

FOR CONSIDERATION By the Committee on Criminal Justice

591-01710D-16

20167066pb

1 A bill to be entitled
2 An act relating to criminal justice; amending s.
3 775.082, F.S.; requiring a defendant who is sentenced
4 for a primary offense of possession of a controlled
5 substance committed on or after a specified date to be
6 sentenced to a nonstate prison sanction under certain
7 circumstances unless the court makes specified written
8 findings; defining the term "possession of a
9 controlled substance"; authorizing a defendant to move
10 the sentencing court to depart from a mandatory
11 minimum term of imprisonment or a mandatory fine, if
12 the offense is committed on or after a specified date;
13 authorizing the state attorney to file an objection to
14 the motion; authorizing the sentencing court to grant
15 the motion if the court finds that the defendant has
16 demonstrated by a preponderance of the evidence that
17 specified criteria are met; defining the term
18 "coercion"; providing applicability; amending s.
19 921.002, F.S.; revising a principle of the Criminal
20 Punishment Code relating to a prisoner's required
21 minimum term of imprisonment; amending s. 944.275,
22 F.S.; revising the incentive gain-time that the
23 Department of Corrections may grant a prisoner for
24 offenses committed on or after a specified date;
25 providing exceptions; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Present subsection (11) of section 775.082,
30 Florida Statutes, is redesignated as subsection (13), and new
31 subsections (11) and (12) are added to that section, to read:

32 775.082 Penalties; applicability of sentencing structures;

591-01710D-16

20167066pb

33 mandatory minimum sentences for certain reoffenders previously
34 released from prison.—

35 (11) If a defendant is sentenced for a primary offense of
36 possession of a controlled substance committed on or after
37 October 1, 2016, and if the total sentence points pursuant to s.
38 921.0024 are 60 points or fewer, the court must sentence the
39 offender to a nonstate prison sanction. However, if the court
40 makes written findings that a nonstate prison sanction could
41 present a danger to the public, the court may sentence the
42 offender to a state correctional facility pursuant to this
43 section. As used in this subsection, the term "possession of a
44 controlled substance" means possession of a controlled substance
45 in violation of s. 893.13 but does not include possession with
46 intent to sell, manufacture, or deliver a controlled substance
47 or possession of a controlled substance in violation of s.
48 893.135.

49 (12) (a) A person who is convicted of an offense committed
50 on or after October 1, 2016, which requires that a mandatory
51 minimum term of imprisonment be imposed may move the sentencing
52 court to depart from the mandatory minimum term and, if
53 applicable, the mandatory fine. The state attorney may file an
54 objection to the motion.

55 (b) The court may grant the motion if the court finds that
56 the defendant has demonstrated by a preponderance of the
57 evidence that all of the following criteria are met:

58 1. The defendant has not previously received a departure
59 under this section and has not been previously convicted of the
60 same offense for which the defendant requests a departure under
61 this section;

591-01710D-16

20167066pb

62 2. The offense is not a forcible felony as defined in s.
63 776.08 or a misdemeanor that involves the use or threat of
64 physical force or violence against another person. However,
65 burglary of an unoccupied structure or conveyance is not
66 considered a forcible felony for purposes of this subparagraph;

67 3. The offense does not involve physical injury to another
68 person or coercion of another person; and

69 4. The offense does not involve a victim who is a minor or
70 the use of a minor in the commission of the offense.

71 (c) As used in this subsection, the term "coercion" means:

72 1. Using or threatening to use physical force against
73 another person; or

74 2. Restraining or confining or threatening to restrain or
75 confine another person without lawful authority and against his
76 or her will.

77 (d) This subsection does not apply to sentencing pursuant
78 to subsection (9), s. 775.0837, s. 775.084, or s. 794.0115.

79 Section 2. Paragraph (e) of subsection (1) of section
80 921.002, Florida Statutes, is amended to read:

81 921.002 The Criminal Punishment Code.—The Criminal
82 Punishment Code shall apply to all felony offenses, except
83 capital felonies, committed on or after October 1, 1998.

84 (1) The provision of criminal penalties and of limitations
85 upon the application of such penalties is a matter of
86 predominantly substantive law and, as such, is a matter properly
87 addressed by the Legislature. The Legislature, in the exercise
88 of its authority and responsibility to establish sentencing
89 criteria, to provide for the imposition of criminal penalties,
90 and to make the best use of state prisons so that violent

591-01710D-16

20167066pb

91 criminal offenders are appropriately incarcerated, has
92 determined that it is in the best interest of the state to
93 develop, implement, and revise a sentencing policy. The Criminal
94 Punishment Code embodies the principles that:

95 (e) The sentence imposed by the sentencing judge reflects
96 the length of actual time to be served, shortened only by the
97 application of incentive and meritorious gain-time as provided
98 by law, and may not be shortened if the defendant would
99 consequently serve less than 65 percent of his or her term of
100 imprisonment as provided in s. 944.275(4)(b)4.a. or 85 percent
101 of his or her term of imprisonment as provided in s.

102 944.275(4)(b)3. or s. 944.275(4)(b)4.b. The provisions of
103 chapter 947, relating to parole, shall not apply to persons
104 sentenced under the Criminal Punishment Code.

105 Section 3. Paragraph (b) of subsection (4) of section
106 944.275, Florida Statutes, is amended to read:

107 944.275 Gain-time.—

108 (4)

109 (b) For each month in which an inmate works diligently,
110 participates in training, uses time constructively, or otherwise
111 engages in positive activities, the department may grant
112 incentive gain-time in accordance with this paragraph. The rate
113 of incentive gain-time in effect on the date the inmate
114 committed the offense that ~~which~~ resulted in his or her
115 incarceration shall be the inmate's rate of eligibility to earn
116 incentive gain-time throughout the period of incarceration and
117 may ~~shall~~ not be altered by a subsequent change in the severity
118 level of the offense for which the inmate was sentenced.

119 1. For sentences imposed for offenses committed before

591-01710D-16

20167066pb

120 ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time
121 may be granted. If granted, such gain-time shall be credited and
122 applied monthly.

123 2. For sentences imposed for offenses committed on or after
124 January 1, 1994, and before October 1, 1995:

125 a. For offenses ranked in offense severity levels 1 through
126 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
127 of incentive gain-time may be granted. If granted, such gain-
128 time shall be credited and applied monthly.

129 b. For offenses ranked in offense severity levels 8, 9, and
130 10, under former s. 921.0012 or former s. 921.0013, up to 20
131 days of incentive gain-time may be granted. If granted, such
132 gain-time shall be credited and applied monthly.

133 3. For sentences imposed for offenses committed on or after
134 October 1, 1995, the department may grant up to 10 days per
135 month of incentive gain-time, except that no prisoner is
136 eligible to earn any type of gain-time in an amount that would
137 cause a sentence to expire, end, or terminate, or that would
138 result in a prisoner's release, before ~~prior to~~ serving a
139 minimum of 85 percent of the sentence imposed. For purposes of
140 this subparagraph, credits awarded by the court for time
141 physically incarcerated shall be credited toward satisfaction of
142 85 percent of the sentence imposed. Except as provided by this
143 section, a prisoner may ~~shall~~ not accumulate further gain-time
144 awards at any point when the tentative release date is the same
145 as that date at which the prisoner will have served 85 percent
146 of the sentence imposed. State prisoners sentenced to life
147 imprisonment shall be incarcerated for the rest of their natural
148 lives, unless granted pardon or clemency.

591-01710D-16

20167066pb

149 4. For sentences imposed for offenses committed on or after
150 October 1, 2016, the department may grant up to 20 days per
151 month of incentive gain-time, except that:

152 a. If the offense is a nonviolent felony, as defined in s.
153 948.08(6), the prisoner is not eligible to earn any type of
154 gain-time in an amount that would cause a sentence to expire,
155 end, or terminate, or that would result in a prisoner's release,
156 before serving a minimum of 65 percent of the sentence imposed.
157 For purposes of this sub-subparagraph, credits awarded by the
158 court for time physically incarcerated shall be credited toward
159 satisfaction of 65 percent of the sentence imposed. A prisoner
160 who is granted incentive gain-time pursuant to this sub-
161 subparagraph may not accumulate further gain-time awards at any
162 point when the tentative release date is the same as that date
163 at which the prisoner will have served 65 percent of the
164 sentence imposed. State prisoners sentenced to life imprisonment
165 shall be incarcerated for the rest of their natural lives,
166 unless granted pardon or clemency.

167 b. If the offense is not a nonviolent felony, as defined in
168 s. 948.08(6), the prisoner is not eligible to earn any type of
169 gain-time in an amount that would cause a sentence to expire,
170 end, or terminate, or that would result in a prisoner's release,
171 before serving a minimum of 85 percent of the sentence imposed.
172 For purposes of this sub-subparagraph, credits awarded by the
173 court for time physically incarcerated shall be credited toward
174 satisfaction of 85 percent of the sentence imposed. A prisoner
175 who is granted incentive gain-time pursuant to this sub-
176 subparagraph may not accumulate further gain-time awards at any
177 point when the tentative release date is the same as that date

591-01710D-16

20167066pb

178 at which the prisoner will have served 85 percent of the
179 sentence imposed. State prisoners sentenced to life imprisonment
180 shall be incarcerated for the rest of their natural lives,
181 unless granted pardon or clemency.

182 Section 4. This act shall take effect October 1, 2016.