

By Senator Brandes

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

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23       Section 1. Subsection (9) of section 775.082, Florida  
24       Statutes, is amended to read:

25       775.082 Penalties; applicability of sentencing structures;  
26       mandatory minimum sentences for certain reoffenders previously  
27       released from prison.—

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

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- 30 a. Treason;
- 31 b. Murder;
- 32 c. Manslaughter;
- 33 d. Sexual battery;
- 34 e. Carjacking;
- 35 f. Home-invasion robbery;
- 36 g. Robbery;
- 37 h. Arson;
- 38 i. Kidnapping;
- 39 j. Aggravated assault with a deadly weapon;
- 40 k. Aggravated battery;
- 41 l. Aggravated stalking;
- 42 m. Aircraft piracy;
- 43 n. Unlawful throwing, placing, or discharging of a
- 44 destructive device or bomb;
- 45 o. Any felony that involves the use or threat of physical
- 46 force or violence against an individual;
- 47 p. Armed burglary;
- 48 q. Burglary of a dwelling or burglary of an occupied
- 49 structure; or
- 50 r. Any felony violation of s. 790.07, s. 800.04, s. 827.03,
- 51 s. 827.071, or s. 847.0135(5);
- 52
- 53 within 3 years after being released from a state correctional
- 54 facility operated by the Department of Corrections or a private
- 55 vendor, a county detention facility following incarceration for
- 56 an offense for which the sentence pronounced was a prison
- 57 sentence, or a correctional institution of another state, the
- 58 District of Columbia, the United States, any possession or

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59 territory of the United States, or any foreign jurisdiction,  
60 following incarceration for an offense for which the sentence is  
61 punishable by more than 1 year in this state.

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

73 3. If the state attorney determines that a defendant is a  
74 prison releasee reoffender as defined in subparagraph 1., the  
75 state attorney may seek to have the court sentence the defendant  
76 as a prison releasee reoffender. Upon proof from the state  
77 attorney which ~~that~~ establishes ~~by a preponderance of the~~  
78 ~~evidence~~ that a defendant is a prison releasee reoffender as  
79 defined in this section, such defendant ~~is not eligible for~~  
80 ~~sentencing under the sentencing guidelines and~~ must be sentenced  
81 as follows:

82 a. For a felony punishable by life, to ~~by~~ a term of  
83 imprisonment of 25 years ~~imprisonment for life~~;

84 b. For a felony of the first degree, to ~~by~~ a term of  
85 imprisonment of 20 ~~30~~ years;

86 c. For a felony of the second degree, to ~~by~~ a term of  
87 imprisonment of 10 ~~15~~ years; and

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88 d. For a felony of the third degree, to ~~by~~ a term of  
89 imprisonment of 3 ~~5~~ years.

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

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

99 ~~(c)(d)~~ 1. It is the intent of the Legislature to  
100 retroactively apply the amendments to this subsection which are  
101 effective on July 1, 2021.

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

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

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

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117 provided in paragraph (a) and sub-subparagraph 5.d.

118 5. Resentencing must occur in the following manner:

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

122 b. The person seeking sentence review may submit an  
123 application to the court of original jurisdiction requesting  
124 that a sentence review hearing be held. The sentencing court  
125 retains original jurisdiction for the duration of the sentence  
126 for this purpose.

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

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

144 6. A person resentenced pursuant to this subsection is  
145 eligible to receive any gain-time pursuant to s. 944.275 which

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146 he or she was previously ineligible to receive under former s.  
147 775.082(9) It is the intent of the Legislature that offenders  
148 previously released from prison or a county detention facility  
149 following incarceration for an offense for which the sentence  
150 pronounced was a prison sentence who meet the criteria in  
151 paragraph (a) be punished to the fullest extent of the law and  
152 as provided in this subsection, unless the state attorney  
153 determines that extenuating circumstances exist which preclude  
154 the just prosecution of the offender, including whether the  
155 victim recommends that the offender not be sentenced as provided  
156 in this subsection.

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

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