

By the Council for Healthy Communities and Representatives  
Kravitz and Kosmas

1                                   A bill to be entitled  
2           An act relating to sentencing; amending s.  
3           775.082, F.S.; requiring that the court  
4           sentence a prison releasee reoffender under  
5           provisions requiring enhanced penalties rather  
6           than under the sentencing guidelines or  
7           Criminal Punishment Code if the defendant's  
8           sentence under the guidelines or Criminal  
9           Punishment Code would be less severe;  
10          authorizing the court to impose a sentence  
11          greater than that otherwise provided by law  
12          using the scoresheet of the sentencing  
13          guidelines or Criminal Punishment Code;  
14          providing an effective date.

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

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

20           775.082 Penalties; applicability of sentencing  
21 structures; mandatory minimum sentences for certain  
22 reoffenders previously released from prison.--

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

- 25           a. Treason;
- 26           b. Murder;
- 27           c. Manslaughter;
- 28           d. Sexual battery;
- 29           e. Carjacking;
- 30           f. Home-invasion robbery;
- 31           g. Robbery;

- 1           h. Arson;
- 2           i. Kidnapping;
- 3           j. Aggravated assault with a deadly weapon;
- 4           k. Aggravated battery;
- 5           l. Aggravated stalking;
- 6           m. Aircraft piracy;
- 7           n. Unlawful throwing, placing, or discharging of a  
8 destructive device or bomb;
- 9           o. Any felony that involves the use or threat of  
10 physical force or violence against an individual;
- 11          p. Armed burglary;
- 12          q. Burglary of a dwelling or burglary of an occupied  
13 structure; or
- 14          r. Any felony violation of s. 790.07, s. 800.04, s.  
15 827.03, or s. 827.071;
- 16
- 17 within 3 years after being released from a state correctional  
18 facility operated by the Department of Corrections or a  
19 private vendor or within 3 years after being released from a  
20 correctional institution of another state, the District of  
21 Columbia, the United States, any possession or territory of  
22 the United States, or any foreign jurisdiction, following  
23 incarceration for an offense for which the sentence is  
24 punishable by more than 1 year in this state.
- 25          2. "Prison releasee reoffender" also means any  
26 defendant who commits or attempts to commit any offense listed  
27 in sub-subparagraphs (a)1.a.-r. while the defendant was  
28 serving a prison sentence or on escape status from a state  
29 correctional facility operated by the Department of  
30 Corrections or a private vendor or while the defendant was on  
31 escape status from a correctional institution of another

1 state, the District of Columbia, the United States, any  
2 possession or territory of the United States, or any foreign  
3 jurisdiction, following incarceration for an offense for which  
4 the sentence is punishable by more than 1 year in this state.

5 3. If the state attorney determines that a defendant  
6 is a prison releasee reoffender as defined in subparagraph 1.,  
7 the state attorney may seek to have the court sentence the  
8 defendant as a prison releasee reoffender. Upon proof from the  
9 state attorney that establishes by a preponderance of the  
10 evidence that a defendant is a prison releasee reoffender as  
11 defined in this section and if the defendant's sentence under  
12 the sentencing guidelines or the Criminal Punishment Code is a  
13 lesser sentence than the following applicable sentence, such  
14 defendant is not eligible for sentencing under the sentencing  
15 guidelines or the Criminal Punishment Code and must be  
16 sentenced as follows:

17 a. For a felony punishable by life, by a term of  
18 imprisonment for life;

19 b. For a felony of the first degree, by a term of  
20 imprisonment of 30 years;

21 c. For a felony of the second degree, by a term of  
22 imprisonment of 15 years; and

23 d. For a felony of the third degree, by a term of  
24 imprisonment of 5 years.

25 (b) A person sentenced under paragraph (a) shall be  
26 released only by expiration of sentence and shall not be  
27 eligible for parole, control release, or any form of early  
28 release. Any person sentenced under paragraph (a) must serve  
29 100 percent of the court-imposed sentence.

30 (c) Nothing in this subsection shall prevent a court  
31 from imposing a greater sentence of incarceration as

1 authorized by law, pursuant to s. 775.084, the Criminal  
2 Punishment Code, the sentencing guidelines, or any other  
3 provision of law.

4 (d)1. It is the intent of the Legislature that  
5 offenders previously released from prison who meet the  
6 criteria in paragraph (a) be punished to the fullest extent of  
7 the law and as provided in this subsection, unless the state  
8 attorney determines that extenuating circumstances exist which  
9 preclude the just prosecution of the offender, including  
10 whether the victim recommends that the offender not be  
11 sentenced as provided in this subsection.

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

24 Section 2. This act shall take effect July 1, 2002.  
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