

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 specified 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 1.a.-r. ~~sub-subparagraphs (a)1.a.-r.~~ while the
65 defendant was serving a prison sentence or on escape status from
66 a state correctional facility operated by the Department of
67 Corrections or a private vendor or while the defendant was on
68 escape status from a correctional institution of another state,
69 the District of Columbia, the United States, any possession or
70 territory of the United States, or any foreign jurisdiction,
71 following 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)1.(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, 2022.

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 takes effect on July 1,
105 2022.

106 3. A person who qualified as a prison releasee reoffender
107 before July 1, 2022, and who was not sentenced as a prison
108 releasee reoffender before July 1, 2022, 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, 2022, who was sentenced as such before July 1,
114 2022, 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, 2022, must be

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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 under this subsection is eligible

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146 to receive any gain-time pursuant to s. 944.275 which he or she
147 was previously ineligible to receive under former s. 775.082(9)

148 ~~It is the intent of the Legislature that offenders previously~~
149 ~~released from prison or a county detention facility following~~
150 ~~incarceration for an offense for which the sentence pronounced~~
151 ~~was a prison sentence who meet the criteria in paragraph (a) be~~
152 ~~punished to the fullest extent of the law and as provided in~~
153 ~~this subsection, unless the state attorney determines that~~
154 ~~extenuating circumstances exist which preclude the just~~
155 ~~prosecution of the offender, including whether the victim~~
156 ~~recommends that the offender not be sentenced as provided in~~
157 ~~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, 2022.