

1                   A bill to be entitled  
2           An act relating to criminal justice; creating  
3           the "Prison Releasee Reoffender Punishment  
4           Act"; amending s. 775.082, F.S.; defining  
5           "prison releasee reoffender"; providing that  
6           certain reoffenders are ineligible for  
7           sentencing under the sentencing guidelines  
8           under specified circumstances when the  
9           reoffender has been released from correctional  
10          custody and, within 3 years of being released,  
11          commits treason, murder, manslaughter, sexual  
12          battery, carjacking, home-invasion robbery,  
13          robbery, arson, kidnapping, aggravated assault,  
14          aggravated battery, aggravated stalking,  
15          aircraft piracy, unlawful throwing, placing, or  
16          discharging of a destructive device or bomb, a  
17          felony involving the use or threat of physical  
18          force or violence against an individual, armed  
19          burglary, burglary of an occupied structure or  
20          dwelling, burglary when the person has two  
21          prior felony convictions, or a felony violation  
22          of s. 790.07, F.S., relating to having weapons  
23          while engaged in criminal offense, s. 800.04,  
24          F.S., relating to lewd, lascivious, or indecent  
25          assault or act upon or in presence of child, s.  
26          827.03, F.S., relating to abuse, aggravated  
27          abuse, or neglect of child, or s. 827.071,  
28          F.S., relating to sexual performance by a  
29          child; providing for such reoffender to be  
30          sentenced to specified mandatory minimum  
31          sentences; making such reoffender ineligible

1 for parole, probation, or early release;  
 2 providing for forfeiture by the reoffender of  
 3 gain-time or other early release credits;  
 4 providing legislative intent to prohibit plea  
 5 bargaining in re-offender cases; requiring  
 6 state attorneys to submit reports regarding any  
 7 sentencing deviations; amending s. 944.705,  
 8 F.S., relating to release orientation program;  
 9 requiring notice to certain released offenders  
 10 by the Department of Corrections with respect  
 11 to the new minimum mandatory sentencing  
 12 provisions; providing for inadmissibility of  
 13 certain evidence regarding departmental failure  
 14 to provide such notice; amending s. 947.141,  
 15 F.S.; providing for mandatory forfeiture of  
 16 previously granted early release credits under  
 17 specified circumstances when conditional  
 18 release, control release, or conditional  
 19 medical release is revoked; amending s. 948.06,  
 20 F.S.; permitting a law enforcement officer to  
 21 arrest a probationer or offender in community  
 22 control upon probable cause that the  
 23 probationer or offender has materially violated  
 24 probation or community control, under specified  
 25 circumstances; providing for mandatory  
 26 forfeiture of previously granted early release  
 27 credits under specified circumstances when  
 28 probation or community control is revoked;  
 29 reenacting ss. 948.01(9) and (13)(b) and  
 30 958.14, F.S., to incorporate said amendment in  
 31 references; providing an effective date.

1  
2 WHEREAS, recent court decisions have mandated the early  
3 release of violent felony offenders, and

4 WHEREAS, the people of this state and the millions of  
5 people who visit our state deserve public safety and  
6 protection from violent felony offenders who have previously  
7 been sentenced to prison and who continue to prey on society  
8 by reoffending, and

9 WHEREAS, the Legislature finds that the best deterrent  
10 to prevent prison releasees from committing future crimes is  
11 to require that any releasee who commits new serious felonies  
12 must be sentenced to the maximum term of incarceration allowed  
13 by law, and serve 100 percent of the court-imposed sentence,  
14 NOW, THEREFORE,

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. This act shall be known and may be cited as  
19 the "Prison Releasee Reoffender Punishment Act."

20 Section 2. Section 775.082, Florida Statutes, is  
21 amended to read:

22 775.082 Penalties; mandatory minimum sentences for  
23 certain reoffenders previously released from prison.--

24 (1) A person who has been convicted of a capital  
25 felony shall be punished by death if the proceeding held to  
26 determine sentence according to the procedure set forth in s.  
27 921.141 results in findings by the court that such person  
28 shall be punished by death, otherwise such person shall be  
29 punished by life imprisonment and shall be ineligible for  
30 parole.

31

1           (2) In the event the death penalty in a capital felony  
2 is held to be unconstitutional by the Florida Supreme Court or  
3 the United States Supreme Court, the court having jurisdiction  
4 over a person previously sentenced to death for a capital  
5 felony shall cause such person to be brought before the court,  
6 and the court shall sentence such person to life imprisonment  
7 as provided in subsection (1).

8           (3) A person who has been convicted of any other  
9 designated felony may be punished as follows:

10           (a)1. For a life felony committed prior to October 1,  
11 1983, by a term of imprisonment for life or for a term of  
12 years not less than 30.

13           2. For a life felony committed on or after October 1,  
14 1983, by a term of imprisonment for life or by a term of  
15 imprisonment not exceeding 40 years.

16           3. For a life felony committed on or after July 1,  
17 1995, by a term of imprisonment for life or by imprisonment  
18 for a term of years not exceeding life imprisonment.

19           (b) For a felony of the first degree, by a term of  
20 imprisonment not exceeding 30 years or, when specifically  
21 provided by statute, by imprisonment for a term of years not  
22 exceeding life imprisonment.

23           (c) For a felony of the second degree, by a term of  
24 imprisonment not exceeding 15 years.

25           (d) For a felony of the third degree, by a term of  
26 imprisonment not exceeding 5 years.

27           (4) A person who has been convicted of a designated  
28 misdemeanor may be sentenced as follows:

29           (a) For a misdemeanor of the first degree, by a  
30 definite term of imprisonment not exceeding 1 year;

31

1 (b) For a misdemeanor of the second degree, by a  
2 definite term of imprisonment not exceeding 60 days.

3 (5) Any person who has been convicted of a noncriminal  
4 violation may not be sentenced to a term of imprisonment nor  
5 to any other punishment more severe than a fine, forfeiture,  
6 or other civil penalty, except as provided in chapter 316 or  
7 by ordinance of any city or county.

8 (6) Nothing in this section shall be construed to  
9 alter the operation of any statute of this state authorizing a  
10 trial court, in its discretion, to impose a sentence of  
11 imprisonment for an indeterminate period within minimum and  
12 maximum limits as provided by law, except as provided in  
13 subsection (1).

14 (7) This section does not deprive the court of any  
15 authority conferred by law to decree a forfeiture of property,  
16 suspend or cancel a license, remove a person from office, or  
17 impose any other civil penalty. Such a judgment or order may  
18 be included in the sentence.

19 (8)(a)1. "Prison releasee reoffender" means any  
20 defendant who commits, or attempts to commit:

21 a. Treason;

22 b. Murder;

23 c. Manslaughter;

24 d. Sexual battery;

25 e. Carjacking;

26 f. Home-invasion robbery;

27 g. Robbery;

28 h. Arson;

29 i. Kidnapping;

30 j. Aggravated assault;

31 k. Aggravated battery;

- 1           l. Aggravated stalking;  
2           m. Aircraft piracy;  
3           n. Unlawful throwing, placing, or discharging of a  
4 destructive device or bomb;  
5           o. Any felony which involves the use or threat of  
6 physical force or violence against an individual;  
7           p. Armed burglary;  
8           q. Burglary of an occupied structure or dwelling; or  
9           r. Any felony violation of s. 790.07, s. 800.04, s.  
10 827.03, or s. 827.071;  
11  
12 within 3 years of being released from a state correctional  
13 facility operated by Department of Corrections or a private  
14 vendor.  
15           2. Upon proof from the state attorney which  
16 establishes by a preponderance of the evidence that a  
17 defendant is a prison releasee reoffender as defined in this  
18 section, such defendant is not eligible for sentencing under  
19 the sentencing guidelines and must be sentenced as follows:  
20           a. For a felony punishable by life, by a term of  
21 imprisonment for life;  
22           b. For a felony of the first degree, by a term of  
23 imprisonment of 30 years;  
24           c. For a felony of the second degree, by a term of  
25 imprisonment of 15 years;  
26           d. For a felony of the third degree, by a term of  
27 imprisonment of 5 years.  
28           (b) A person sentenced under paragraph (a) shall be  
29 released only by expiration of sentence and shall not be  
30 eligible for probation, parole, control release, or any form  
31

1 of early release. Any person sentenced under paragraph (a)  
2 must serve 100 percent of the court-imposed sentence.

3 (c) Nothing in this subsection shall prevent a court  
4 from imposing a greater sentence of incarceration as  
5 authorized by law, pursuant to s. 775.084, or any other  
6 provision of law.

7 (d)1. There is empirical evidence that prosecuting  
8 attorneys mitigate charges and sentences which impact the  
9 punishment of offenders. It is the intent of the Legislature  
10 that offenders previously released from prison who meet the  
11 criteria in paragraph (a) be punished to the fullest extent of  
12 the law and as provided in this subsection, unless the  
13 following circumstances exist:

14 a. The prosecuting attorney does not have sufficient  
15 evidence to prove the highest charge available;

16 b. The testimony of a material witness cannot be  
17 obtained;

18 c. The victim does not want the offender to receive  
19 the mandatory minimum prison sentence and provides a written  
20 statement to that effect; or

21 d. Other extenuating circumstances exist which  
22 preclude the just prosecution of the offender.

23 3. For every case in which the offender meets the  
24 criteria in paragraph (a) and does not receive the mandatory  
25 minimum prison sentence, the state attorney must explain the  
26 sentencing deviation in writing and place such explanation in  
27 the case file maintained by the state attorney. On a quarterly  
28 basis, each state attorney shall submit copies of deviation  
29 memoranda regarding offenses committed on or after the  
30 effective date of this subsection, to the President of the  
31 Florida Prosecuting Attorneys Association, Inc. The

1 association must maintain such information, and make such  
2 information available to the public upon request, for at least  
3 a 10-year period.

4 ~~(9)(8)~~ The purpose of this section is to provide  
5 uniform punishment for those crimes made punishable under this  
6 section and, to this end, a reference to this section  
7 constitutes a general reference under the doctrine of  
8 incorporation by reference.

9 Section 3. Subsection (6) is added to section 944.705,  
10 Florida Statutes, to read:

11 944.705 Release orientation program.--

12 (6)(a) The department shall notify every inmate, in no  
13 less than 18-point type in the inmate's release documents,  
14 that the inmate shall be sentenced pursuant to s. 775.082(8)  
15 should the inmate commit any felony offense described in s.  
16 775.082(8) within 3 years of the inmate's release. This notice  
17 shall be prefaced by the word "WARNING" in boldfaced type.

18 (b) Nothing herein shall preclude the sentencing of a  
19 person pursuant to s. 775.082(8), nor shall evidence that the  
20 department failed to provide this notice prohibit a person  
21 from being sentenced pursuant to s. 775.082(8). The state  
22 shall not be required to demonstrate that a person received  
23 any notice from the department in order for the court to  
24 impose a sentence pursuant to s. 775.082(8).

25 Section 4. Subsection (6) of section 947.141, Florida  
26 Statutes, is amended to read:

27 947.141 Violations of conditional release, control  
28 release, or conditional medical release.--

29 (6) Whenever a conditional release, control release,  
30 or conditional medical release is revoked by a panel of no  
31 fewer than two commissioners and the releasee is ordered to be



1 returned to prison, the releasee, by reason of the misconduct,  
2 shall ~~may~~ be deemed to have forfeited all gain-time or  
3 commutation of time for good conduct, as provided for by law,  
4 earned up to the date of release. However, if a conditional  
5 medical release is revoked due to the improved medical or  
6 physical condition of the releasee, the releasee shall not  
7 forfeit gain-time accrued before the date of conditional  
8 medical release. This subsection does not deprive the prisoner  
9 of the right to gain-time or commutation of time for good  
10 conduct, as provided by law, from the date of return to  
11 prison.

12 Section 5. Subsections (1) and (6) of section 948.06,  
13 Florida Statutes, are amended to read:

14 948.06 Violation of probation or community control;  
15 revocation; modification; continuance; failure to pay  
16 restitution or cost of supervision.--

17 (1) Whenever within the period of probation or  
18 community control there are reasonable grounds to believe that  
19 a probationer or offender in community control has violated  
20 his probation or community control in a material respect, any  
21 law enforcement officer who is aware of the probationary or  
22 community control status of the probationer or offender in  
23 community control or any parole or probation supervisor may  
24 arrest or request any county or municipal law enforcement  
25 officer to arrest such probationer or offender without warrant  
26 wherever found and forthwith return him to the court granting  
27 such probation or community control. Any committing  
28 magistrate may issue a warrant, upon the facts being made  
29 known to him by affidavit of one having knowledge of such  
30 facts, for the arrest of the probationer or offender,  
31 returnable forthwith before the court granting such probation

1 or community control. Any parole or probation supervisor, any  
2 officer authorized to serve criminal process, or any peace  
3 officer of this state is authorized to serve and execute such  
4 warrant. The court, upon the probationer or offender being  
5 brought before it, shall advise him of such charge of  
6 violation and, if such charge is admitted to be true, may  
7 forthwith revoke, modify, or continue the probation or  
8 community control or place the probationer into a community  
9 control program. If probation or community control is revoked,  
10 the court shall adjudge the probationer or offender guilty of  
11 the offense charged and proven or admitted, unless he has  
12 previously been adjudged guilty, and impose any sentence which  
13 it might have originally imposed before placing the  
14 probationer on probation or the offender into community  
15 control. If such violation of probation or community control  
16 is not admitted by the probationer or offender, the court may  
17 commit him or release him with or without bail to await  
18 further hearing, or it may dismiss the charge of probation or  
19 community control violation. If such charge is not at that  
20 time admitted by the probationer or offender and if it is not  
21 dismissed, the court, as soon as may be practicable, shall  
22 give the probationer or offender an opportunity to be fully  
23 heard on his behalf in person or by counsel. After such  
24 hearing, the court may revoke, modify, or continue the  
25 probation or community control or place the probationer into  
26 community control. If such probation or community control is  
27 revoked, the court shall adjudge the probationer or offender  
28 guilty of the offense charged and proven or admitted, unless  
29 he has previously been adjudged guilty, and impose any  
30 sentence which it might have originally imposed before placing  
31

1 the probationer or offender on probation or into community  
2 control.

3 (6) Any provision of law to the contrary  
4 notwithstanding, whenever probation, community control, or  
5 control release, including the probationary, community control  
6 portion of a split sentence, is violated and the probation or  
7 community control is revoked, the offender, by reason of his  
8 misconduct, shall ~~may~~ be deemed to have forfeited all  
9 gain-time or commutation of time for good conduct, as provided  
10 by law, earned up to the date of his release on probation,  
11 community control, or control release. This subsection does  
12 not deprive the prisoner of his right to gain-time or  
13 commutation of time for good conduct, as provided by law, from  
14 the date on which he is returned to prison. However, if a  
15 prisoner is sentenced to incarceration following termination  
16 from a drug punishment program imposed as a condition of  
17 probation, the sentence may include incarceration without the  
18 possibility of gain-time or early release for the period of  
19 time remaining in his treatment program placement term.

20 Section 6. For the purpose of incorporating the  
21 amendment to section 948.06, Florida Statutes, in references  
22 thereto, the sections or subdivisions of Florida Statutes set  
23 forth below are reenacted to read:

24 948.01 When court may place defendant on probation or  
25 into community control.--

26 (9) Procedures governing violations of community  
27 control shall be the same as those described in s. 948.06 with  
28 respect to probation.

29 (13) If it appears to the court upon a hearing that  
30 the defendant is a chronic substance abuser whose criminal  
31 conduct is a violation of chapter 893, the court may either

1 | adjudge the defendant guilty or stay and withhold the  
2 | adjudication of guilt; and, in either case, it may stay and  
3 | withhold the imposition of sentence and place the defendant on  
4 | drug offender probation.

5 |       (b) Offenders placed on drug offender probation are  
6 | subject to revocation of probation as provided in s. 948.06.

7 |       958.14 Violation of probation or community control  
8 | program.--A violation or alleged violation of probation or the  
9 | terms of a community control program shall subject the  
10 | youthful offender to the provisions of s. 948.06(1). However,  
11 | no youthful offender shall be committed to the custody of the  
12 | department for a substantive violation for a period longer  
13 | than the maximum sentence for the offense for which he was  
14 | found guilty, with credit for time served while incarcerated,  
15 | or for a technical or nonsubstantive violation for a period  
16 | longer than 6 years or for a period longer than the maximum  
17 | sentence for the offense for which he was found guilty,  
18 | whichever is less, with credit for time served while  
19 | incarcerated.

20 |       Section 7. This act shall take effect upon becoming a  
21 | law.