and has a previous conviction for sexual battery or an attempt to commit a sexual battery.

The bill provides for a three year minimum mandatory prison sentence for the possession or sale of either more than 25 lbs of cannabis, between four and 14 grams of controlled substances, or between 28 and 200 grams of cocaine. The bill provides for a seven year prison sentence for the possession or sale of between 2000 and 10,000 cannabis plants or

of 200 grams of cocaine. And, the bill requires a 15 year prison sentence for possession or sale of 14 to 28 grams of cocaine.

The bill also requires Clerks of the Court to notify Immigration and Naturalization Services whenever an alien is convicted of or enters a plea for a felony or misdemeanor offense.

The fiscal impact of this bill as projected by the Criminal Justice Estimating Conference is a cumulative impact of 441 additional prison beds at a total cost of \$31.6 million through FY 2003-04.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Introduction

In recent years lawmakers at both the State and Federal levels have passed legislation increasing penalties for criminal offenses, particularly violent crimes.¹ These laws came in response to public concern about crime and the belief that many serious offenders are released from prison too soon. Id. Twenty four states and the federal government, led by Washington² and California³ have enacted new laws using the "three strikes" nomenclature. Id.

The Current Law

The Florida Punishment Code

The Florida Punishment Code came into effect for crimes committed after October 1, 1998. The Code establishes a lowest permissible sentence for felony offenses by establishing a method of scoring the severity of the offense and the severity of an offender's criminal history. A judge may not sentence a person below the lowest permissible sentence without a mitigating reason which is authorized by statute or case law. An example of a mitigating reason to impose a sentence below the lowest permissible sentence is the young age of the offender. Under the Code, a judge has complete discretion to sentence an offender to any sentence that is above the lowest permissible sentence and below the statutory maximum. Thus, the Code sets a floor to a judge's sentencing options, but not a ceiling, and even a first offender could receive the statutory maximum. The statutory periods of incarceration established in s. 775.082 F.S., are as follows:

¹National Institute of Justice, "Three Strikes and You're Out": A Review of State Legislation, by John Clark, James Austin and D. Alan Henry, September 1997.

²The Washington law took effect in December 1993 following a voter initiative that passed by a three to one margin. National Institute of Justice.

³In March 1994, the Governor signed the California law which voters later ratified in a State referendum. National Institute of Justice.

Felony Degree	Length of Prison Penalty
Life	Up to Life
1 st	Up to 30 years
2 nd	Up to 15 years
3 rd	Up to 5 years

The Florida Punishment Code does not apply to the sentencing of an offender for a misdemeanor, and a judge may impose any sentence for a misdemeanor up to the statutory maximum. These are described below.

Misdemeanor Degree	Length of Jail Time
1 st	Up to one year
2 nd	Up to 60 days

Minimum Mandatory Sentences for Crimes with Firearms

Section 775.087(2), F.S., requires a judge to impose a minimum term of imprisonment of **3** years for any person who possessed a firearm at any time during the course of one of the violent felonies listed in the statute.

Reclassification of Crimes Committed Against Law Enforcement Officers and Others

Section 784.07, F.S., provides for the reclassification of certain violent crimes to the next higher degree if committed against any of the following:

law enforcement officers, firefighters, emergency medical care providers, traffic accident investigation officers, traffic infraction enforcement officers, traffic infraction enforcement officers, parking enforcement specialist, and certain security officers.

The offenses are reclassified as follows:

- (a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- (b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- © In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- (d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Assault is a threat by word or act to do violence to another coupled with the ability to do so, which creates a well-founded fear that the violence is imminent. Aggravated assault is an assault with a deadly weapon.

Battery is a touch or a striking of another against that person's will. Aggravated battery is either a battery committed with a deadly weapon, or a battery causing serious bodily harm.

Other Enhanced Penalty Provisions

Current law provides for a variety of habitual sentencing provisions for repeat offenders. Such provisions include.

**Violent Career Criminal
Habitual Felony Offender
Habitual Violent Felony Offender
Prison Releasee Re-offender**

Violent Career Criminal

A judge must sentence a person as a violent career criminal if the offender meets the following criteria.

1. The offender has been previously been convicted three or more times of any of the following offenses.
 - burglary
 - aggravated assault
 - aggravated battery
 - aggravated stalking
 - aggravated child abuse
 - aggravated abuse of an elderly person or disabled adult
 - lewd lascivious or indecent conduct
 - escape
 - possession of a concealed firearm
 - possession of a firearm by a convicted felon
 - possession of a short-barrel shotgun
 - robbery car jacking sexual battery
 - manslaughter
 - murder
 - treason
 - home invasion robbery
 - any other felony which involves the use or threat of physical force or violence against any individual
2. The offense for which the offender is to be sentenced is for one of the crimes enumerated above.
3. The prior convictions were sentenced on separate occasions.
4. The crime for which the offender is being sentenced was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison whichever was later.
5. The offender has previously been incarcerated in state or federal prison.

If a judge elects to designate an offender as a violent career criminal, then the court must sentence the violent career criminal as follows:

Felony Degree	Mandatory Minimum	Length of Prison Penalty
Life	Life	For Life
1st	Life	For Life
2nd	30 years	For a term not exceeding 30 years
3rd	10 years	For a term not exceeding 15 years

Habitual Felony Offender

A judge has the complete discretion under s. 775.084 F.S., to sentence a person as a habitual felony offender if the following criteria are met:

1. The offender has been convicted of two prior felonies. [A withhold of adjudication counts as a conviction for the purposes of enhanced penalties.]
2. The prior convictions were sentenced on separate occasions.
3. The charge for which the offender is being sentenced is a felony.
4. The crime for which the offender is being sentenced was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison whichever was later.
5. The pending offense and one of the priors were not third degree felonies for possession of controlled substances such as cocaine. [Possession with intent to sell or trafficking are qualifying offenses.]

If a judge designates a qualifying person as a habitual felony offender, the judge may impose a sentence which is double the statutory maximum. For example, a habitual offender being sentenced for a third degree felony such as auto theft may be sentenced to ten years in prison. A habitual offender may be sentenced for a maximum of thirty years in prison for a second degree felony such as burglary of a dwelling or possession of cocaine with intent to sell. A habitual offender may receive a life sentence for committing a first degree felony.

Habitual Violent Felony Offender

A judge has the complete discretion under 775.084 F.S., to sentence a person as a habitual violent felony offender if the following criteria are met.

1. A person has previously been convicted for one of the following crimes or for an attempt to commit one of the following crimes.

- arson

- sexual battery
- robbery
- kidnaping
- aggravated child abuse
- aggravated abuse of an elderly person or disabled adult
- aggravated assault
- murder
- manslaughter
- aggravated manslaughter of an elderly person or disabled adult
- aggravated manslaughter of a child
- unlawful throwing, placing, or discharging of a destructive device or bomb
- armed burglary
- aggravated battery
- aggravated stalking

2. The crime for which the offender is being sentenced is any felony that was committed within 5 years of the date of the conviction for the offender's last prior felony, or within 5 years of the defendant's release from prison whichever was later.

If a judge designates a qualifying person as a habitual violent felony offender, the judge may impose a sentence that is double the statutory maximum. The enhanced penalty authorized by the habitual violent felony offender statute is the same as the enhanced penalty authorized by the habitual felony offender law. *State v. Hudson*, 698 So.2d 831 (Fla.1997).

Section 775.084(3)(a)(6)., F.S., provides that a judge must sentence a qualifying person as habitual felony offender or habitual violent felony offender unless the judge finds that such a sentence is not necessary for the protection of the public. The statute further requires that if the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide the written reasons or transcripts to the Office of Economic and Demographic Research of the Legislature. Crime and Punishment Committee Staff stated that the State Court Administrator's Office indicated that these reporting requirements were rarely complied with.

Section 775.084(4)(d) F.S., gives judges discretion to decide whether a person should be designated as a habitual offender, habitual violent offender, or violent career criminal:

(d) If the court finds ... that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

Prison Releasee Reoffender

A judge must sentence a person as a Prison Releasee Reoffender to the statutory maximum if the following are met.

1. A state attorney decides to seek to have a person sentenced as a prison releasee reoffender.
2. The offender has committed or attempted to commit one of the following crimes:
 - treason
 - murder
 - manslaughter
 - sexual battery
 - car jacking
 - home-invasion robbery
 - robbery arson
 - kidnaping
 - aggravated assault
 - aggravated battery
 - aggravated stalking
 - aircraft piracy
 - unlawful throwing; placing; or discharging of a destructive device or bomb
 - any felony that involves the use or threat of physical force or violence against an individual
 - armed burglary
 - burglary of an occupied structure or dwelling
 - any felony violation of s. 790. 07 (relating to felonies committed with firearms), s. 800.04 (Lewd, lascivious, or indecent assault) s. 827.03 (aggravated abuse of a child or the disabled) or s. 827.071 (sexual performance by a child), F.S.
3. The offender committed one of the enumerated offenses within 3 years of being released from prison.

Section 775.082(8)(d), F.S. requires that in every case where the offender meets the above criteria and does not receive the minimum mandatory sentence, the state attorney must explain in writing and place the explanation in a case file maintained by the state attorney and supplied on a quarterly basis to the president of the Florida Prosecuting Attorneys Association explaining the sentence for every case in which a qualifying offender did not receive the statutory maximum sentence.

Trafficking in Controlled Substances

Section 893.135, F.S., provides for penalties for the possession or sale of controlled substances. Subsection (1) (a) provides that a person who sells, purchases, or who is in possession of in excess of 50 lbs of cannabis commits a first degree felony (trafficking in cannabis). If the amount is in excess of 50 lbs but less than 10,000 lbs, the defendant must be sentenced pursuant to the Criminal Punishment Code. If the amount is 10,000 lbs or more, the defendant must receive a minimum prison sentence of 15 years. Subsection (b) provides that person who sells, purchases, or is in possession of between 25 and 150 grams of cocaine commits a first degree felony (trafficking in cocaine). If the quantity is 28 grams but less than 400 grams, the person

is sentenced pursuant to the Criminal Punishment Code. If the amount is 400 grams or more, the person must be sentenced to a prison term of 15 years.

Subsection (c)1 provides that a person who sells, purchases, or possesses between 4 and 28 grams of controlled substances (including heroin), must be sentenced pursuant to the Criminal Punishment Code. The prison sentence is 25 years for the sale or possession of 28 grams and 30 kilograms.

Aliens and Criminal Records

Section 943.0535, F.S., provides that upon the request of a United State Immigration officer of the federal Immigration and Naturalization Services (INS), a clerk of the court in the jurisdiction of the INS officer must furnish a certified copy of a complaint, information, or indictment and the judgement and sentence of an alien convicted of a felony or misdemeanor.

According to staff of the Criminal Alien Program of the INS in Miami, efforts to identify criminal aliens have focused on identifying those offenders who are incarcerated in the Department of Corrections and in county correctional facilities. Such efforts are based upon a memorandum of understanding between the INS and the DOC which outlines a program where DOC assists the INS in the identification process.

According to DOC, as of February 19,1999, there were 4,555 suspected aliens in the state prison system of which 4,226 have been confirmed. The alien identification program currently applies to the incarcerated population in DOC. No data currently exist on the number of aliens on DOC community supervision (probation, community control, or post-prison release). In November 1998, there were 145,979 offenders on community supervision (active community supervision population).

DOC collects and reports monthly data from county correctional facilities on the number and characteristics of offenders housed in county jails. One type of information collected is the number of undocumented aliens housed in county jails. Since the collection of these data are voluntary and not all facilities report, DOC believes that these data are underestimates. In addition, DOC staff report that county facility staff may not be accurately reporting the number of undocumented aliens in the facility. In spite of these limitations, DOC reports that for 1998, the average daily population of undocumented aliens in county jails was 425 offenders (395 males and 30 females).

B. EFFECT OF PROPOSED CHANGES:

Three-Time Felony Offender

The bill amends 775.084 F.S.(1998 Supp.) to create a new enhanced penalty in addition to habitual felony offender, habitual violent felony offender, and career criminal enhanced penalties that are already provided for by that section. The enhanced penalty created by the bill requires a judge to impose a mandatory minimum term of imprisonment for a third violent felony. The title of the bill, "Three-Strike Violent Felony Offender Act," is derived from this portion of the bill.

The mandatory term of imprisonment is the same as the statutory maximum except that the offender must serve 100% of his or her sentence. The mandatory sentences depend on the degree of the offense for which the person is being sentenced and are as follows.

- | | | |
|---|----------------------|----------------------------|
| • | life felony | mandatory life sentence |
| • | first degree felony | mandatory 30 year sentence |
| • | second degree felony | mandatory 15 year sentence |
| • | third degree felony | mandatory 5 year sentence |

For a person to be sentenced as a three-time violent felony offender, the two prior offenses and the offense for which the person is being sentenced as a three-time violent felony offender all must be one of the following crimes or an attempt to commit one of the following crimes.

- arson
- sexual battery
- robbery
- kidnaping
- aggravated child abuse
- aggravated abuse of an elderly person or disabled adult
- aggravated assault
- murder
- manslaughter
- aggravated manslaughter of an elderly person or disabled adult
- aggravated manslaughter of a child
- unlawful throwing, placing, or discharging of a destructive device or bomb
- armed burglary
- aggravated battery
- aggravated stalking

Section 775.084(5) F.S., currently provides that prior felonies are counted only if they were sentenced on separate occasions. The bill removes this method of counting prior felonies, thus allowing cases or even all counts sentenced on the same day to be counted towards the number necessary to authorize the imposition of habitual felony offender, habitual violent felony offender, career criminal, or the three-strikes penalties.

The bill provides that the mandatory penalties authorized by the three-strikes provision do not prevent a court from imposing a greater sentence as authorized by law. Thus, the greater penalties authorized by the habitual felony offender, habitual violent felony offender, and the career criminal enhancements are not thwarted by the mandatory minimum penalties imposed by the three-strikes enhanced penalty.

Habitual Felony Offender and Habitual Violent Felony Offender

Enhanced penalties are currently authorized under the habitual felony offender, the habitual violent felony offender, and the career criminal provisions in section 775.084 F.S., if the crime for which the offender is to be sentenced occurred while the offender was serving a sentence, or within 5 years of the date of the conviction of the defendant's last qualifying felony, or within 5 years of the defendant's release from a prison sentence or other commitment imposed as a result of a conviction for a qualifying felony. The bill amends the underlined language to read:

“within 5 years of the defendant's release from a prison sentence, probation, community control, or other sentence imposed...”

This change was made in response to a court decision which held that the phrase "other commitment" did not include release from probation. *Bacon v. State*, 620 So.2d 1084, (Fla. 1st DCA 1993).

Minimum Mandatory for Violent Crimes Committed Against Law Enforcement Officers and Persons Over 65 Years of Age

The bill provides that any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum mandatory prison term of three years, and any person convicted of aggravated battery upon a law enforcement officer must receive a minimum sentence of 5 years in prison. The bill also provides for a three year minimum mandatory penalty that a judge must impose on a person convicted of aggravated assault or aggravated battery against a person over 65 years of age.

Enhanced Penalties for Repeat Sexual Batterers

The bill creates a new enhanced penalty that requires a judge to impose a mandatory minimum prison term of 10 years if a person is charged with and has a previous conviction for any of the following offenses or an attempt to commit any of the following.

1. Sexual battery by a person less than 18 years of age committed against a person less than 12.
2. Sexual battery committed against a person over 12 years of age if the offender uses or threatens to use physical force likely to cause serious personal injury.
3. Sexual battery committed against a person over 12 if one of the following applies.
 - (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.
 - © 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.

4. Sexual battery upon a person less than 12 without that persons consent, and no physical force or violence likely to cause serious injury is used. [This is the standard rape charge that only requires a lack of consent by a victim over 12.]

The offense for which the repeat sexual batterer is to be sentenced must have occurred while the offender is serving a prison sentence or within 10 years of the offender's last sexual battery, or within 10 years of the offenders release from prison or supervision.

Certain related offenses were excluded from the list of qualifying crimes. The qualifying crimes do not include:

1. Lewd, lascivious, or indecent assault upon a child in violation of section 800.04 F.S.
2. A violation of s. 794.011(8)(a), F.S., relating to the solicitation of sexual acts by a person in custodial authority committed against a person under 18 years of age.

Other related offenses in s. 794.011 are not listed as well, however, these offenses are capital crimes and are punishable by a mandatory life sentence.

Enhanced Penalties for Drug Offenses

The bill provides for a three year minimum mandatory prison sentence for the possession or sale of the following:

- 25 to 2000 pounds of cannabis (marijuana) plants;
- between 300 to 2,000 cannabis plants;
- 28 to 200 grams of cocaine; or
- 4 to 14 grams of heroin, opium, morphine or a related drug.

The bill provides for a 7 year minimum mandatory prison sentence for the possession or sale of the following:

- 2,000 or more cannabis plants;
- 2,000 to 10,000 pounds of cannabis; or
- 200 to 400 grams of cocaine

The bill provides for a 15 year minimum mandatory prison sentence for the possession or sale of the following:

- 10,000 or more cannabis plans; or
- 14 to 28 grams of opium, heroin or morphine;

The bill creates similar 3 and 7 year mandatory penalties for possession or sale of methaqualone, phencyclidine, amphetamines, and flunitrazepam (roofies).

Other Provisions of CS/HB 121

The bill amends s. 943.0535, F.S., related to notifying the federal Office of Immigration and Naturalization Services (INS) of any alien who has been convicted of or pleas nolo contendere to a misdemeanor or felony charge. Rather than placing the burden upon the INS to request this information from a Clerk of the Court, the bill requires a Clerk of the Court, with the assistance of the State Attorney, to furnish this information to the INS in every case in which an alien is convicted of or enters a plea to any felony or misdemeanor. Information to be provided includes the judgement, sentence, and any other record pertaining to the case.

The bill also requires the Office of the Governor to place public service announcements in visible local media throughout the state explaining the penalties provided in the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

1. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

2. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

1. Does the bill increase anyone's taxes?

No.

2. Does the bill require or authorize an increase in any fees?

No.

3. Does the bill reduce total taxes, both rates and revenues?

No.

4. Does the bill reduce total fees, both rates and revenues?

No.

5. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

1. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

2. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

1. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

2. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

1. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

2. Does the bill directly affect the legal rights and obligations between family members?

N/A

3. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

(D) STATUTE(S) AFFECTED:

ss. 775.082, 775.084, 921.002, 784.07, 784.08, 790.235, 794.0115, 794.011, 397.451(7), 782.04(4), 893.135, 893.1351(1), 903.133, 907.041(4)(b), 921.0022(3)(g), 921.0024(1)(b), 921.142(2), 943.0535, 943.0585, 943.059, Florida Statutes.

(E) SECTION-BY-SECTION

See Effect of Proposed Changes (Section B).

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The primary impact is expected to be on the Department of Corrections due to projected increases in the inmate population. The following estimated capital costs would be incurred only if new prisons beds are constructed for inmates added to the prison population as a result of the passage of this bill.

FY 1999-2000	7 beds	\$1,125,840
FY 2000-2001	45 beds	\$3,261,445
FY 2001-2002	127 beds	\$3,852,373
FY 2002-2003	146 beds	\$3,146,522
FY 2003-2004	116 beds	\$3,739,893
Cumulative Costs		\$15,126,074

There is currently a surplus of between 4,000 to 5,000 prison beds. This surplus will likely negate the need to construct additional prison beds in the short term.

For further information, see Fiscal Comments.

2. Recurring Effects:

The primary effect of this bill is expected to be on the Department of Corrections due to projected increases in the prison population.

Operating costs resulting from this bill causing an increase in additional prison beds is as follows.

FY 1999-2000	7 beds	\$67,402
FY 2000-2001	45 beds	\$582,942
FY 2001-2002	127 beds	\$2,342,758
FY 2002-2003	146 beds	\$5,251,884
FY 2003-2004	116 beds	\$8,205,607

Cumulative Costs \$16,450,593

Additional costs may be incurred by the court system including state attorneys, public defenders, local law enforcement and county jails. These cost increases are indeterminate.

For further information, see Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

See non-recurring and recurring effects above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment

None.

D. FISCAL COMMENTS:

Department of Corrections cost estimates presented above are derived from multiplying the prison bed impact projected by the Criminal Justice Estimating Conference by standard average per bed costs for construction and operation. Costs per prison bed are adjusted to take in account anticipated effects of inflation.

The projected prison bed impact of this bill as estimated by the Criminal Justice Estimating Conference is as follows.

<u>Fiscal Year</u>	<u># Beds</u>	<u>Cum. # Beds</u>
1999-2000	7	7
2000-2001	45	52
2001-2002	127	179
2002-2003	146	325
2003-2004	116	441

The following assumptions were made in developing the projected impact of the three time violent felony offender provisions of this bill.

- Offenders eligible for the three time violent felony offender provisions of this bill who currently are not receiving a prison sentence would not receive a prison sentence.
- Only those offenders who are currently sentenced as habitual felony offenders and habitual violent felony offenders who are eligible for the three strike violent felony offender provision of this bill are affected.

The following assumptions were made in developing the projected impact of the assault and battery on a law enforcement officer (LEO) provision of this bill.

- No offenders eligible for the law enforcement mandatory provisions of this bill who currently receive a non-prison sentence will receive a prison sentence.
- The number of prison admissions affected by this provision is based on the percentage of sentencing guidelines cases in FY 1997-98 sentenced to prison for these offenses who received the LEO multiplier in the guidelines.

The following assumptions were made in developing the projected impact of the trafficking in cocaine and heroin provisions of this bill.

- No offenders eligible for these drug trafficking provisions of this bill who currently are receiving a non-prison sentence will receive a prison sentence.
- The percentage of offenders who received drug trafficking mandatories for these sentences in FY 1993-94 when mandatory provisions existed in law were applied to prison admissions in FY 1997-98 to derive the number of future drug trafficking admissions affected by provisions of this bill.

The following assumptions were made in developing the projected impact of the provision of the bill related to prior offenses of habitual offenders based on the actual number of counts.

- No offenders eligible for the new definition of habitual offenders' priors provision in the bill who are currently receiving a non-prison sentence will receive a prison sentence under the bill.

- It was determined that 23% of offenders who were statutorily eligible to be habitualized for prison admissions from July 1, 1998 to November 30, 1998 were habitualized. This rate is applied to those offenders who would become eligible under this bill to determine the number of additional habitual offenders sentenced to prison.

The issue of to what extent offenders currently receiving non-prison sentences who meet the three-time violent offender provisions of this bill would be sentenced to prison instead of probation or community control was discussed by the Criminal Justice Estimating Conference. The Conference decided that since offenders who meet the three-strikes provisions of the bill are currently receiving non-prison sentences, there is little to suggest that whatever dynamics occurring in the criminal justice system which result in such sentences would be little affected by provisions of this bill. It is likely that state attorney reporting requirements provided for in this bill as well as the increased attention placed upon the extent to which the intent and provisions of this bill are met, will result in some proportion of the non-prison sentenced offenders who meet the three-times provision of this bill receiving a prison sentence.

According to DOC, based upon supervision admissions (probation and community control) between July 1, 1998 to November 30, 1998, there were 32,931 cases of which 95 (0.29%) met the three-time violent offender provision of the bill. Based on these data, DOC estimates that 228 offenders sentenced to supervision in 1998 would be eligible to be sentenced as three-time violent felony offenders. The proportion of these offenders who would actually receive prison sentences is indeterminate and, based upon reasons discussed above, would likely be minimal.

There is a possibility that additional prison admissions could occur resulting from the acceptance of fewer pleas by defendants and by more aggressive prosecution. Accepting fewer pleas could result in longer time spent in county jails awaiting trial.

According to the State Court's Administrator's office, this bill will have a significant impact on the judicial system. The minimum mandatory sentences contained in this bill will result in offenders who are eligible for these enhanced penalties not accepting plea negotiations and instead seek a jury trial. The increase in jury trials will place a severe strain on the court system and also place a significant strain on court support personnel and facilities. According to the State Courts Administrator's office, the increase costs resulting from this bill are significant but indeterminate.

There may be a deterrent effect from this bill and should offenders spend longer prison sentences, there will be an incapacitation effect of reducing the number of offenses committed due to the incarceration of offenders. These factors could result in significant cost savings. However, the extent of such saving is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities have to raise revenues in the aggravate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Sentencing as a Prison Releasee Reoffender

CS/HB 121 makes the following changes to the provision allowing for exceptions to the mandatory penalties for prison releasee reoffenders in Section 775.082(9)(d)1.:

(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 section.~~

This change clarifies the original intent of the of the Prison Releasee Reoffender Act to create mandatory penalties that could only be waived by the prosecutor if certain conditions are met. This law is consistent with a prosecutors obligation not to prosecute cases without sufficient evidence and with a prosecutor's ability to file or dismiss (no prosse) cases. The Second District Court of Appeals in State v. Cotton, 24 FLWD 18 (2 DCA 1998), and the Fourth District Court of Appeals in State v. Wise, 24 FLWD 657 (4th DCA 1999), held that section 775.082(9)(d)1, F. S. (before modified by this bill) provides the trial court sentencing discretion to determine if one of the exceptions to the mandatory penalties apply. Two recent

District Courts have disagreed with the decision in Cotton. McKnight v. State 1999 WL 72739 (3rd DCA 1999); Woods v. State 1999 WL 162971 (1st DCA 1999).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of the bill offered a strike-everything amendment in the Crime and Punishment Committee on 2/3/99 that makes a number of technical clarifying changes and adds to the bill minimum mandatory penalties for drug trafficking. The minimum mandatory penalties for drug trafficking are substantially the same minimum mandatory penalties that were a part of Florida law prior to their removal in 1994.”

Amendment Highlights

- ◆ The amendment provides for a 3 year minimum mandatory for possession or sale of more than 25 pounds of cannabis, (marijuana). [Prior to 1994 the minimum mandatory was for 100 to 2,000 pounds.]
- ◆ The amendment adds a seven year minimum mandatory prison sentence for the possession or sale of between 2,000 and 10,000 cannabis plants. [Prior to 1994 the minimum mandatory for this offense was 5 years.]
- ◆ The amendment provides for a 3 year minimum mandatory for the possession or sale of between four and 14 grams of various controlled substances including morphine, opium, and heroin. The amendment makes it a 15 year minimum mandatory to sell or possess 14 to 28 grams of these controlled substances [Prior to 1994, the law provided for a 10 year minimum mandatory for sale or possession of between 14 and 28 grams of these illegal drugs.]
- ◆ The amendment provides for a 3 year minimum mandatory prison sentence for possession or sale of between 28 and 200 grams of cocaine. More than 200 grams of cocaine is punishable by a minimum mandatory sentence of seven years in prison. [Prior law provided for a five year minimum mandatory sentence for possession of more than 200 grams of cocaine.]

On 2/17/99, the Corrections Committee heard HB 121 which came to the committee with the strike-all amendment discussed above. In addition to this amendment, the committee heard three amendments to the strike-all amendment. Amendment #1 clarified that victims of crime would have input to the state attorney in terms of charging decisions. Amendment #2 requires Clerks of the Court to provide the federal Immigration and Naturalization Services documents on aliens who are convicted in court for a felony or misdemeanor. Amendment #3 requires the Office of the Governor to issue public service announcements informing the citizens of Florida of the provisions of the three-strikes provisions of the bill. All amendments were adopted by the committee and HB 121 was made into a committee substitute.

After much debate and proposed amendments, an amendment was adopted on the House floor to undo all changes to subsection (5) of section 775.084, F.S., relating to whether prior offenses must be sentenced separately to be counted as prior offenses for the purposes of the enhanced penalties provided by section 775.084 such as the enhanced penalties for a three strike offender and a habitual felony offender.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:
Prepared by:

J. Willis Renuart

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

Leslie A. Sweet

Ken Winker

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

Johana P. Hatcher

Ken Winker

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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