

By the Committees on Criminal Justice Appropriations, Crime & Punishment and Representatives Villalobos, Putnam, Crist, Harrington, Ball, Warner, Flanagan, Culp, Morroni, Morse, Fasano, Valdes, Lacasa, Goode, Thrasher, Bronson, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to criminal justice; creating
3 the "Prison Releasee Reoffender Punishment
4 Act"; amending s. 775.082, F.S.; defining
5 "prison releasee reoffender"; providing that
6 certain reoffenders are ineligible for
7 sentencing under the sentencing guidelines
8 under specified circumstances when the
9 reoffender has been released from correctional
10 custody and, within 3 years of being released,
11 commits treason, murder, manslaughter, sexual
12 battery, carjacking, home-invasion robbery,
13 robbery, arson, kidnapping, aggravated assault,
14 aggravated battery, aggravated stalking,
15 aircraft piracy, unlawful throwing, placing, or
16 discharging of a destructive device or bomb, a
17 felony involving the use or threat of physical
18 force or violence against an individual, armed
19 burglary, burglary of an occupied structure or
20 dwelling, burglary when the person has two
21 prior felony convictions, or a felony violation
22 of s. 790.07, F.S., relating to having weapons
23 while engaged in criminal offense, s. 800.04,
24 F.S., relating to lewd, lascivious, or indecent
25 assault or act upon or in presence of child, s.
26 827.03, F.S., relating to abuse, aggravated
27 abuse, or neglect of child, or s. 827.071,
28 F.S., relating to sexual performance by a
29 child; providing for such reoffender to be
30 sentenced to specified mandatory minimum
31 sentences; making such reoffender ineligible

1 for parole, probation, or early release;
2 providing for forfeiture by the reoffender of
3 gain-time or other early release credits;
4 amending s. 944.705, F.S., relating to release
5 orientation program; requiring notice to
6 certain released offenders by the Department of
7 Corrections with respect to the new minimum
8 mandatory sentencing provisions; providing for
9 inadmissibility of certain evidence regarding
10 departmental failure to provide such notice;
11 amending s. 947.141, F.S.; providing for
12 mandatory forfeiture of previously granted
13 early release credits under specified
14 circumstances when conditional release, control
15 release, or conditional medical release is
16 revoked; amending s. 948.06, F.S.; permitting a
17 law enforcement officer to arrest a probationer
18 or offender in community control upon probable
19 cause that the probationer or offender has
20 materially violated probation or community
21 control, under specified circumstances;
22 providing for mandatory forfeiture of
23 previously granted early release credits under
24 specified circumstances when probation or
25 community control is revoked; reenacting ss.
26 948.01(9) and (13)(b) and 958.14, F.S., to
27 incorporate said amendment in references;
28 providing an effective date.

29
30 WHEREAS, recent court decisions have mandated the early
31 release of violent felony offenders, and

1 WHEREAS, the people of this state and the millions of
2 people who visit our state deserve public safety and
3 protection from violent felony offenders who have previously
4 been sentenced to prison and who continue to prey on society
5 by reoffending, and

6 WHEREAS, the Legislature finds that the best deterrent
7 to prevent prison releasees from committing future crimes is
8 to require that any releasee who commits new serious felonies
9 must be sentenced to the maximum term of incarceration allowed
10 by law, and serve 100 percent of the court-imposed sentence,
11 NOW, THEREFORE,

12

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

14

15 Section 1. This act shall be known and may be cited as
16 the "Prison Releasee Reoffender Punishment Act."

17 Section 2. Section 775.082, Florida Statutes, is
18 amended to read:

19 775.082 Penalties; mandatory minimum sentences for
20 certain reoffenders previously released from prison.--

21 (1) A person who has been convicted of a capital
22 felony shall be punished by death if the proceeding held to
23 determine sentence according to the procedure set forth in s.
24 921.141 results in findings by the court that such person
25 shall be punished by death, otherwise such person shall be
26 punished by life imprisonment and shall be ineligible for
27 parole.

28 (2) In the event the death penalty in a capital felony
29 is held to be unconstitutional by the Florida Supreme Court or
30 the United States Supreme Court, the court having jurisdiction
31 over a person previously sentenced to death for a capital

1 felony shall cause such person to be brought before the court,
2 and the court shall sentence such person to life imprisonment
3 as provided in subsection (1).

4 (3) A person who has been convicted of any other
5 designated felony may be punished as follows:

6 (a)1. For a life felony committed prior to October 1,
7 1983, by a term of imprisonment for life or for a term of
8 years not less than 30.

9 2. For a life felony committed on or after October 1,
10 1983, by a term of imprisonment for life or by a term of
11 imprisonment not exceeding 40 years.

12 3. For a life felony committed on or after July 1,
13 1995, by a term of imprisonment for life or by imprisonment
14 for a term of years not exceeding life imprisonment.

15 (b) For a felony of the first degree, by a term of
16 imprisonment not exceeding 30 years or, when specifically
17 provided by statute, by imprisonment for a term of years not
18 exceeding life imprisonment.

19 (c) For a felony of the second degree, by a term of
20 imprisonment not exceeding 15 years.

21 (d) For a felony of the third degree, by a term of
22 imprisonment not exceeding 5 years.

23 (4) A person who has been convicted of a designated
24 misdemeanor may be sentenced as follows:

25 (a) For a misdemeanor of the first degree, by a
26 definite term of imprisonment not exceeding 1 year;

27 (b) For a misdemeanor of the second degree, by a
28 definite term of imprisonment not exceeding 60 days.

29 (5) Any person who has been convicted of a noncriminal
30 violation may not be sentenced to a term of imprisonment nor
31 to any other punishment more severe than a fine, forfeiture,

1 or other civil penalty, except as provided in chapter 316 or
2 by ordinance of any city or county.

3 (6) Nothing in this section shall be construed to
4 alter the operation of any statute of this state authorizing a
5 trial court, in its discretion, to impose a sentence of
6 imprisonment for an indeterminate period within minimum and
7 maximum limits as provided by law, except as provided in
8 subsection (1).

9 (7) This section does not deprive the court of any
10 authority conferred by law to decree a forfeiture of property,
11 suspend or cancel a license, remove a person from office, or
12 impose any other civil penalty. Such a judgment or order may
13 be included in the sentence.

14 (8)(a)1. "Prison releasee reoffender" means any
15 defendant who commits, or attempts to commit:

16 a. Treason;

17 b. Murder;

18 c. Manslaughter;

19 d. Sexual battery;

20 e. Carjacking;

21 f. Home-invasion robbery;

22 g. Robbery;

23 h. Arson;

24 i. Kidnapping;

25 j. Aggravated assault;

26 k. Aggravated battery;

27 l. Aggravated stalking;

28 m. Aircraft piracy;

29 n. Unlawful throwing, placing, or discharging of a
30 destructive device or bomb;

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1 o. Any felony which involves the use or threat of
2 physical force or violence against an individual;
3 p. Armed burglary;
4 q. Burglary of an occupied structure or dwelling;
5 r. Any burglary if the person has two prior felony
6 convictions; or
7 s. Any felony violation of s. 790.07, s. 800.04, s.
8 827.03, or s. 827.071;
9
10 within 3 years of being released from a state correctional
11 facility operated by Department of Corrections or a private
12 vendor.
13 2. Upon proof from the state attorney which
14 establishes by a preponderance of the evidence that a
15 defendant is a prison releasee reoffender as defined in this
16 section, such defendant is not eligible for sentencing under
17 the sentencing guidelines and must be sentenced as follows:
18 a. For a felony punishable by life, by a term of
19 imprisonment for life;
20 b. For a felony of the first degree, by a term of
21 imprisonment of 30 years;
22 c. For a felony of the second degree, by a term of
23 imprisonment of 15 years;
24 d. For a felony of the third degree, by a term of
25 imprisonment of 5 years.
26 (b) A person sentenced under paragraph (a) shall be
27 released only by expiration of sentence and shall not be
28 eligible for probation, parole, control release, or any form
29 of early release. Any person sentenced under paragraph (a)
30 must serve 100 percent of the court-imposed sentence.
31

1 (c) Nothing in this subsection shall prevent a court
2 from imposing a greater sentence of incarceration as
3 authorized by law, pursuant to s. 775.084, or any other
4 provision of law.

5 ~~(9)(8)~~ The purpose of this section is to provide
6 uniform punishment for those crimes made punishable under this
7 section and, to this end, a reference to this section
8 constitutes a general reference under the doctrine of
9 incorporation by reference.

10 Section 3. Subsection (6) is added to section 944.705,
11 Florida Statutes, to read:

12 944.705 Release orientation program.--

13 (6)(a) The department shall notify every inmate, in no
14 less than 18-point type in the inmate's release documents,
15 that the inmate shall be sentenced pursuant to s. 775.082(8)
16 should the inmate commit any felony offense described in s.
17 775.082(8) within 3 years of the inmate's release. This notice
18 shall be prefaced by the word "WARNING" in boldfaced type.

19 (b) Nothing herein shall preclude the sentencing of a
20 person pursuant to s. 775.082(8), nor shall evidence that the
21 department failed to provide this notice prohibit a person
22 from being sentenced pursuant to s. 775.082(8). The state
23 shall not be required to demonstrate that a person received
24 any notice from the department in order for the court to
25 impose a sentence pursuant to s. 775.082(8).

26 Section 4. Subsection (6) of section 947.141, Florida
27 Statutes, is amended to read:

28 947.141 Violations of conditional release, control
29 release, or conditional medical release.--

30 (6) Whenever a conditional release, control release,
31 or conditional medical release is revoked by a panel of no

1 fewer than two commissioners and the releasee is ordered to be
2 returned to prison, the releasee, by reason of the misconduct,
3 shall ~~may~~ be deemed to have forfeited all gain-time or
4 commutation of time for good conduct, as provided for by law,
5 earned up to the date of release. However, if a conditional
6 medical release is revoked due to the improved medical or
7 physical condition of the releasee, the releasee shall not
8 forfeit gain-time accrued before the date of conditional
9 medical release. This subsection does not deprive the prisoner
10 of the right to gain-time or commutation of time for good
11 conduct, as provided by law, from the date of return to
12 prison.

13 Section 5. Subsections (1) and (6) of section 948.06,
14 Florida Statutes, are amended to read:

15 948.06 Violation of probation or community control;
16 revocation; modification; continuance; failure to pay
17 restitution or cost of supervision.--

18 (1) Whenever within the period of probation or
19 community control there are reasonable grounds to believe that
20 a probationer or offender in community control has violated
21 his probation or community control in a material respect, any
22 law enforcement officer who is aware of the probationary or
23 community control status of the probationer or offender in
24 community control or any parole or probation supervisor may
25 arrest or request any county or municipal law enforcement
26 officer to arrest such probationer or offender without warrant
27 wherever found and forthwith return him to the court granting
28 such probation or community control. Any committing
29 magistrate may issue a warrant, upon the facts being made
30 known to him by affidavit of one having knowledge of such
31 facts, for the arrest of the probationer or offender,

1 returnable forthwith before the court granting such probation
2 or community control. Any parole or probation supervisor, any
3 officer authorized to serve criminal process, or any peace
4 officer of this state is authorized to serve and execute such
5 warrant. The court, upon the probationer or offender being
6 brought before it, shall advise him of such charge of
7 violation and, if such charge is admitted to be true, may
8 forthwith revoke, modify, or continue the probation or
9 community control or place the probationer into a community
10 control program. If probation or community control is revoked,
11 the court shall adjudge the probationer or offender guilty of
12 the offense charged and proven or admitted, unless he has
13 previously been adjudged guilty, and impose any sentence which
14 it might have originally imposed before placing the
15 probationer on probation or the offender into community
16 control. If such violation of probation or community control
17 is not admitted by the probationer or offender, the court may
18 commit him or release him with or without bail to await
19 further hearing, or it may dismiss the charge of probation or
20 community control violation. If such charge is not at that
21 time admitted by the probationer or offender and if it is not
22 dismissed, the court, as soon as may be practicable, shall
23 give the probationer or offender an opportunity to be fully
24 heard on his behalf in person or by counsel. After such
25 hearing, the court may revoke, modify, or continue the
26 probation or community control or place the probationer into
27 community control. If such probation or community control is
28 revoked, the court shall adjudge the probationer or offender
29 guilty of the offense charged and proven or admitted, unless
30 he has previously been adjudged guilty, and impose any
31 sentence which it might have originally imposed before placing

1 the probationer or offender on probation or into community
2 control.

3 (6) Any provision of law to the contrary
4 notwithstanding, whenever probation, community control, or
5 control release, including the probationary, community control
6 portion of a split sentence, is violated and the probation or
7 community control is revoked, the offender, by reason of his
8 misconduct, shall ~~may~~ be deemed to have forfeited all
9 gain-time or commutation of time for good conduct, as provided
10 by law, earned up to the date of his release on probation,
11 community control, or control release. This subsection does
12 not deprive the prisoner of his right to gain-time or
13 commutation of time for good conduct, as provided by law, from
14 the date on which he is returned to prison. However, if a
15 prisoner is sentenced to incarceration following termination
16 from a drug punishment program imposed as a condition of
17 probation, the sentence may include incarceration without the
18 possibility of gain-time or early release for the period of
19 time remaining in his treatment program placement term.

20 Section 6. For the purpose of incorporating the
21 amendment to section 948.06, Florida Statutes, in references
22 thereto, the sections or subdivisions of Florida Statutes set
23 forth below are reenacted to read:

24 948.01 When court may place defendant on probation or
25 into community control.--

26 (9) Procedures governing violations of community
27 control shall be the same as those described in s. 948.06 with
28 respect to probation.

29 (13) If it appears to the court upon a hearing that
30 the defendant is a chronic substance abuser whose criminal
31 conduct is a violation of chapter 893, the court may either

1 adjudge the defendant guilty or stay and withhold the
2 adjudication of guilt; and, in either case, it may stay and
3 withhold the imposition of sentence and place the defendant on
4 drug offender probation.

5 (b) Offenders placed on drug offender probation are
6 subject to revocation of probation as provided in s. 948.06.

7 958.14 Violation of probation or community control
8 program.--A violation or alleged violation of probation or the
9 terms of a community control program shall subject the
10 youthful offender to the provisions of s. 948.06(1). However,
11 no youthful offender shall be committed to the custody of the
12 department for a substantive violation for a period longer
13 than the maximum sentence for the offense for which he was
14 found guilty, with credit for time served while incarcerated,
15 or for a technical or nonsubstantive violation for a period
16 longer than 6 years or for a period longer than the maximum
17 sentence for the offense for which he was found guilty,
18 whichever is less, with credit for time served while
19 incarcerated.

20 Section 7. This act shall take effect upon becoming a
21 law.

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ADDITIONAL SPONSORS

Smith, Wiles, Livingston, Laurent, Bainter, Dockery, Byrd,
Posey, Cosgrove, Melvin, Sanderson, Argenziano, Brooks,
Edwards, Spratt, Barreiro, Casey, Minton and Feeney