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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1563
RELATING TO: Sentencing/Releasee Reoffender
SPONSOR(S): Representative Kravitz
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
(2) FISCAL RESPONSIBILITY COUNCIL
(3) HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill amends section 775.082 which provides for enhanced sentencing for a person who qualifies as a prison releasee reoffender. The bill will enable a court to sentence an offender under the sentencing guidelines if the offender's sentence under the guidelines exceeds the sentence that the offender could receive as a prison releasee reoffender. This situation would be most likely to occur when an offender has a particularly lengthy prior record.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Sentencing Guidelines

The revised sentencing guidelines apply to offenses which were committed between January 1, 1994, and October 1, 1998. A defendant’s guideline sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record and other aggravating factors. A scoresheet is used to determine the minimum and maximum sentence that could be imposed. The judge then imposes a sentence within the “guidelines range”. A judge can impose a sentence that is below or above the range only if the judge makes findings justifying the “departure” sentence.

Criminal Punishment Code

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant’s sentence is calculated based on points assigned for the same type of factors relevant to a guideline sentence. Offenses are ranked in the offense severity ranking chart from level one to level ten and are assigned points based on the severity of the offense as determined by the legislature. s. 921.0022, F.S. The points assigned for the offense committed, the offender’s prior record and for other factors are added in order to determine the “lowest permissible sentence” for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. One of the primary differences between the sentencing guidelines and the Criminal Punishment Code is the fact that under the Code, the judge can impose any sentence above the lowest permissible sentence up to the statutory maximum for the offense. In other words, while the Code provides a “floor” for sentencing purposes, it removes any “ceiling” other than the statutory maximum for the offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

Prison Releasee Reoffender Act

Section 775.082 creates an enhanced sentencing provision for "prison releasee reoffenders". The provision applies to a person who has been convicted of one of a list of enumerated felonies¹ or an attempt to commit one of the felonies within three years of being released from prison.² The provision also applies to a defendant who committed one of the enumerated offenses while the defendant was serving a prison sentence or while escaped from prison.

If the state attorney determines that a defendant is a prison releasee reoffender, the state attorney may seek to have the defendant sentenced as a prison releasee reoffender. Upon proof that the defendant qualifies, the defendant is not eligible to be sentenced under the sentencing guidelines and must be sentenced to the statutory maximum sentence for the offense. The statutory maximum sentence for a first degree felony is 30 years in prison; for a second degree felony is fifteen years in prison and for a third degree felony is five years in prison. s. 775.082, F.S. A prison releasee reoffender is not eligible to accumulate gain time and must serve 100 percent of his or her sentence.

The section also provides the following:

Nothing in this section shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or other provision of law.

In State v. Wilson, 793 So.2d 1003 (Fla. 2nd DCA 2001), the defendant had an extensive prior criminal history and, as a result, his sentencing range under the sentencing guidelines exceeded his sentence as a prison releasee reoffender. Over the state's objection, the judge sentenced the defendant as a prison releasee reoffender. The appellate court found that the provision of the statute which requires a judge to impose a prison releasee reoffender sentence on a qualifying offender conflicted with the provision of the statute which states that "nothing in the subsection shall prevent a court from imposing a greater sentence of incarcerations as authorized by...any other provision of law." The court then held that the section "does not authorize a guidelines sentence even when that sentence would be greater than the mandatory sentence provided by the [prison releasee reoffender act]. Id. at 1006.

In Irons v. State, 791 So.2d 1221 (Fla. 5th DCA 2001), the court followed the holding in Wilson but acknowledged that legislature had probably not contemplated a circumstance in which a defendant's prior record was so extensive that the defendant's guideline sentence would exceed the mandatory prison releasee reoffender sentence. The Irons court suggested that the legislature consider revising the statute if the results reached in the Wilson case was not what the legislature intended.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 775.082 to provide that upon proof that a defendant qualifies as a prison releasee reoffender and if the defendant's sentence under the sentencing guidelines is less than the applicable sentence under the Prison Releasee Reoffender Act, the defendant is not eligible for

¹ The list of enumerated offenses includes: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault with a deadly weapon; 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 a dwelling or burglary of an occupied structure; or any felony violation of s. 790.07, s. 800.04, s. 827.03 or s. 827.071.

² The incarceration must have been for an offense for which the sentence is punishable by more than one year in the state of Florida. In other words, the offense for which the person was incarcerated must be an offense that is a felony in the state of Florida.

sentencing under the sentencing guidelines and must be sentenced as a prison releasee reoffender. This will enable a court to sentence a defendant under the sentencing guidelines in cases in which the offender's prior record is so extensive that the defendant's guideline sentence is in excess of the sentence that the defendant would receive as a prison releasee reoffender

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill on the Department of Corrections. However, committee staff expects that this bill will have an insignificant impact on the department. I

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements 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 counties or municipalities have to raise revenues in the aggregate.

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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The bill clarifies that a judge may not sentence an offender under the sentencing guidelines if the offender's guideline sentence is less than the offender's sentence as a prison releasee offender. Thus, for cases in which an offender's guideline sentence exceeds the offender's sentence as a releasee reoffender, the court will be permitted to sentence the offender under the guidelines. However, the bill does not address a similar situation that could occur when an offender's lowest permissible sentence under the Criminal Punishment Code exceeds the offender's sentence as a prison releasee reoffender. It is expected that the sponsor will offer an amendment to address this situation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted two clarifying amendments which are traveling with the bill. The amendments will enable a court to sentence an offender under the Criminal Punishment Code if the offender's sentence under the Code exceeds the sentence that the offender could receive as a prison releasee reoffender.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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