Eligibility for release and parole and probation

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Subject:
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PAROLE AND PROBATION--WHEN PERSON, UNDER MINIMUM SENTENCE FOR USE OF FIREARM OR DESTRUCTIVE DEVICE, ELIGIBLE FOR RELEASE

To: Ray E. Howard, Chairman, Florida Parole and Probation Commission, Tallahassee

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QUESTIONS:

1. When does a person under a minimum sentence pursuant to s. 775.087(2), F. S. 1975, become eligible for parole release?

2. Is such a person entitled to statutory gain time?

SUMMARY:

In answer to your questions raised by the passage of Ch. 75-7, Laws of Florida, amending s. 775.087(2), F. S., a person sentenced pursuant to this section is required to serve a minimum term of 3 years' imprisonment before being eligible for parole. Such a person is still entitled to both statutory and extra gain-time allowances even to the extent that the individual may be released from incarceration on mandatory conditional release prior to the service of 3 years' imprisonment.

By Ch. 75-7, Laws of Florida, s. 775.087(2), F. S., was amended to read:

"Any person who is convicted of any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, aircraft piracy, or any attempt to commit the aforementioned crimes, and said person had in his possession a firearm or destructive device as defined in subsection 790.001(4) or (6) shall be sentenced to a minimum term of imprisonment of 3 years. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred or withheld, nor shall the defendant be eligible for parole prior to serving such minimum sentence."

It is clear from the very terms of this statute that a person sentenced to a minimum term pursuant to s. 775.087(2), F. S., is not eligible for a parole under the provisions of Ch. 947, F. S., until he has served a minimum of 3 years' imprisonment.

In answer to your second question, I would first note that in passing s. 775.087(2), F. S., the Legislature did not specifically exclude application of the gain-time statutes, nor did the Legislature use terminology which could be positively interpreted that its intent was to provide for a minimum 3 calendar years' imprisonment. *Compare* s. 775.082(1), F. S., requiring service of a minimum of 25 calendar years before becoming eligible for parole for a person convicted of a capital felony and sentenced to life imprisonment.

Therefore, a person, even though sentenced to a minimum term under s. 775.087(2), F. S., is entitled to statutory gain time under s. 944.27, F. S., as well as extra gain-time allowances which may be granted in the discretion of the Division of Corrections under s. 944.29, F. S.

Under certain circumstances, a person sentenced to a minimum sentence of 3 years' imprisonment may, upon accumulation of sufficient gain time pursuant to ss. 944.27 and 944.29, F. S., be released from incarceration on mandatory conditional release procedures established by s. 944.291, F. S.