

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 346

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Conditional Medical Release

DATE: March 5, 2019

REVISED: 03/06/19

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Fav/CS</b>
2.	Jameson	Jameson	ACJ	<b>Recommend: Favorable</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 346 amends the eligibility criteria for conditional medical release (CMR). The bill creates a new CMR designation entitled “inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

The bill also modifies the current designation of “terminally ill inmate” to apply to inmates whose death is expected within 12 months, rather than imminent.

The bill also amends s. 947.005, F.S., adding a new definition for the term “conditional medical release.”

The bill reenacts a number of sections of law to incorporate changes made by the act.

The bill expands CMR by creating a new CMR designation and modifying a current designation, which will likely cause an increased number of inmates to be referred to the Florida Commission on Offender Review (FCOR) for CMR.

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, on February 27, 2019, the CJIC reviewed HB 607, which is similar to the current bill and estimated that the bill would have a “negative significant” prison bed impact.<sup>1</sup>

The bill is effective October 1, 2019.

## II. Present Situation:

The Criminal Punishment Code<sup>2</sup> (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>3</sup> The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.<sup>4</sup>

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.<sup>5</sup>

However, there are several exceptions provided in law that allow an inmate to be released from imprisonment prior to the service of 85 percent of his or her sentence, including, but not limited to, control release<sup>6</sup> and conditional medical release.<sup>7</sup>

### Conditional Medical Release

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,<sup>8</sup> is a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.<sup>9</sup> The Florida Commission on Offender Review (FCOR) reviews eligible inmates for release under the CMR program.<sup>10</sup>

Eligible inmates include inmates designated by the Department of Corrections (DOC) as a:

- “Permanently incapacitated inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the

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<sup>1</sup> Criminal Justice Impact Conference (updated through February 27, 2019), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls>.

<sup>2</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>3</sup> Section 921.0022, F.S.

<sup>4</sup> Section 775.082, F.S.

<sup>5</sup> Section 944.275, F.S., provides for various types of incentive and meritorious gain-time and establishes the prohibition of serving less than 85 percent of one’s sentence.

<sup>6</sup> Section 947.146, F.S., provides for the limited authority to release inmates to ensure that the prison bed capacity maintains between 99 and 100 percent of total capacity.

<sup>7</sup> Section 947.149, F.S.

<sup>8</sup> Chapter 92-310, L.O.F.

<sup>9</sup> Florida Commission on Offender Review, *Release Types, Post Release*, <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited January 28, 2019).

<sup>10</sup> Section 947.149(3), F.S.

inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or

- “Terminally ill inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.<sup>11</sup>

However, inmates sentenced to death are ineligible for CMR.<sup>12</sup>

The release of an inmate on CMR is for the remainder of the inmate’s sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.<sup>13</sup>

Supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or
- Her or his medical or physical condition improves to the point that the offender no longer meets the CMR criteria.<sup>14</sup>

Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 62 inmates for CMR in the last three fiscal years, including:

- 21 in FY 2017-2018;
- 14 in FY 2016-2017; and
- 27 in FY 2015-2016.<sup>15</sup>

The DOC has recommended 124 inmates for release in the past three fiscal years, including:

- 39 in FY 2017-2018;
- 34 in FY 2016-2017; and
- 51 in FY 2015-2016.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill amends s. 947.149, F.S., creating a new CMR designation entitled “inmate with a debilitating illness.” The designation “inmate with a debilitating illness” applies to an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

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<sup>11</sup> Section 947.149(1), F.S.

<sup>12</sup> Section 947.149(2), F.S.

<sup>13</sup> Section 947.149(4), F.S.

<sup>14</sup> Section 947.149(5), F.S.

<sup>15</sup> Email from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data (attachment on file with the Senate Committee on Criminal Justice) (December 15, 2017). *See also* FCOR Annual Report FY 2017-18, p. 8, <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited January 28, 2019).

<sup>16</sup> *Id.*

Additionally, the current designation of “terminally ill inmate” is amended to apply to inmates whose death is expected within 12 months, rather than imminent. The current designation of permanently incapacitated inmate is not altered.

The bill also amends s. 947.005, F.S., defining a new term, “conditional medical release,” to mean the release from a state correctional institution or facility as provided in this chapter for a medical or physical condition pursuant to s. 947.149, F.S.

The bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

The bill is effective October 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The bill expands CMR by creating a new CMR designation and modifying a current designation, which will likely cause an increased number of inmates to be referred to the FCOR for CMR. However, the number of additional inmates who will be eligible for release under the provisions of the bill is unknown. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds) and a reduction in the associated inmate healthcare costs. The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, on February 27, 2019, the CJIC reviewed HB 607, which is similar to the current bill and estimated that the bill would have a “negative significant” prison bed impact.<sup>17</sup>

The FCOR reports a unit cost of \$589.29 for each parole and conditional medical release determination.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 947.005 and 947.149.

This bill reenacts the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 11, 2019:**

The Committee Substitute:

- Deletes an unnecessary definition of “electronic monitoring” from s. 947.005, F.S.;
- Changes the newly created designation of “inmate with a debilitating disease” in s. 947.149, F.S., to:
  - Remove the requirement that the inmate be suffering from a permanent condition, disease, or syndrome; and

<sup>17</sup> Criminal Justice Impact Conference (updated through February 27, 2019), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls>.

<sup>18</sup> FCOR Annual Report FY 2017-18, p. 33, <https://www.fcor.state.fl.us/docs/reports/Annual%202018%20WEB.pdf> (last visited February 26, 2019).

- Permit the condition to be causing impairment, debilitation, or incapacitation of the inmate, rather than just debilitation or incapacitation.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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