

1 A bill to be entitled
2 An act relating to prison releasee reoffender
3 sentencing; amending s. 775.082, F.S.; revising the
4 required sentencing structure for prison releasee
5 reoffenders upon proof from a state attorney which
6 establishes that a defendant is a prison releasee
7 reoffender; deleting a provision that prohibits a
8 prison releasee reoffender from eligibility for any
9 form of early release and that requires a prison
10 releasee reoffender to serve 100 percent of the court-
11 imposed sentence; providing for retroactive
12 application; defining a term for the purpose of
13 establishing applicability of a specified provision;
14 applying the revised sentencing structure to certain
15 persons under certain circumstances; providing
16 resentencing requirements; deleting a provision
17 relating to legislative intent; deleting a provision
18 that requires a state attorney to explain a sentencing
19 deviation in writing under certain circumstances;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (9) of section 775.082, Florida
25 Statutes, is amended to read:

26 775.082 Penalties; applicability of sentencing structures;
 27 mandatory minimum sentences for certain reoffenders previously
 28 released from prison.—

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

- 31 a. Treason;
- 32 b. Murder;
- 33 c. Manslaughter;
- 34 d. Sexual battery;
- 35 e. Carjacking;
- 36 f. Home-invasion robbery;
- 37 g. Robbery;
- 38 h. Arson;
- 39 i. Kidnapping;
- 40 j. Aggravated assault with a deadly weapon;
- 41 k. Aggravated battery;
- 42 l. Aggravated stalking;
- 43 m. Aircraft piracy;
- 44 n. Unlawful throwing, placing, or discharging of a
 45 destructive device or bomb;
- 46 o. Any felony that involves the use or threat of physical
 47 force or violence against an individual;
- 48 p. Armed burglary;
- 49 q. Burglary of a dwelling or burglary of an occupied
 50 structure; or

51 r. Any felony violation of s. 790.07, s. 800.04, s.
52 827.03, s. 827.071, or s. 847.0135(5);

53
54 within 3 years after being released from a state correctional
55 facility operated by the Department of Corrections or a private
56 vendor, a county detention facility following incarceration for
57 an offense for which the sentence pronounced was a prison
58 sentence, or a correctional institution of another state, the
59 District of Columbia, the United States, any possession or
60 territory of the United States, or any foreign jurisdiction,
61 following incarceration for an offense for which the sentence is
62 punishable by more than 1 year in this state.

63 2. "Prison releasee reoffender" also means any defendant
64 who commits or attempts to commit any offense listed in sub-
65 subparagraphs ~~(a)~~1.a.-r. while the defendant was serving a
66 prison sentence or on escape status from a state correctional
67 facility operated by the Department of Corrections or a private
68 vendor or while the defendant was on escape status from a
69 correctional institution of another state, the District of
70 Columbia, the United States, any possession or territory of the
71 United States, or any foreign jurisdiction, following
72 incarceration for an offense for which the sentence is
73 punishable by more than 1 year in this state.

74 3. If the state attorney determines that a defendant is a
75 prison releasee reoffender as defined in subparagraph 1., the

76 state attorney may seek to have the court sentence the defendant
 77 as a prison releasee reoffender. Upon proof from the state
 78 attorney which ~~that~~ establishes ~~by a preponderance of the~~
 79 ~~evidence~~ that a defendant is a prison releasee reoffender as
 80 defined in this section, such defendant ~~is not eligible for~~
 81 ~~sentencing under the sentencing guidelines and~~ must be sentenced
 82 as follows:

- 83 a. For a felony punishable by life, to ~~by~~ a term of
 84 imprisonment of 25 years ~~imprisonment for life;~~
- 85 b. For a felony of the first degree, to ~~by~~ a term of
 86 imprisonment of 20 ~~30~~ years;
- 87 c. For a felony of the second degree, to ~~by~~ a term of
 88 imprisonment of 10 ~~15~~ years; and
- 89 d. For a felony of the third degree, to ~~by~~ a term of
 90 imprisonment of 3 ~~5~~ years.

91 ~~(b) A person sentenced under paragraph (a) shall be~~
 92 ~~released only by expiration of sentence and shall not be~~
 93 ~~eligible for parole, control release, or any form of early~~
 94 ~~release. Any person sentenced under paragraph (a) must serve 100~~
 95 ~~percent of the court imposed sentence.~~

96 (b)(c) ~~Nothing in~~ This subsection does not ~~shall~~ prevent a
 97 court from imposing a greater sentence of incarceration as
 98 authorized by law, pursuant to s. 775.084 or any other ~~provision~~
 99 ~~of~~ law.

100 (c)(d)1. It is the intent of the Legislature to

101 retroactively apply the amendments to this subsection which are
102 effective on July 1, 2021.

103 2. As used in this paragraph, the term "former s.
104 775.082(9)" means s. 775.082(9) as it existed before the
105 amendment of this subsection, which took effect on July 1, 2021.

106 3. A person who qualified as a prison releasee reoffender
107 before July 1, 2021, and who was not sentenced as a prison
108 releasee reoffender before July 1, 2021, may not be sentenced as
109 such under former s. 775.082(9). Such person, if sentenced as a
110 prison releasee reoffender, must be sentenced as provided in
111 paragraph (a).

112 4. A person who qualified as a prison releasee reoffender
113 before July 1, 2021, who was sentenced as such before July 1,
114 2021, to a mandatory minimum term of imprisonment pursuant to
115 former s. 775.082(9), and who is serving such mandatory minimum
116 term of imprisonment on or after July 1, 2021, must be
117 resentenced in accordance with subparagraph 5. to a sentence as
118 provided in paragraph (a) and sub-subparagraph 5.d.

119 5. Resentencing must occur in the following manner:

120 a. The Department of Corrections shall notify a person
121 described in subparagraph 4. of his or her eligibility to
122 request a sentence review hearing.

123 b. The person seeking sentence review may submit an
124 application to the court of original jurisdiction requesting
125 that a sentence review hearing be held. The sentencing court

126 retains original jurisdiction for the duration of the sentence
127 for this purpose.

128 c. A person who is eligible for a sentence review hearing
129 under this paragraph is entitled to representation by legal
130 counsel. If the person is indigent and unable to employ counsel,
131 the court must appoint counsel under s. 27.52. Determination of
132 indigence and costs of representation is as provided in ss.
133 27.52 and 938.29.

134 d. Upon receiving an application from an eligible person,
135 the court of original jurisdiction shall hold a sentence review
136 hearing to determine if the eligible person meets the criteria
137 for resentencing under subparagraph 4. If the court determines
138 at the sentence review hearing that the eligible person meets
139 such criteria, the court must resentence the person as provided
140 in paragraph (a); however, the new sentence may not exceed the
141 person's original sentence with credit for time served. If the
142 court determines that such person does not meet the criteria for
143 resentencing under subparagraph 4., the court must provide
144 written reasons why such person does not meet such criteria.

145 6. A person resentenced pursuant to this subsection is
146 eligible to receive any gain-time pursuant to s. 944.275 which
147 he or she was previously ineligible to receive under former s.
148 775.082(9) ~~It is the intent of the Legislature that offenders~~
149 ~~previously released from prison or a county detention facility~~
150 ~~following incarceration for an offense for which the sentence~~

HB 1127

2021

151 ~~pronounced was a prison sentence who meet the criteria in~~
152 ~~paragraph (a) be punished to the fullest extent of the law and~~
153 ~~as provided in this subsection, unless the state attorney~~
154 ~~determines that extenuating circumstances exist which preclude~~
155 ~~the just prosecution of the offender, including whether the~~
156 ~~victim recommends that the offender not be sentenced as provided~~
157 ~~in this subsection.~~

158 ~~2. For every case in which the offender meets the criteria~~
159 ~~in paragraph (a) and does not receive the mandatory minimum~~
160 ~~prison sentence, the state attorney must explain the sentencing~~
161 ~~deviation in writing and place such explanation in the case file~~
162 ~~maintained by the state attorney.~~

163 Section 2. This act shall take effect July 1, 2021.