

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; revising the conditions under

26 | which an inmate may be granted a one-time award of 60
27 | additional days of incentive gain-time by the
28 | department; deleting provisions prohibiting inmates
29 | from earning or receiving gain-time in amounts that
30 | would cause the inmate's sentence to expire, end, or
31 | terminate, or result in a prisoner's release, before
32 | serving a specified percentage of the imposed
33 | sentence; amending s. 947.1405, F.S.; providing that
34 | persons convicted of a noncapital offense and
35 | sentenced for a term of life qualify for conditional
36 | release, subject to certain terms and conditions;
37 | requiring that the Department of Corrections within a
38 | specified timeframe review certain records of persons
39 | serving life sentences and compile such information
40 | for the Florida Commission on Offender Review to use
41 | in making certain determinations regarding conditional
42 | release; reenacting ss. 775.084(4)(j), 944.70,
43 | 947.13(1)(f), and 947.141(1), (2), and (7), F.S.,
44 | relating to the conditional release program applying
45 | to persons sentenced under certain provisions,
46 | conditions for release from incarceration, the powers
47 | and duties of the Florida Commission on Offender
48 | Review, and violations of certain release or
49 | supervision provisions, respectively, to incorporate
50 | the amendment made to s. 947.1405, F.S., in references

51 thereto; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Present subsection (11) of section 775.082,
56 Florida Statutes, is redesignated as subsection (13), and a new
57 subsection (11) and subsection (12) are added to that section,
58 to read:

59 775.082 Penalties; applicability of sentencing structures;
60 mandatory minimum sentences for certain reoffenders previously
61 released from prison.—

62 (11) If a defendant is sentenced for a primary offense of
63 possession of a controlled substance committed on or after
64 October 1, 2019, and if the total sentence points pursuant to s.
65 921.0024 are 60 points or fewer, the court must sentence the
66 offender to a nonstate prison sanction. However, if the court
67 makes written findings that a nonstate prison sanction could
68 present a danger to the public, the court may sentence the
69 offender to a state correctional facility pursuant to this
70 section. As used in this subsection, the term "possession of a
71 controlled substance" means possession of a controlled substance
72 in violation of s. 893.13 but does not include possession with
73 intent to sell, manufacture, or deliver a controlled substance
74 or possession of a controlled substance in violation of s.
75 893.135.

76 (12) (a) A defendant who is convicted of an offense
 77 committed on or after October 1, 2019, which requires that a
 78 mandatory minimum term of imprisonment be imposed may move the
 79 sentencing court to depart from the mandatory minimum term and,
 80 if applicable, the mandatory fine. The state attorney may file
 81 an objection to the motion.

82 (b) The court may grant the defendant's motion if the
 83 court finds that the defendant has demonstrated by a
 84 preponderance of the evidence that all of the following criteria
 85 are met:

86 1. The defendant has not previously received a departure
 87 under this section and has not been previously convicted of the
 88 same offense for which he or she requests a departure under this
 89 section;

90 2. The offense is not a forcible felony as defined in s.
 91 776.08 or a misdemeanor that involves the use or threat of
 92 physical force or violence against another person. However,
 93 burglary of an unoccupied structure or conveyance is not
 94 considered a forcible felony for purposes of this subparagraph;

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

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

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

100 1. Using or threatening to use physical force against

101 another person; or

102 2. Restraining or confining or threatening to restrain or
 103 confine another person without lawful authority and against his
 104 or her will.

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

107 Section 2. Paragraph (e) of subsection (1) of section
 108 921.002, Florida Statutes, is amended to read:

109 921.002 The Criminal Punishment Code.—The Criminal
 110 Punishment Code shall apply to all felony offenses, except
 111 capital felonies, committed on or after October 1, 1998.

112 (1) The provision of criminal penalties and of limitations
 113 upon the application of such penalties is a matter of
 114 predominantly substantive law and, as such, is a matter properly
 115 addressed by the Legislature. The Legislature, in the exercise
 116 of its authority and responsibility to establish sentencing
 117 criteria, to provide for the imposition of criminal penalties,
 118 and to make the best use of state prisons so that violent
 119 criminal offenders are appropriately incarcerated, has
 120 determined that it is in the best interest of the state to
 121 develop, implement, and revise a sentencing policy. The Criminal
 122 Punishment Code embodies the principles that:

123 (e) The sentence imposed by the sentencing judge reflects
 124 the length of actual time to be served, shortened only by the
 125 application of incentive and meritorious gain-time as provided

126 by law, and may not be shortened if the defendant would
 127 consequently serve less than 65 percent of his or her term of
 128 imprisonment as provided in s. 944.275(4) (b)4.a. or 85 percent
 129 of his or her term of imprisonment as provided in s. 944.275(4)
 130 or s. 944.275(4) (b)4.b. The provisions of chapter 947, relating
 131 to parole, shall not apply to persons sentenced under the
 132 Criminal Punishment Code.

133 Section 3. Paragraphs (b), (d), and (f) of subsection (4)
 134 of section 944.275, Florida Statutes, are amended to read:

135 944.275 Gain-time.—

136 (4)

137 (b) For each month in which an inmate works diligently,
 138 participates in training, uses time constructively, or otherwise
 139 engages in positive activities, the department may grant
 140 incentive gain-time in accordance with this paragraph. The rate
 141 of incentive gain-time in effect on the date the inmate
 142 committed the offense that ~~which~~ resulted in his or her
 143 incarceration shall be the inmate's rate of eligibility to earn
 144 incentive gain-time throughout the period of incarceration and
 145 may ~~shall~~ not be altered by a subsequent change in the severity
 146 level of the offense for which the inmate was sentenced.

147 1. For sentences imposed for offenses committed before
 148 ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time
 149 may be granted. If granted, such gain-time shall be credited and
 150 applied monthly.

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

153 a. For offenses ranked in offense severity levels 1
154 through 7, under former s. 921.0012 or former s. 921.0013, up to
155 25 days of incentive gain-time may be granted. If granted, such
156 gain-time shall be credited and applied monthly.

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

161 3. For sentences imposed for offenses committed on or
162 after October 1, 1995, and before October 1, 2019, the
163 department may grant up to 10 days per month of incentive gain-
164 time.

165 4. For sentences imposed for offenses committed on or
166 after October 1, 2019, the department may grant up to 20 days
167 per month of incentive gain-time, except that:

168 a. If the offense is a nonviolent felony, as defined in s.
169 948.08(6), the prisoner is not eligible to earn any type of
170 gain-time in an amount that would cause a sentence to expire,
171 end, or terminate, or that would result in a prisoner's release,
172 before he or she serves a minimum of 65 percent of the sentence
173 imposed. For purposes of this sub-subparagraph, credits awarded
174 by the court for time physically incarcerated shall be credited
175 toward satisfaction of 65 percent of the sentence imposed. A

176 prisoner who is granted incentive gain-time pursuant to this
177 sub-subparagraph may not accumulate further gain-time awards at
178 any point when the tentative release date is the same as that
179 date at which the prisoner will have served 65 percent of the
180 sentence imposed. State prisoners sentenced to life imprisonment
181 shall be incarcerated for the rest of their natural lives,
182 unless granted pardon or clemency.

183 b. If the offense is not a nonviolent felony, as defined
184 in s. 948.08(6), the prisoner is not eligible to earn any type
185 of gain-time in an amount that would cause a sentence to expire,
186 end, or terminate, or that would result in a prisoner's release,
187 before he or she serves a minimum of 85 percent of the sentence
188 imposed. For purposes of this sub-subparagraph, credits awarded
189 by the court for time physically incarcerated shall be credited
190 toward satisfaction of 85 percent of the sentence imposed. A
191 prisoner who is granted incentive gain-time pursuant to this
192 sub-subparagraph may not accumulate further gain-time awards at
193 any point when the tentative release date is the same as that
194 date at which the prisoner will have served 85 percent of the
195 sentence imposed. State prisoners sentenced to life imprisonment
196 shall be incarcerated for the rest of their natural lives,
197 unless granted pardon or clemency.

198 (d) Notwithstanding the monthly maximum awards of
199 incentive gain-time under subparagraphs (b)1.-4., ~~2.7~~ and ~~3.7~~
200 the education program manager shall recommend, and the

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201 Department of Corrections may grant, a one-time award of 60
202 additional days of incentive gain-time to an inmate who is
203 otherwise eligible and who successfully completes requirements
204 for and is, or has been during the current commitment, awarded a
205 high school equivalency diploma or vocational certificate. Under
206 no circumstances may an inmate receive more than 60 days for
207 educational attainment pursuant to this section.

208 ~~(f) An inmate who is subject to subparagraph (b)3. is not~~
209 ~~eligible to earn or receive gain-time under paragraph (a),~~
210 ~~paragraph (b), paragraph (c), or paragraph (d) or any other type~~
211 ~~of gain-time in an amount that would cause a sentence to expire,~~
212 ~~end, or terminate, or that would result in a prisoner's release,~~
213 ~~prior to serving a minimum of 85 percent of the sentence~~
214 ~~imposed. For purposes of this paragraph, credits awarded by the~~
215 ~~court for time physically incarcerated shall be credited toward~~
216 ~~satisfaction of 85 percent of the sentence imposed. Except as~~
217 ~~provided by this section, a prisoner may not accumulate further~~
218 ~~gain-time awards at any point when the tentative release date is~~
219 ~~the same as that date at which the prisoner will have served 85~~
220 ~~percent of the sentence imposed. State prisoners sentenced to~~
221 ~~life imprisonment shall be incarcerated for the rest of their~~
222 ~~natural lives, unless granted pardon or clemency.~~

223 Section 4. Subsections (2) and (5) of section 947.1405,
224 Florida Statutes, are amended to read:

225 947.1405 Conditional release program.—

226 (2) Any inmate who:

227 (a) Is convicted of a crime committed on or after October
228 1, 1988, and before January 1, 1994, and any inmate who is
229 convicted of a crime committed on or after January 1, 1994,
230 which crime is or was contained in category 1, category 2,
231 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
232 Rules of Criminal Procedure (1993), and who has served at least
233 one prior felony commitment at a state or federal correctional
234 institution;

235 (b) Is sentenced as a habitual or violent habitual
236 offender or a violent career criminal pursuant to s. 775.084; ~~or~~

237 (c) Is found to be a sexual predator under s. 775.21 or
238 former s. 775.23; or

239 (d) Is convicted of a noncapital offense and sentenced for
240 a term of life,

241
242 shall, upon reaching the tentative release date or provisional
243 release date or serving 20 years of a life sentence with no
244 record of disciplinary violations during that time, whichever
245 occurs ~~is~~ earlier, as established by the Department of
246 Corrections, be released under supervision subject to specified
247 terms and conditions, including payment of the cost of
248 supervision pursuant to s. 948.09. Such supervision shall be
249 applicable to all sentences within the overall term of sentences
250 if an inmate's overall term of sentences includes one or more

251 sentences that are eligible for conditional release supervision
252 as provided herein. Effective July 1, 1994, and applicable for
253 offenses committed on or after that date, the commission may
254 require, as a condition of conditional release, that the
255 releasee make payment of the debt due and owing to a county or
256 municipal detention facility under s. 951.032 for medical care,
257 treatment, hospitalization, or transportation received by the
258 releasee while in that detention facility. The commission, in
259 determining whether to order such repayment and the amount of
260 such repayment, shall consider the amount of the debt, whether
261 there was any fault of the institution for the medical expenses
262 incurred, the financial resources of the releasee, the present
263 and potential future financial needs and earning ability of the
264 releasee, and dependents, and other appropriate factors. If any
265 inmate placed on conditional release supervision is also subject
266 to probation or community control, resulting from a probationary
267 or community control split sentence within the overall term of
268 sentences, the Department of Corrections shall supervise such
269 person according to the conditions imposed by the court and the
270 commission shall defer to such supervision. If the court revokes
271 probation or community control and resentences the offender to a
272 term of incarceration, such revocation also constitutes a
273 sufficient basis for the revocation of the conditional release
274 supervision on any nonprobationary or noncommunity control
275 sentence without further hearing by the commission. If any such

276 supervision on any nonprobationary or noncommunity control
277 sentence is revoked, such revocation may result in a forfeiture
278 of all gain-time, and the commission may revoke the resulting
279 deferred conditional release supervision or take other action it
280 considers appropriate. If the term of conditional release
281 supervision exceeds that of the probation or community control,
282 then, upon expiration of the probation or community control,
283 authority for the supervision shall revert to the commission and
284 the supervision shall be subject to the conditions imposed by
285 the commission. A panel of no fewer than two commissioners shall
286 establish the terms and conditions of any such release. If the
287 offense was a controlled substance violation, the conditions
288 shall include a requirement that the offender submit to random
289 substance abuse testing intermittently throughout the term of
290 conditional release supervision, upon the direction of the
291 correctional probation officer as defined in s. 943.10(3). The
292 commission shall also determine whether the terms and conditions
293 of such release have been violated and whether such violation
294 warrants revocation of the conditional release.

295 (5) Within 180 days before an inmate's ~~prior to the~~
296 tentative release date, ~~or~~ provisional release date, or
297 completion of 20 years of a life sentence, whichever occurs ~~is~~
298 earlier, a representative of the department shall review the
299 inmate's program participation, disciplinary record,
300 psychological and medical records, criminal records, and any

301 other information pertinent to the impending release. The
302 department shall gather and compile information necessary for
303 the commission to make the determinations set forth in
304 subsections (2) and subsection (3). A department representative
305 shall conduct a personal interview with the inmate for the
306 purpose of determining the details of the inmate's release plan,
307 including the inmate's planned residence and employment. The
308 department representative shall forward the inmate's release
309 plan to the commission and recommend to the commission the terms
310 and conditions of the conditional release.

311 Section 5. For the purpose of incorporating the amendment
312 made by this act to section 947.1405, Florida Statutes, in a
313 reference thereto, paragraph (j) of subsection (4) of section
314 775.084, Florida Statutes, is reenacted to read:

315 775.084 Violent career criminals; habitual felony
316 offenders and habitual violent felony offenders; three-time
317 violent felony offenders; definitions; procedure; enhanced
318 penalties or mandatory minimum prison terms.—

319 (4)

320 (j) The provisions of s. 947.1405 shall apply to persons
321 sentenced as habitual felony offenders and persons sentenced as
322 habitual violent felony offenders.

323 Section 6. For the purpose of incorporating the amendment
324 made by this act to section 947.1405, Florida Statutes, in a
325 reference thereto, section 944.70, Florida Statutes, is

326 reenacted to read:

327 944.70 Conditions for release from incarceration.—

328 (1) (a) A person who is convicted of a crime committed on
329 or after October 1, 1983, but before January 1, 1994, may be
330 released from incarceration only:

- 331 1. Upon expiration of the person's sentence;
- 332 2. Upon expiration of the person's sentence as reduced by
333 accumulated gain-time;
- 334 3. As directed by an executive order granting clemency;
- 335 4. Upon attaining the provisional release date;
- 336 5. Upon placement in a conditional release program
337 pursuant to s. 947.1405; or
- 338 6. Upon the granting of control release pursuant to s.
339 947.146.

340 (b) A person who is convicted of a crime committed on or
341 after January 1, 1994, may be released from incarceration only:

- 342 1. Upon expiration of the person's sentence;
- 343 2. Upon expiration of the person's sentence as reduced by
344 accumulated meritorious or incentive gain-time;
- 345 3. As directed by an executive order granting clemency;
- 346 4. Upon placement in a conditional release program
347 pursuant to s. 947.1405 or a conditional medical release program
348 pursuant to s. 947.149; or
- 349 5. Upon the granting of control release, including
350 emergency control release, pursuant to s. 947.146.

351 (2) A person who is convicted of a crime committed on or
352 after December 1, 1990, and who receives a control release date
353 may not refuse to accept the terms or conditions of control
354 release.

355 Section 7. For the purpose of incorporating the amendment
356 made by this act to section 947.1405, Florida Statutes, in a
357 reference thereto, paragraph (f) of subsection (1) of section
358 947.13, Florida Statutes, is reenacted to read:

359 947.13 Powers and duties of commission.—

360 (1) The commission shall have the powers and perform the
361 duties of:

362 (f) Establishing the terms and conditions of persons
363 released on conditional release under s. 947.1405, and
364 determining subsequent ineligibility for conditional release due
365 to a violation of the terms or conditions of conditional release
366 and taking action with respect to such a violation.

367 Section 8. For the purpose of incorporating the amendment
368 made by this act to section 947.1405, Florida Statutes, in a
369 reference thereto, subsections (1), (2), and (7) of section
370 947.141, Florida Statutes, are reenacted to read:

371 947.141 Violations of conditional release, control
372 release, or conditional medical release or addiction-recovery
373 supervision.—

374 (1) If a member of the commission or a duly authorized
375 representative of the commission has reasonable grounds to

376 believe that an offender who is on release supervision under s.
377 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
378 the terms and conditions of the release in a material respect,
379 such member or representative may cause a warrant to be issued
380 for the arrest of the releasee; if the offender was found to be
381 a sexual predator, the warrant must be issued.

382 (2) Upon the arrest on a felony charge of an offender who
383 is on release supervision under s. 947.1405, s. 947.146, s.
384 947.149, or s. 944.4731, the offender must be detained without
385 bond until the initial appearance of the offender at which a
386 judicial determination of probable cause is made. If the trial
387 court judge determines that there was no probable cause for the
388 arrest, the offender may be released. If the trial court judge
389 determines that there was probable cause for the arrest, such
390 determination also constitutes reasonable grounds to believe
391 that the offender violated the conditions of the release. Within
392 24 hours after the trial court judge's finding of probable
393 cause, the detention facility administrator or designee shall
394 notify the commission and the department of the finding and
395 transmit to each a facsimile copy of the probable cause
396 affidavit or the sworn offense report upon which the trial court
397 judge's probable cause determination is based. The offender must
398 continue to be detained without bond for a period not exceeding
399 72 hours excluding weekends and holidays after the date of the
400 probable cause determination, pending a decision by the

401 commission whether to issue a warrant charging the offender with
402 violation of the conditions of release. Upon the issuance of the
403 commission's warrant, the offender must continue to be held in
404 custody pending a revocation hearing held in accordance with
405 this section.

406 (7) If a law enforcement officer has probable cause to
407 believe that an offender who is on release supervision under s.
408 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
409 the terms and conditions of his or her release by committing a
410 felony offense, the officer shall arrest the offender without a
411 warrant, and a warrant need not be issued in the case.

412 Section 9. This act shall take effect October 1, 2019.