

By Senator Brandes

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1 A bill to be entitled
2 An act relating to sentencing; amending s. 775.082,
3 F.S.; revising the required sentencing structure for
4 prison release reoffenders upon proof from a state
5 attorney which establishes that a defendant is a
6 prison release reoffender; providing legislative
7 intent; defining a term for the purpose of
8 establishing applicability of a specified provision;
9 applying the revised sentencing structure to certain
10 persons under certain circumstances; providing
11 resentencing requirements; deleting a provision
12 relating to legislative intent; deleting a provision
13 that requires a state attorney to explain a sentencing
14 deviation in writing under certain circumstances;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (9) of section 775.082, Florida
20 Statutes, is amended to read:

21 775.082 Penalties; applicability of sentencing structures;
22 mandatory minimum sentences for certain reoffenders previously
23 released from prison.—

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

- 26 a. Treason;
27 b. Murder;
28 c. Manslaughter;
29 d. Sexual battery;

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- 30 e. Carjacking;
- 31 f. Home-invasion robbery;
- 32 g. Robbery;
- 33 h. Arson;
- 34 i. Kidnapping;
- 35 j. Aggravated assault with a deadly weapon;
- 36 k. Aggravated battery;
- 37 l. Aggravated stalking;
- 38 m. Aircraft piracy;
- 39 n. Unlawful throwing, placing, or discharging of a
- 40 destructive device or bomb;
- 41 o. Any felony that involves the use or threat of physical
- 42 force or violence against an individual;
- 43 p. Armed burglary;
- 44 q. Burglary of a dwelling or burglary of an occupied
- 45 structure; or
- 46 r. Any felony violation of s. 790.07, s. 800.04, s. 827.03,
- 47 s. 827.071, or s. 847.0135(5);
- 48
- 49 within 3 years after being released from a state correctional
- 50 facility operated by the Department of Corrections or a private
- 51 vendor, a county detention facility following incarceration for
- 52 an offense for which the sentence pronounced was a prison
- 53 sentence, or a correctional institution of another state, the
- 54 District of Columbia, the United States, any possession or
- 55 territory of the United States, or any foreign jurisdiction,
- 56 following incarceration for an offense for which the sentence is
- 57 punishable by more than 1 year in this state.
- 58 2. "Prison releasee reoffender" also means any defendant

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59 who commits or attempts to commit any offense listed in sub-
60 subparagraphs ~~(a)~~1.a.-r. while the defendant was serving a
61 prison sentence or on escape status from a state correctional
62 facility operated by the Department of Corrections or a private
63 vendor or while the defendant was on escape status from a
64 correctional institution of another state, the District of
65 Columbia, the United States, any possession or territory of the
66 United States, or any foreign jurisdiction, following
67 incarceration for an offense for which the sentence is
68 punishable by more than 1 year in this state.

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

78 a. For a felony punishable by life, to ~~by~~ a term of 25
79 years ~~imprisonment for life~~;

80 b. For a felony of the first degree, to ~~by~~ a term of
81 imprisonment of 20 ~~30~~ years;

82 c. For a felony of the second degree, to ~~by~~ a term of
83 imprisonment of 10 ~~15~~ years; and

84 d. For a felony of the third degree, to ~~by~~ a term of
85 imprisonment of 3 ~~5~~ years.

86 (b) A person sentenced under paragraph (a) shall be
87 released only by expiration of sentence and shall not be

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88 eligible for parole, control release, or any form of early
89 release. Any person sentenced under paragraph (a) must serve 100
90 percent of the court-imposed sentence.

91 (c) ~~Nothing in~~ This subsection does not shall prevent a
92 court from imposing a greater sentence of incarceration as
93 authorized by law, pursuant to s. 775.084 or any other ~~provision~~
94 ~~of~~ law.

95 (d)1. It is the intent of the Legislature to retroactively
96 apply the amendments to this subsection which are effective on
97 July 1, 2020.

98 2. As used in this paragraph, the term "former s.
99 775.082(9)" means s. 775.082(9) as it existed before the
100 amendment of this subsection, which took effect on July 1, 2020.

101 3. A person who qualified as a prison release reoffender
102 before July 1, 2010, and who was not sentenced as a prison
103 release reoffender before July 1, 2020, may not be sentenced as
104 such under former s. 775.082(9). Such person, if sentenced as a
105 prison release reoffender, must be sentenced as provided in
106 paragraph (a).

107 4. A person who qualified as a prison release reoffender
108 before July 1, 2010, who was sentenced as such before July 1,
109 2020, to a mandatory minimum term of imprisonment pursuant to
110 former s. 775.082(9), and who is serving such mandatory minimum
111 term of imprisonment on or after July 1, 2010, must be
112 resentenced in accordance with subparagraph 5. to a sentence as
113 provided in paragraph (a) and sub-subparagraph 5.d.

114 5. Resentencing must occur in the following manner:

115 a. The Department of Corrections shall notify a person
116 described in subparagraph 4. of his or her eligibility to

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117 request a sentence review hearing.

118 b. The person seeking sentence review may submit an
119 application to the court of original jurisdiction requesting
120 that a sentence review hearing be held. The sentencing court
121 retains original jurisdiction for the duration of the sentence
122 for this purpose.

123 c. A person who is eligible for a sentence review hearing
124 under this paragraph is entitled to representation by legal
125 counsel. If the person is indigent and unable to employ counsel,
126 the court must appoint counsel under s. 27.52. Determination of
127 indigence and costs of representation is as provided in ss.
128 27.52 and 938.29.

129 d. Upon receiving an application from an eligible person,
130 the court of original jurisdiction shall hold a sentence review
131 hearing to determine if the eligible person meets the criteria
132 for resentencing under subparagraph 4. If the court determines
133 at the sentence review hearing that the eligible person meets
134 such criteria, the court must resentence the person as provided
135 in paragraph (a); however, the new sentence may not exceed the
136 person's original sentence with credit for time served. If the
137 court determines that such person does not meet the criteria for
138 resentencing under subparagraph 4., the court must provide
139 written reasons why such person does not meet such criteria.

140 6. A person resentenced pursuant to this subsection is
141 eligible to receive any gain-time pursuant to s. 944.275 which
142 he or she was previously ineligible to receive under former s.
143 775.082(9) ~~It is the intent of the Legislature that offenders~~
144 ~~previously released from prison or a county detention facility~~
145 ~~following incarceration for an offense for which the sentence~~

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146 ~~pronounced was a prison sentence who meet the criteria in~~
147 ~~paragraph (a) be punished to the fullest extent of the law and~~
148 ~~as provided in this subsection, unless the state attorney~~
149 ~~determines that extenuating circumstances exist which preclude~~
150 ~~the just prosecution of the offender, including whether the~~
151 ~~victim recommends that the offender not be sentenced as provided~~
152 ~~in this subsection.~~

153 ~~2. For every case in which the offender meets the criteria~~
154 ~~in paragraph (a) and does not receive the mandatory minimum~~
155 ~~prison sentence, the state attorney must explain the sentencing~~
156 ~~deviation in writing and place such explanation in the case file~~
157 ~~maintained by the state attorney.~~

158 Section 2. This act shall take effect July 1, 2020.