

By Senator Rouson

19-00739A-18

20181194__

1 A bill to be entitled
2 An act relating to criminal justice; amending s.
3 775.082, F.S.; requiring a defendant who is sentenced
4 for a primary offense of possession of a controlled
5 substance committed on or after a specified date to be
6 sentenced to a nonstate prison sanction under certain
7 circumstances unless the court makes specified written
8 findings; defining the term "possession of a
9 controlled substance"; authorizing a defendant to move
10 the sentencing court to depart from a mandatory
11 minimum term of imprisonment or a mandatory fine if
12 the offense is committed on or after a specified date;
13 authorizing the state attorney to file an objection to
14 the motion; authorizing the sentencing court to grant
15 the motion if the court finds that the defendant has
16 demonstrated by a preponderance of the evidence that
17 specified criteria are met; defining the term
18 "coercion"; providing applicability; amending s.
19 921.002, F.S.; revising a principle of the Criminal
20 Punishment Code relating to a prisoner's required
21 minimum term of imprisonment; amending s. 944.275,
22 F.S.; revising the incentive gain-time that the
23 Department of Corrections may grant a prisoner for
24 offenses committed on or after a specified date;
25 providing exceptions; revising the conditions under
26 which an inmate may be granted a one-time award of 60
27 additional days of incentive gain-time by the
28 department; deleting provisions prohibiting inmates
29 from earning or receiving gain-time in amounts that

19-00739A-18

20181194__

30 would cause the inmate's sentence to expire, end, or
31 terminate, or result in a prisoner's release, before
32 serving a specified percentage of the imposed
33 sentence; amending s. 947.1405, F.S.; providing that
34 persons convicted of a noncapital offense and
35 sentenced for a term of life qualify for conditional
36 release, subject to certain terms and conditions;
37 requiring that the Department of Corrections within a
38 specified timeframe review certain records of persons
39 serving life sentences and compile such information
40 for the Florida Commission on Offender Review to use
41 in making certain determinations regarding conditional
42 release; reenacting ss. 775.084(4)(j), 944.70,
43 947.13(1)(f), and 947.141(1), (2), and (7), F.S.,
44 relating to the conditional release program applying
45 to persons sentenced under certain provisions,
46 conditions for release from incarceration, the powers
47 and duties of the Florida Commission on Offender
48 Review, and violations of certain release or
49 supervision provisions, respectively, to incorporate
50 the amendment made to s. 947.1405, F.S., in references
51 thereto; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Present subsection (11) of section 775.082,
56 Florida Statutes, is redesignated as subsection (13), and a new
57 subsection (11) and subsection (12) are added to that section,
58 to read:

19-00739A-18

20181194

59 775.082 Penalties; applicability of sentencing structures;
60 mandatory minimum sentences for certain reoffenders previously
61 released from prison.—

62 (11) If a defendant is sentenced for a primary offense of
63 possession of a controlled substance committed on or after
64 October 1, 2018, and if the total sentence points pursuant to s.
65 921.0024 are 60 points or fewer, the court must sentence the
66 offender to a nonstate prison sanction. However, if the court
67 makes written findings that a nonstate prison sanction could
68 present a danger to the public, the court may sentence the
69 offender to a state correctional facility pursuant to this
70 section. As used in this subsection, the term "possession of a
71 controlled substance" means possession of a controlled substance
72 in violation of s. 893.13 but does not include possession with
73 intent to sell, manufacture, or deliver a controlled substance
74 or possession of a controlled substance in violation of s.
75 893.135.

76 (12) (a) A defendant who is convicted of an offense
77 committed on or after October 1, 2018, which requires that a
78 mandatory minimum term of imprisonment be imposed may move the
79 sentencing court to depart from the mandatory minimum term and,
80 if applicable, the mandatory fine. The state attorney may file
81 an objection to the motion.

82 (b) The court may grant the defendant's motion if the court
83 finds that the defendant has demonstrated by a preponderance of
84 the evidence that all of the following criteria are met:

85 1. The defendant has not previously received a departure
86 under this section and has not been previously convicted of the
87 same offense for which he or she requests a departure under this

19-00739A-18

20181194__

88 section;

89 2. The offense is not a forcible felony as defined in s.
90 776.08 or a misdemeanor that involves the use or threat of
91 physical force or violence against another person. However,
92 burglary of an unoccupied structure or conveyance is not
93 considered a forcible felony for purposes of this subparagraph;

94 3. The offense does not involve physical injury to another
95 person or coercion of another person; and

96 4. The offense does not involve a victim who is a minor or
97 the use of a minor in the commission of the offense.

98 (c) As used in this subsection, the term "coercion" means:

99 1. Using or threatening to use physical force against
100 another person; or

101 2. Restraining or confining or threatening to restrain or
102 confine another person without lawful authority and against his
103 or her will.

104 (d) This subsection does not apply to sentencing pursuant
105 to subsection (9), s. 775.0837, s. 775.084, or s. 794.0115.

106 Section 2. Paragraph (e) of subsection (1) of section
107 921.002, Florida Statutes, is amended to read:

108 921.002 The Criminal Punishment Code.—The Criminal
109 Punishment Code shall apply to all felony offenses, except
110 capital felonies, committed on or after October 1, 1998.

111 (1) The provision of criminal penalties and of limitations
112 upon the application of such penalties is a matter of
113 predominantly substantive law and, as such, is a matter properly
114 addressed by the Legislature. The Legislature, in the exercise
115 of its authority and responsibility to establish sentencing
116 criteria, to provide for the imposition of criminal penalties,

19-00739A-18

20181194__

117 and to make the best use of state prisons so that violent
118 criminal offenders are appropriately incarcerated, has
119 determined that it is in the best interest of the state to
120 develop, implement, and revise a sentencing policy. The Criminal
121 Punishment Code embodies the principles that:

122 (e) The sentence imposed by the sentencing judge reflects
123 the length of actual time to be served, shortened only by the
124 application of incentive and meritorious gain-time as provided
125 by law, and may not be shortened if the defendant would
126 consequently serve less than 65 percent of his or her term of
127 imprisonment as provided in s. 944.275(4)(b)4.a. or 85 percent
128 of his or her term of imprisonment as provided in s. 944.275(4)
129 or s. 944.275(4)(b)4.b. The provisions of chapter 947, relating
130 to parole, shall not apply to persons sentenced under the
131 Criminal Punishment Code.

132 Section 3. Paragraphs (b), (d), and (f) of subsection (4)
133 of section 944.275, Florida Statutes, are amended to read:

134 944.275 Gain-time.—

135 (4)

136 (b) For each month in which an inmate works diligently,
137 participates in training, uses time constructively, or otherwise
138 engages in positive activities, the department may grant
139 incentive gain-time in accordance with this paragraph. The rate
140 of incentive gain-time in effect on the date the inmate
141 committed the offense that ~~which~~ resulted in his or her
142 incarceration shall be the inmate's rate of eligibility to earn
143 incentive gain-time throughout the period of incarceration and
144 may ~~shall~~ not be altered by a subsequent change in the severity
145 level of the offense for which the inmate was sentenced.

19-00739A-18

20181194__

146 1. For sentences imposed for offenses committed before
147 ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time
148 may be granted. If granted, such gain-time shall be credited and
149 applied monthly.

150 2. For sentences imposed for offenses committed on or after
151 January 1, 1994, and before October 1, 1995:

152 a. For offenses ranked in offense severity levels 1 through
153 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
154 of incentive gain-time may be granted. If granted, such gain-
155 time shall be credited and applied monthly.

156 b. For offenses ranked in offense severity levels 8, 9, and
157 10, under former s. 921.0012 or former s. 921.0013, up to 20
158 days of incentive gain-time may be granted. If granted, such
159 gain-time shall be credited and applied monthly.

160 3. For sentences imposed for offenses committed on or after
161 October 1, 1995, and before October 1, 2018, the department may
162 grant up to 10 days per month of incentive gain-time.

163 4. For sentences imposed for offenses committed on or after
164 October 1, 2018, the department may grant up to 20 days per
165 month of incentive gain-time, except that:

166 a. If the offense is a nonviolent felony, as defined in s.
167 948.08(6), the prisoner is not eligible to earn any type of
168 gain-time in an amount that would cause a sentence to expire,
169 end, or terminate, or that would result in a prisoner's release,
170 before he or she serves a minimum of 65 percent of the sentence
171 imposed. For purposes of this sub-subparagraph, credits awarded
172 by the court for time physically incarcerated shall be credited
173 toward satisfaction of 65 percent of the sentence imposed. A
174 prisoner who is granted incentive gain-time pursuant to this

19-00739A-18

20181194__

175 sub-subparagraph may not accumulate further gain-time awards at
176 any point when the tentative release date is the same as that
177 date at which the prisoner will have served 65 percent of the
178 sentence imposed. State prisoners sentenced to life imprisonment
179 shall be incarcerated for the rest of their natural lives,
180 unless granted pardon or clemency.

181 b. If the offense is not a nonviolent felony, as defined in
182 s. 948.08(6), the prisoner is not eligible to earn any type of
183 gain-time in an amount that would cause a sentence to expire,
184 end, or terminate, or that would result in a prisoner's release,
185 before he or she serves a minimum of 85 percent of the sentence
186 imposed. For purposes of this sub-subparagraph, credits awarded
187 by the court for time physically incarcerated shall be credited
188 toward satisfaction of 85 percent of the sentence imposed. A
189 prisoner who is granted incentive gain-time pursuant to this
190 sub-subparagraph may not accumulate further gain-time awards at
191 any point when the tentative release date is the same as that
192 date at which the prisoner will have served 85 percent of the
193 sentence imposed. State prisoners sentenced to life imprisonment
194 shall be incarcerated for the rest of their natural lives,
195 unless granted pardon or clemency.

196 (d) Notwithstanding the monthly maximum awards of incentive
197 gain-time under subparagraphs (b)1.-4., ~~2., and 3.,~~ the
198 education program manager shall recommend, and the Department of
199 Corrections may grant, a one-time award of 60 additional days of
200 incentive gain-time to an inmate who is otherwise eligible and
201 who successfully completes requirements for and is, or has been
202 during the current commitment, awarded a high school equivalency
203 diploma or vocational certificate. Under no circumstances may an

19-00739A-18

20181194__

204 inmate receive more than 60 days for educational attainment
205 pursuant to this section.

206 ~~(f) An inmate who is subject to subparagraph (b)3. is not~~
207 ~~eligible to earn or receive gain time under paragraph (a),~~
208 ~~paragraph (b), paragraph (c), or paragraph (d) or any other type~~
209 ~~of gain time in an amount that would cause a sentence to expire,~~
210 ~~end, or terminate, or that would result in a prisoner's release,~~
211 ~~prior to serving a minimum of 85 percent of the sentence~~
212 ~~imposed. For purposes of this paragraph, credits awarded by the~~
213 ~~court for time physically incarcerated shall be credited toward~~
214 ~~satisfaction of 85 percent of the sentence imposed. Except as~~
215 ~~provided by this section, a prisoner may not accumulate further~~
216 ~~gain time awards at any point when the tentative release date is~~
217 ~~the same as that date at which the prisoner will have served 85~~
218 ~~percent of the sentence imposed. State prisoners sentenced to~~
219 ~~life imprisonment shall be incarcerated for the rest of their~~
220 ~~natural lives, unless granted pardon or clemency.~~

221 Section 4. Subsections (2) and (5) of section 947.1405,
222 Florida Statutes, are amended to read:

223 947.1405 Conditional release program.—

224 (2) Any inmate who:

225 (a) Is convicted of a crime committed on or after October
226 1, 1988, and before January 1, 1994, and any inmate who is
227 convicted of a crime committed on or after January 1, 1994,
228 which crime is or was contained in category 1, category 2,
229 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
230 Rules of Criminal Procedure (1993), and who has served at least
231 one prior felony commitment at a state or federal correctional
232 institution;

19-00739A-18

20181194__

233 (b) Is sentenced as a habitual or violent habitual offender
234 or a violent career criminal pursuant to s. 775.084; ~~or~~

235 (c) Is found to be a sexual predator under s. 775.21 or
236 former s. 775.23; or

237 (d) Is convicted of a noncapital offense and sentenced for
238 a term of life,

239
240 shall, upon reaching the tentative release date or provisional
241 release date or serving 20 years of a life sentence with no
242 record of disciplinary violations during that time, whichever
243 occurs ~~is~~ earlier, as established by the Department of
244 Corrections, be released under supervision subject to specified
245 terms and conditions, including payment of the cost of
246 supervision pursuant to s. 948.09. Such supervision shall be
247 applicable to all sentences within the overall term of sentences
248 if an inmate's overall term of sentences includes one or more
249 sentences that are eligible for conditional release supervision
250 as provided herein. Effective July 1, 1994, and applicable for
251 offenses committed on or after that date, the commission may
252 require, as a condition of conditional release, that the
253 releasee make payment of the debt due and owing to a county or
254 municipal detention facility under s. 951.032 for medical care,
255 treatment, hospitalization, or transportation received by the
256 releasee while in that detention facility. The commission, in
257 determining whether to order such repayment and the amount of
258 such repayment, shall consider the amount of the debt, whether
259 there was any fault of the institution for the medical expenses
260 incurred, the financial resources of the releasee, the present
261 and potential future financial needs and earning ability of the

19-00739A-18

20181194__

262 releasee, and dependents, and other appropriate factors. If any
263 inmate placed on conditional release supervision is also subject
264 to probation or community control, resulting from a probationary
265 or community control split sentence within the overall term of
266 sentences, the Department of Corrections shall supervise such
267 person according to the conditions imposed by the court and the
268 commission shall defer to such supervision. If the court revokes
269 probation or community control and resentences the offender to a
270 term of incarceration, such revocation also constitutes a
271 sufficient basis for the revocation of the conditional release
272 supervision on any nonprobationary or noncommunity control
273 sentence without further hearing by the commission. If any such
274 supervision on any nonprobationary or noncommunity control
275 sentence is revoked, such revocation may result in a forfeiture
276 of all gain-time, and the commission may revoke the resulting
277 deferred conditional release supervision or take other action it
278 considers appropriate. If the term of conditional release
279 supervision exceeds that of the probation or community control,
280 then, upon expiration of the probation or community control,
281 authority for the supervision shall revert to the commission and
282 the supervision shall be subject to the conditions imposed by
283 the commission. A panel of no fewer than two commissioners shall
284 establish the terms and conditions of any such release. If the
285 offense was a controlled substance violation, the conditions
286 shall include a requirement that the offender submit to random
287 substance abuse testing intermittently throughout the term of
288 conditional release supervision, upon the direction of the
289 correctional probation officer as defined in s. 943.10(3). The
290 commission shall also determine whether the terms and conditions

19-00739A-18

20181194__

291 of such release have been violated and whether such violation
292 warrants revocation of the conditional release.

293 (5) Within 180 days before an inmate's ~~prior to the~~
294 tentative release date, ~~or~~ provisional release date, or
295 completion of 20 years of a life sentence, whichever occurs ~~is~~
296 earlier, a representative of the department shall review the
297 inmate's program participation, disciplinary record,
298 psychological and medical records, criminal records, and any
299 other information pertinent to the impending release. The
300 department shall gather and compile information necessary for
301 the commission to make the determinations set forth in
302 subsections (2) and ~~subsection~~ (3). A department representative
303 shall conduct a personal interview with the inmate for the
304 purpose of determining the details of the inmate's release plan,
305 including the inmate's planned residence and employment. The
306 department representative shall forward the inmate's release
307 plan to the commission and recommend to the commission the terms
308 and conditions of the conditional release.

309 Section 5. For the purpose of incorporating the amendment
310 made by this act to section 947.1405, Florida Statutes, in a
311 reference thereto, paragraph (j) of subsection (4) of section
312 775.084, Florida Statutes, is reenacted to read:

313 775.084 Violent career criminals; habitual felony offenders
314 and habitual violent felony offenders; three-time violent felony
315 offenders; definitions; procedure; enhanced penalties or
316 mandatory minimum prison terms.—

317 (4)

318 (j) The provisions of s. 947.1405 shall apply to persons
319 sentenced as habitual felony offenders and persons sentenced as

19-00739A-18

20181194__

320 habitual violent felony offenders.

321 Section 6. For the purpose of incorporating the amendment
322 made by this act to section 947.1405, Florida Statutes, in a
323 reference thereto, section 944.70, Florida Statutes, is
324 reenacted to read:

325 944.70 Conditions for release from incarceration.—

326 (1) (a) A person who is convicted of a crime committed on or
327 after October 1, 1983, but before January 1, 1994, may be
328 released from incarceration only:

- 329 1. Upon expiration of the person's sentence;
- 330 2. Upon expiration of the person's sentence as reduced by
331 accumulated gain-time;
- 332 3. As directed by an executive order granting clemency;
- 333 4. Upon attaining the provisional release date;
- 334 5. Upon placement in a conditional release program pursuant
335 to s. 947.1405; or
- 336 6. Upon the granting of control release pursuant to s.
337 947.146.

338 (b) A person who is convicted of a crime committed on or
339 after January 1, 1994, may be released from incarceration only:

- 340 1. Upon expiration of the person's sentence;
- 341 2. Upon expiration of the person's sentence as reduced by
342 accumulated meritorious or incentive gain-time;
- 343 3. As directed by an executive order granting clemency;
- 344 4. Upon placement in a conditional release program pursuant
345 to s. 947.1405 or a conditional medical release program pursuant
346 to s. 947.149; or
- 347 5. Upon the granting of control release, including
348 emergency control release, pursuant to s. 947.146.

19-00739A-18

20181194__

349 (2) A person who is convicted of a crime committed on or
350 after December 1, 1990, and who receives a control release date
351 may not refuse to accept the terms or conditions of control
352 release.

353 Section 7. For the purpose of incorporating the amendment
354 made by this act to section 947.1405, Florida Statutes, in a
355 reference thereto, paragraph (f) of subsection (1) of section
356 947.13, Florida Statutes, is reenacted to read:

357 947.13 Powers and duties of commission.—

358 (1) The commission shall have the powers and perform the
359 duties of:

360 (f) Establishing the terms and conditions of persons
361 released on conditional release under s. 947.1405, and
362 determining subsequent ineligibility for conditional release due
363 to a violation of the terms or conditions of conditional release
364 and taking action with respect to such a violation.

365 Section 8. For the purpose of incorporating the amendment
366 made by this act to section 947.1405, Florida Statutes, in a
367 reference thereto, subsections (1), (2), and (7) of section
368 947.141, Florida Statutes, are reenacted to read:

369 947.141 Violations of conditional release, control release,
370 or conditional medical release or addiction-recovery
371 supervision.—

372 (1) If a member of the commission or a duly authorized
373 representative of the commission has reasonable grounds to
374 believe that an offender who is on release supervision under s.
375 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
376 the terms and conditions of the release in a material respect,
377 such member or representative may cause a warrant to be issued

19-00739A-18

20181194__

378 for the arrest of the releasee; if the offender was found to be
379 a sexual predator, the warrant must be issued.

380 (2) Upon the arrest on a felony charge of an offender who
381 is on release supervision under s. 947.1405, s. 947.146, s.
382 947.149, or s. 944.4731, the offender must be detained without
383 bond until the initial appearance of the offender at which a
384 judicial determination of probable cause is made. If the trial
385 court judge determines that there was no probable cause for the
386 arrest, the offender may be released. If the trial court judge
387 determines that there was probable cause for the arrest, such
388 determination also constitutes reasonable grounds to believe
389 that the offender violated the conditions of the release. Within
390 24 hours after the trial court judge's finding of probable
391 cause, the detention facility administrator or designee shall
392 notify the commission and the department of the finding and
393 transmit to each a facsimile copy of the probable cause
394 affidavit or the sworn offense report upon which the trial court
395 judge's probable cause determination is based. The offender must
396 continue to be detained without bond for a period not exceeding
397 72 hours excluding weekends and holidays after the date of the
398 probable cause determination, pending a decision by the
399 commission whether to issue a warrant charging the offender with
400 violation of the conditions of release. Upon the issuance of the
401 commission's warrant, the offender must continue to be held in
402 custody pending a revocation hearing held in accordance with
403 this section.

404 (7) If a law enforcement officer has probable cause to
405 believe that an offender who is on release supervision under s.
406 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated

19-00739A-18

20181194__

407 the terms and conditions of his or her release by committing a
408 felony offense, the officer shall arrest the offender without a
409 warrant, and a warrant need not be issued in the case.

410 Section 9. This act shall take effect October 1, 2018.