

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; conforming provisions; deleting

26 provisions prohibiting inmates from earning or  
 27 receiving gain-time in amounts that would cause the  
 28 inmate's sentence to expire, end, or terminate, or  
 29 result in a prisoner's release, before serving a  
 30 specified percentage of the imposed sentence; amending  
 31 s. 947.1405, F.S.; providing that inmates convicted of  
 32 noncapital offenses and sentenced to life terms  
 33 qualify for conditional release under certain  
 34 conditions; requiring that the Department of  
 35 Corrections on a specified date review certain records  
 36 of inmates serving life sentences and compile such  
 37 information for the Florida Commission on Offender  
 38 Review to use in making certain determinations  
 39 regarding conditional release; providing an effective  
 40 date.

41  
 42 Be It Enacted by the Legislature of the State of Florida:

43  
 44 Section 1. Present subsection (11) of section 775.082,  
 45 Florida Statutes, is renumbered as subsection (13), and new  
 46 subsections (11) and (12) are added to that section, to read:

47 775.082 Penalties; applicability of sentencing structures;  
 48 mandatory minimum sentences for certain reoffenders previously  
 49 released from prison.—

50 (11) If a defendant is sentenced for a primary offense of

51 possession of a controlled substance committed on or after  
52 October 1, 2018, and if the total sentence points pursuant to s.  
53 921.0024 are 60 points or fewer, the court must sentence the  
54 offender to a nonstate prison sanction. However, if the court  
55 makes written findings that a nonstate prison sanction could  
56 present a danger to the public, the court may sentence the  
57 offender to a state correctional facility pursuant to this  
58 section. As used in this subsection, the term "possession of a  
59 controlled substance" means possession of a controlled substance  
60 in violation of s. 893.13 but does not include possession with  
61 intent to sell, manufacture, or deliver a controlled substance  
62 or possession of a controlled substance in violation of s.  
63 893.135.

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

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

74 1. The defendant has not previously received a departure  
75 under this section and has not been previously convicted of the

76 same offense for which he or she requests a departure under this  
 77 section.

78 2. The offense is not a forcible felony as defined in s.  
 79 776.08 or a misdemeanor that involves the use or threat of  
 80 physical force or violence against another person. However,  
 81 burglary of an unoccupied structure or conveyance is not  
 82 considered a forcible felony for purposes of this subparagraph.

83 3. The offense does not involve physical injury to another  
 84 person or coercion of another person.

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

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

88 1. Using or threatening to use physical force against  
 89 another person; or

90 2. Restraining or confining or threatening to restrain or  
 91 confine another person without lawful authority and against his  
 92 or her will.

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

95 Section 2. Paragraph (e) of subsection (1) of section  
 96 921.002, Florida Statutes, is amended to read:

97 921.002 The Criminal Punishment Code.—The Criminal  
 98 Punishment Code shall apply to all felony offenses, except  
 99 capital felonies, committed on or after October 1, 1998.

100 (1) The provision of criminal penalties and of limitations

101 upon the application of such penalties is a matter of  
102 predominantly substantive law and, as such, is a matter properly  
103 addressed by the Legislature. The Legislature, in the exercise  
104 of its authority and responsibility to establish sentencing  
105 criteria, to provide for the imposition of criminal penalties,  
106 and to make the best use of state prisons so that violent  
107 criminal offenders are appropriately incarcerated, has  
108 determined that it is in the best interest of the state to  
109 develop, implement, and revise a sentencing policy. The Criminal  
110 Punishment Code embodies the principles that:

111 (e) The sentence imposed by the sentencing judge reflects  
112 the length of actual time to be served, shortened only by the  
113 application of incentive and meritorious gain-time as provided  
114 by law, and may not be shortened if the defendant would  
115 consequently serve less than 65 percent of his or her term of  
116 imprisonment as provided in s. 944.275(4)(b)4.a. or 85 percent  
117 of his or her term of imprisonment as provided in s. 944.275(4)  
118 or s. 944.275(4)(b)4.b. The provisions of chapter 947, relating  
119 to parole, shall not apply to persons sentenced under the  
120 Criminal Punishment Code.

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

123 944.275 Gain-time.—

124 (4)

125 (b) For each month in which an inmate works diligently,

126 participates in training, uses time constructively, or otherwise  
127 engages in positive activities, the department may grant  
128 incentive gain-time in accordance with this paragraph. The rate  
129 of incentive gain-time in effect on the date the inmate  
130 committed the offense that ~~which~~ resulted in his or her  
131 incarceration shall be the inmate's rate of eligibility to earn  
132 incentive gain-time throughout the period of incarceration and  
133 may ~~shall~~ not be altered by a subsequent change in the severity  
134 level of the offense for which the inmate was sentenced.

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

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

141 a. For offenses ranked in offense severity levels 1  
142 through 7, under former s. 921.0012 or former s. 921.0013, up to  
143 25 days of incentive gain-time may be granted. If granted, such  
144 gain-time shall be credited and applied monthly.

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

149 3. For sentences imposed for offenses committed on or  
150 after October 1, 1995, and before October 1, 2018, the

151 department may grant up to 10 days per month of incentive gain-  
152 time.

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

156 a. If the offense is a nonviolent felony, as defined in s.  
157 948.08(6), the inmate is not eligible to earn any type of gain-  
158 time in an amount that would cause a sentence to expire, end, or  
159 terminate, or that would result in a prisoner's release, before  
160 he or she serves a minimum of 65 percent of the sentence  
161 imposed. For purposes of this sub-subparagraph, credits awarded  
162 by the court for time physically incarcerated shall be credited  
163 toward satisfaction of 65 percent of the sentence imposed. A  
164 prisoner who is granted incentive gain-time pursuant to this  
165 sub-subparagraph may not accumulate further gain-time awards at  
166 any point when the tentative release date is the same as that  
167 date at which the prisoner will have served 65 percent of the  
168 sentence imposed. State prisoners sentenced to life imprisonment  
169 shall be incarcerated for the rest of their natural lives,  
170 unless granted pardon or clemency.

171 b. If the offense is not a nonviolent felony, as defined  
172 in s. 948.08(6), the inmate is not eligible to earn any type of  
173 gain-time in an amount that would cause a sentence to expire,  
174 end, or terminate, or that would result in a prisoner's release,  
175 before he or she serves a minimum of 85 percent of the sentence

176 imposed. For purposes of this sub-subparagraph, credits awarded  
177 by the court for time physically incarcerated shall be credited  
178 toward satisfaction of 85 percent of the sentence imposed. A  
179 prisoner who is granted incentive gain-time pursuant to this  
180 sub-subparagraph may not accumulate further gain-time awards at  
181 any point when the tentative release date is the same as that  
182 date at which the prisoner will have served 85 percent of the  
183 sentence imposed. State prisoners sentenced to life imprisonment  
184 shall be incarcerated for the rest of their natural lives,  
185 unless granted pardon or clemency.

186 (d) Notwithstanding the monthly maximum awards of  
187 incentive gain-time under subparagraphs (b)1., 2., ~~and 3., and~~  
188 4., the education program manager shall recommend, and the  
189 Department of Corrections may grant, a one-time award of 60  
190 additional days of incentive gain-time to an inmate who is  
191 otherwise eligible and who successfully completes requirements  
192 for and is, or has been during the current commitment, awarded a  
193 high school equivalency diploma or vocational certificate. Under  
194 no circumstances may an inmate receive more than 60 days for  
195 educational attainment pursuant to this section.

196 ~~(f) An inmate who is subject to subparagraph (b)3. is not~~  
197 ~~eligible to earn or receive gain-time under paragraph (a),~~  
198 ~~paragraph (b), paragraph (c), or paragraph (d) or any other type~~  
199 ~~of gain-time in an amount that would cause a sentence to expire,~~  
200 ~~end, or terminate, or that would result in a prisoner's release,~~

201 ~~prior to serving a minimum of 85 percent of the sentence~~  
202 ~~imposed. For purposes of this paragraph, credits awarded by the~~  
203 ~~court for time physically incarcerated shall be credited toward~~  
204 ~~satisfaction of 85 percent of the sentence imposed. Except as~~  
205 ~~provided by this section, a prisoner may not accumulate further~~  
206 ~~gain-time awards at any point when the tentative release date is~~  
207 ~~the same as that date at which the prisoner will have served 85~~  
208 ~~percent of the sentence imposed. State prisoners sentenced to~~  
209 ~~life imprisonment shall be incarcerated for the rest of their~~  
210 ~~natural lives, unless granted pardon or clemency.~~

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

213 947.1405 Conditional release program.—

214 (2) Any inmate who:

215 (a) Is convicted of a crime committed on or after October  
216 1, 1988, and before January 1, 1994, and any inmate who is  
217 convicted of a crime committed on or after January 1, 1994,  
218 which crime is or was contained in category 1, category 2,  
219 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida  
220 Rules of Criminal Procedure (1993), and who has served at least  
221 one prior felony commitment at a state or federal correctional  
222 institution;

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

225 (c) Is found to be a sexual predator under s. 775.21 or

226 former s. 775.23; or  
227 (d) Is convicted of a noncapital offense and sentenced for  
228 a term of life, shall, upon reaching the tentative release date  
229 or provisional release date or serving 20 years of a life term  
230 sentence with no record of disciplinary violations during that  
231 time, whichever occurs ~~is~~ earlier, as established by the  
232 Department of Corrections, be released under supervision subject  
233 to specified terms and conditions, including payment of the cost  
234 of supervision pursuant to s. 948.09. Such supervision shall be  
235 applicable to all sentences within the overall term of sentences  
236 if an inmate's overall term of sentences includes one or more  
237 sentences that are eligible for conditional release supervision  
238 as provided herein. Effective July 1, 1994, and applicable for  
239 offenses committed on or after that date, the commission may  
240 require, as a condition of conditional release, that the  
241 releasee make payment of the debt due and owing to a county or  
242 municipal detention facility under s. 951.032 for medical care,  
243 treatment, hospitalization, or transportation received by the  
244 releasee while in that detention facility. The commission, in  
245 determining whether to order such repayment and the amount of  
246 such repayment, shall consider the amount of the debt, whether  
247 there was any fault of the institution for the medical expenses  
248 incurred, the financial resources of the releasee, the present  
249 and potential future financial needs and earning ability of the  
250 releasee, and dependents, and other appropriate factors. If any

251 inmate placed on conditional release supervision is also subject  
252 to probation or community control, resulting from a probationary  
253 or community control split sentence within the overall term of  
254 sentences, the Department of Corrections shall supervise such  
255 person according to the conditions imposed by the court and the  
256 commission shall defer to such supervision. If the court revokes  
257 probation or community control and resentsences the offender to a  
258 term of incarceration, such revocation also constitutes a  
259 sufficient basis for the revocation of the conditional release  
260 supervision on any nonprobationary or noncommunity control  
261 sentence without further hearing by the commission. If any such  
262 supervision on any nonprobationary or noncommunity control  
263 sentence is revoked, such revocation may result in a forfeiture  
264 of all gain-time, and the commission may revoke the resulting  
265 deferred conditional release supervision or take other action it  
266 considers appropriate. If the term of conditional release  
267 supervision exceeds that of the probation or community control,  
268 then, upon expiration of the probation or community control,  
269 authority for the supervision shall revert to the commission and  
270 the supervision shall be subject to the conditions imposed by  
271 the commission. A panel of no fewer than two commissioners shall  
272 establish the terms and conditions of any such release. If the  
273 offense was a controlled substance violation, the conditions  
274 shall include a requirement that the offender submit to random  
275 substance abuse testing intermittently throughout the term of

276 conditional release supervision, upon the direction of the  
277 correctional probation officer as defined in s. 943.10(3). The  
278 commission shall also determine whether the terms and conditions  
279 of such release have been violated and whether such violation  
280 warrants revocation of the conditional release.

281 (5) Within 180 days prior to an inmate's ~~the~~ tentative  
282 release date, ~~or~~ provisional release date, or completion of 20  
283 years of a life term sentence, whichever occurs ~~is~~ earlier, a  
284 representative of the department shall review the inmate's  
285 program participation, disciplinary record, psychological and  
286 medical records, criminal records, and any other information  
287 pertinent to the impending release. The department shall gather  
288 and compile information necessary for the commission to make the  
289 determinations set forth in subsections (2) and ~~subsection~~ (3).  
290 A department representative shall conduct a personal interview  
291 with the inmate for the purpose of determining the details of  
292 the inmate's release plan, including the inmate's planned  
293 residence and employment. The department representative shall  
294 forward the inmate's release plan to the commission and  
295 recommend to the commission the terms and conditions of the  
296 conditional release.

297 Section 5. This act shall take effect October 1, 2018.