

Repeal the Perverse Bi-Polar PBL-Degree Called “A Felony of the First Degree, Punishable by Imprisonment For a Term Of Years Not Exceeding Life Imprisonment”

As bad as the Prison Releasee Reoffender (PRR) law, s. 775.082(9), Fla.Stat., is as far as resulting in mandatory life sentences for non-murderers, it is a different law that makes PRR require life sentences for robbers and burglars -- and that law may be easier politically to change than the PRR.

Here is what I am talking about, the perverse, bi-polar crime degree of a “felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment” (commonly called a PBL sentence, for Punishable By Life), which I will refer to here as a PBL-degree crime, which applies to about ten crimes, including robbery and burglary (the full list is below).

What I mean by bi-polar, is that that the PBL-degree wants to be both a first-degree felony (with a maximum 30-year sentence) and a life-felony (without parole). What? That makes no sense. A crime should be one degree or the other. Is a PBL-degree a first-degree felony or a life felony? How can it be both?

Take armed robbery for example, one of the PBL-degree crimes: if the PRR law is not involved, the most common sentence is from 10-15 years, close to what the CPC scoresheet would indicate. 50% of armed robbery sentences are less than 20 years, and 70% are less than 30 years. But even though the PRR law *requires* a mandatory life sentence for the same armed robbery crime, the PRR law does not even mention the “PBL degree” nor a “life felony” degree in its statutory text, but skips right up from a first-degree felony to “For a felony punishable by life, by a term of imprisonment for life.” So the PRR only includes *by implication* both the PBL-degree and the life-felony degree, without actually listing the PBL-degree and the life-felony degree.

How did this bi-polar, split-personality of the PBL-degree come about? In 1971 the Legislature created the new crime degree of a “**felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment,**” a perverse hybrid between a first-degree felony (punishable by up to 30 years in prison) and a life sentence. At the time that law was written, “Life” did not mean natural life without the possibility of parole. It was in 1983 that parole was ended, but up until 1995 and the 85% gain-time law, you typically did 40% of your sentence. Before then, a 30-year sentence for an armed robbery would typically end in 12 years (40%), so by creating the hybrid felony degree category of a first degree felony punishable by life in 1971, it enabled courts to increase time served for certain egregious armed robberies beyond 12-years to “life” — but a life sentence before 1995 did not mean the natural life sentence it has meant since then.

But by keeping the “first degree felony punishable by life” in the statute for armed robbery and nine other crimes, robbers and burglars can and do get natural Life sentences (and *must* get Life if subject to the Prison Releasee Reoffender law)— just because the Legislature did not bother to delete the “first degree punishable by life” from the robbery and burglary statutes in 1983 when parole was ended. Armed robbery or burglary should be at most a first-degree felony (up to 30 years). I don’t think the Legislature ever really intended natural life sentences for any

crimes except murder and some sex crimes, as that has surely caused a lot of robbers and burglars to kill their victim.

So if we can convince the Legislature to eliminate this perverse, hybrid, inbred felony level of “felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment” (by just making it a regular first-degree felony) and make it retroactive, that would at least knock those PRR life sentences down to a 30-year sentence (max for a first-degree felony).

Florida has 13,787 prisoners doing life, of whom 1,864 are robbers and 1,163 are burglars. Of the 7,207 murderers doing life, I wonder how many victims did they murder while really just trying to rob or burglarize someone, but figured a dead witness would make it easier to get away with the crime? Why not, if it is the same life sentence for an armed robbery or for a murder? Or how many actually got away with murder during a robbery or burglary because with no living witness, they were never caught at all? Too many for sure.

List of Crimes in Florida that include as a penalty a “felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment” (PBL-degree):

Crime	#	%
Murder	7,235	53%
Sexual Battery	2,266	16%
Robbery	1,861	14%
Burglary	1,054	8%
Kidnapping	404	3%
Sex	160	1%
Carjack	93	1%
Others	663	5%
Total	13,736	100%

Section 775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison:

s. 775.082 (3) A person who has been convicted of any other designated felony may be punished as follows:

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

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

3. Except as provided in subparagraph 4., **for a life felony committed on or after July 1, 1995, by a term of imprisonment for life** or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), [lewd or lascivious molestation] by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b) [lewd or lascivious molestation], by a term of imprisonment for life.

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

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

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

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

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

(Edited shorter version of Prison releasee reoffender (PRR) law):

s. 775.082(9)(a)1, Florida Statutes (9)(a)1. "**Prison releasee reoffender**" means any defendant who commits, or attempts to commit [list of crimes covered subject to life are **robbery** (with assault; while armed; **burglary** (with assault or while armed),; carjacking; home-invasion

robbery; kidnapping; 2nd degree murder; and Attempted felony murder] . . .**within 3 years after being released from a state correctional facility** operated by the Department of Corrections or a private vendor

(3). If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., **the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. . . . ; such defendant is not eligible for sentencing under the sentencing guidelines and *must be sentenced as follows:***

a. **For a felony punishable by life, by a term of imprisonment for life;**

b. For a felony of the first degree, by a term of imprisonment of 30 years;

. . .

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.