

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2156

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: Sentencing/Releasee Reoffender

DATE: February 25, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>APJ</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This CS amends the prison releasee reoffender (PRR) sentencing provisions of s. 775.082(9), F.S., to permit defendants to be concurrently sentenced under the PRR Act as well as any sentencing statute that would result in a greater sentence.

The CS has an effective date of July 1, 2002.

This CS would substantially amend section 775.082 of the Florida Statutes.

II. Present Situation:

Section 775.082(9), F.S., provides special sentencing provisions for offenders who commit certain felonies within three years of being released from a correctional institution. Section 775.082(9)(a)3., F.S., provides:

Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced [as a prison releasee reoffender]

However, s. 775.082(9)(c), F.S., states:

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

In *State v. Wilson*, 793 So.2d 1003 (Fla. 2d Dist. 2001) and *Irons v. State*, 791 So.2d 1221 (Fla. 5th Dist. 2001), the Second and Fifth District Courts of Appeal affirmed trial court rulings holding that an offender who is qualified as a prison releasee reoffender cannot be sentenced under the sentencing guidelines, even though the guideline sentence would be longer than the PRR sentence. The courts determined that the exception in s. 775.082(9)(c), F.S., permitting greater sentences under other provisions of law does not include the sentencing guidelines because sentencing under the guidelines is specifically prohibited. Both the *Wilson* and *Irons* courts expressed concern that the result was dictated by application of the rules of statutory construction, but that it probably did not meet the intent of the Legislature. The courts recommended that the Legislature consider amending s. 775.082, F.S., if it intended to allow a defendant to be sentenced pursuant to the most severe sentencing option.

In *Grant v. State*, 770 So.2d 655 (Fla. 2000), the Florida Supreme Court approved concurrent sentences under the PRR Act and the Habitual Felony Offender Act (s. 775.084, F.S.). The Second and Fifth DCAs found that the holding in *Grant* did not apply to their respective cases because s. 775.082(9)(a)3., F.S., specifically states that defendants shown to be prison releasee reoffenders are not eligible for sentencing under the sentencing guidelines.

The Supreme Court noted in *Grant* that sentencing under different sentencing provisions can benefit the state even though the sentences run concurrently. This is because a prisoner does not accrue gaintime while serving a PRR sentence, but may under another type of sentence. Therefore, it is possible that a sentence that is longer under a sentencing statute with gaintime eligibility may result in a defendant serving less time than he or she would under a shorter sentence with no gaintime eligibility.

III. Effect of Proposed Changes:

The CS amends s. 775.082(9)(a)3., F.S., to specify that a defendant must be sentenced under the Prison Releasee Reoffender Act if the state attorney establishes that the defendant is a prison releasee reoffender. It also amends s. 775.082(9)(c), F.S., to specifically authorize a court to impose a greater sentence pursuant to the Criminal Punishment Code or sentencing guidelines. This amendment would put sentences under the Criminal Punishment Code or sentencing guidelines on the same footing as sentences under the Habitual Felony Offender Act. In accordance with the Supreme Court's reasoning in *Grant*, a court could impose concurrent sentences under both the PRR Act and the Criminal Punishment Code or sentencing guidelines.

The CS will prevent situations such as those in *Wilson* and *Irons* in which the defendant actually benefited from application of the mandatory sentencing provisions of the PRR Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This CS would result in increased prison sentences for those persons whose sentence under the sentencing guidelines would be greater than their sentence as a Prison Releasee Reoffender. However, there should be minimal fiscal impact because the sentencing guidelines only apply to cases committed prior to October 1, 1998, for which sentence has not been imposed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
