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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/HB 1371

RELATING TO: Prison Release

SPONSOR(S): Committee on Crime and Punishment, Representative Putnam and Representative Crist

STATUTE(S) AFFECTED: s. 775.082, F.S., s. 944.705, F.S., s. 947.141, F.S., s. 948.06, F.S.

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME AND PUNISHMENT 8 YEAS 1 NAY
(2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 6 NAYS 2
(3)
(4)
(5)

I. SUMMARY:

Under this bill, an offender who commits a qualifying offense within three years from being released from prison is subject to minimum mandatory penalties upon a proper showing by the state attorney. Offenders who are sentenced under this bill must be sentenced to the maximum periods of incarceration for the applicable felony offense as provided under s. 775.082, F.S., as minimum mandatory sentences. Persons sentenced under the bill must serve 100% of the court-imposed sentence.

This bill requires the Department of Corrections to warn released inmates of the penalties provided herein.

This bill also imposes a mandatory forfeiture of gain time credits whenever an offender on supervision violates the terms of the supervision. Current law makes such gain time forfeitures discretionary.

The bill amends current law to allow law enforcement officers to arrest, without a warrant, probation and community control violators to the same extent probation officers can under existing law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Creation and Repeal of Early Release Statutes

From 1987 to 1990, the legislature enacted a series of early release statutes:

- Administrative gain-time (s. 944.276, F.S.)
- Provisional release credits (s. 944.277, F.S.)
- Control release (s. 947.146, F.S.)

authorizing the Department of Corrections or the Parole Commission to award early release credits or gain-time to state inmates when the population of the state prison system exceeded predetermined levels. Inmates who were statutorily eligible to receive administrative gain-time or provisional release credits automatically received them and did not need to work or earn the early release credits. The early release statutes were designed to alleviate prison overcrowding and to maintain the prison population within its lawfully prescribed level established in the federal court settlement agreement under Costello and Celestineo v. Wainwright.

From 1987 to 1993, the early release statutes were repeatedly activated and resulted in the early release of over 200,000 inmates which reduced the average time served to about one-third of the court imposed sentence. The use of early release mechanisms generated public safety concerns. The Legislature later repealed administrative gain-time and provisional release credits (Chapters 88-122 and 93-406, Laws of Florida), and created s. 944.278, F.S., which retroactively canceled those awards for all inmates serving a sentence in the custody of the Department of Corrections.

Control release, although inactive since December of 1994, is the sole early release mechanism which is statutorily authorized when the state prison system exceeds 99 percent of total capacity. In 1996, the legislature amended the control release statute and voided all control release dates established prior to July 1, 1996. This amendment in 1996 substantially postponed the date of release for several thousand inmates.

2. Keeping Prison Populations Below Thresholds for Early Release

To halt the early release of inmates, the Legislature began in 1988, and continued over the next eight years, an aggressive prison expansion program of appropriating and constructing over 49,000 prison beds. However, it was not until December of 1994, that the new prison beds coupled with the decline in prison admissions permitted the Legislature to stop the early release of inmates.

With the elimination of early release in December of 1994, inmates immediately began serving a substantially larger percentage of their sentence. Inmates released from prison in June of 1989, for example, served an average of only 34 percent of their sentence, whereas inmates today serve an average of 64 percent of their sentence.

3. The Cancellation of Administrative Gain-time and Provisional Release Credits

In 1989, the Legislature amended the provisional credits statute to render those convicted of certain murder and attempted murder offenses, ineligible for provisional credits. An opinion by the Attorney General concluded that amendments to the provisional release credit law applied retroactively. 92-96, Op. Fla. Att'y Gen. (1992). As a result, in 1992, the Department of Corrections retroactively cancelled provisional release credits for certain classes of inmates. Approximately 2,800 inmates had provisional release credits cancelled and arrest warrants were issued for 164 offenders who had been released early.

The following year, the Legislature created s. 944.278, F.S., which retroactively cancelled all administrative gain-time and provisional release credits substantially postponing the date of release for several thousand inmates.

On February, 19, 1997, the U.S. Supreme Court held in Lynce v. Mathis that Florida's 1992 and 1993 statutes canceling administrative gain-time and provisional release credits violated the Ex Post Facto Clause finding that it disadvantaged the affected inmates by increasing their punishment. Lynce v. Mathis, 65 U.S.L.W. 4131 (U.S. Feb. 19, 1997), (No. 95-7452).

As a result of Lynce, approximately 2,700 inmates will have their sentence reduced from 30 days up to 7 years. Of those affected, approximately 500 either have been or will be immediately released during the first two weeks of March, 1997. The remaining inmates will be released on an average of 10 to 12 inmates per month for several years to come. Of those 2,700 inmates, the Department of Corrections estimates that 1,800 or almost 68% will be under some type of supervision or placed under the custody of another law enforcement agency.

In adhering to the Lynce decision, the Department of Corrections has identified two unique classes of inmates who will not have administrative gain-time or provisional release credits restored: inmates sentenced to offenses committed before June 15, 1983, when an emergency release statutes was not in existence, and those inmates serving an offense during portions of 1986 and 1987 when the threshold for the early release mechanisms were never triggered.

4. Gain Time

Gain-time is a behavioral management tool used by prison officials to encourage satisfactory behavior while inmates are serving their sentences.

Section 944.275, F.S., provides for four types of gain-time to encourage satisfactory behavior and provide incentives for inmates to work and use their time constructively: basic gain-time, incentive gain-time, educational gain-time and meritorious gain-time.

This section was amended in 1993 and 1995 to repeal basic gain-time and reduce the amount of incentive gain-time the Department of Corrections is authorized to award. Specifically, the 1995 Legislature prospectively reduced the amount of incentive gain-time an inmate may earn from up to 20 days per month, to a maximum of 10 days per month. It also required all inmates sentenced to state prison for crimes committed on or after October 1, 1995, to serve no less than 85 percent of their sentence.

Based on an Attorney General opinion issued March 20, 1996, the Department of Corrections amended Rule 33-11.0065 of the Florida Administrative Code, and denied future incentive gain-time awards to inmates who had 85% or less of any sentence remaining to be served. The rule was effective April 21, 1996. The amended rule affected over 18,000 inmates and was projected on average to lengthen the time served in prison by several years. A small number of inmates (153) were projected to serve more than 20 years longer as a result of the amended rule.

On October 10, 1996, the Florida Supreme Court ruled in Gwong v. Singletary that the department could not change the manner in which incentive gain time was previously awarded, and that such a retrospective change violated the ex post facto clause of the U.S. Constitution. The Court further stated that the department cannot do by rule what the Legislature cannot do by law. Gwong v. Singletary, 683 So. 2d 109 (Fla. 1996), reh'g denied, No. 87,824, 1996 WL 673978 (Nov. 22, 1996), *cert denied*, 65 U.S.L.W. 3564 (U.S. Fla., Feb. 18, 1997) (No. 96-958).

As a result of Gwong, approximately 500 inmates were immediately released in November and December of 1996. By August 1997, about 1,800 additional inmates are projected to be released. Inmates affected by Gwong, mostly convicted of murder and sexual battery, were scheduled to be released by these dates prior to the department's adoption of the amended rule and the Florida Supreme Court decision.

5. Habitual Offenders and Habitual Violent Offenders

Habitual offender laws allow the court to double the statutory maximum periods of incarceration. To qualify as a "Habitual Felony Offender" under s. 775.084(1)(a), F.S., the defendant must have been previously convicted of two or more felonies (one of which may not be for possession or purchase of a controlled substance), and the current felony for which the defendant is to be sentenced occurred within 5 years of his last conviction or release from prison, whichever is later. (Except that the current felony cannot be for possession or purchase of a controlled substance.) For habitual felony offenders the court may, in its discretion, sentence an offender outside the sentencing guidelines as follows:

- For life felonies and felonies of the first degree - to life.
- For felonies of the second degree - to 30 years. [double the maximum]
- For felonies of the third degree - to 10 years. [double the maximum]

To qualify as a "Habitual Violent Felony Offender" under s. 775.084(1)(b), F.S., the defendant must have been previously convicted of one or more enumerated violent felony offenses, or attempts, or conspiracy to commit such offense, and the current felony for which the defendant is to be sentenced occurred within 5 years of the last enumerated conviction or release from prison, whichever is later. For habitual felony offenders the court may, in its discretion, sentence an offender to the same periods set out above. However, such periods of imprisonment are subject to mandatory minimums of 15 years for a life felony or first degree felony, 10 years for a second degree felony, and 5 years on a third degree felony. (See *Comments* for comparison of Habitual Offender provisions to this bill.)

B. EFFECT OF PROPOSED CHANGES:

1. Qualifying Offenses

Under this Committee Substitute, an offender who commits a qualifying offense within three years from being released from prison is subject to the penalties prescribed in this bill upon a proper showing by the state attorney. Those qualifying offenses which trigger the application of this bill are:

- Treason; murder; manslaughter; sexual battery; car jacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing or discharging of a destructive device or bomb; any felony which involves the use or threat of physical force or violence against an individual; armed burglary; burglary of an occupied structure or dwelling; or any burglary if the person has two prior felony convictions.

- Under s. 790.07, F.S., - any person who while committing, or attempting to commit, any felony or while under indictment, displays, uses or threatens to use a weapon, electric weapon, firearm, concealed weapon, or concealed firearm (excluding some non-violent felonies).

- Under s. 800.04, F.S., - lewd, lascivious, or indecent assault or act upon or in the presence of a child.

- Under s. 827.03, F.S., - Aggravated Child Abuse, Felony Child Abuse, or Felony Neglect of a Child.

- Under s. 827.071, F.S., - Sexual Performance by a Child.

2. State Attorneys Required to Make Proper Showing

The application of the penalties provided by this bill are triggered by a submission of proof by the state attorney to the sentencing court, that a defendant qualifies as a "prison releasee reoffender." Upon the court finding, by a preponderance of the evidence, that the proper showing has been made, the court must impose the prescribed sentence.

3. Penalties

Offenders who fall within the scope of this bill will be sentenced to the maximum periods of incarceration for the applicable felony offense as provided under s. 775.082, F.S., as minimum mandatory sentences. Any first degree felony that is punishable by life, is treated as a life felony. Offenders sentenced under the bill will serve 100% of their sentence with no mechanism for early release, probation, or parole.

This bill also amends s. 947.141, F.S. and s. 948.06, F.S., to provide for mandatory forfeiture of gain time credits whenever an offender on conditional release, probation, community control, or control release has such status revoked due to a violation of the terms of his supervision. The current state of the law makes such forfeitures discretionary.

4. Warrantless Arrest of Probation and Community Control Violators

This CS also expands the warrantless arrest provisions of s. 948.06, F.S., to allow law enforcement officers to arrest probation and community control violators when they have reasonable cause to believe that a violation has occurred. This is the same standard by which probation officers make warrantless arrests under the current law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

A new responsibility will arise for the Department of Corrections and prosecutors to check and obtain inmate release records if the prosecutor chooses to trigger the penalty provisions of this bill.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

   a. Does the bill increase anyone's taxes?

      No.

   b. Does the bill require or authorize an increase in any fees?

      No.

   c. Does the bill reduce total taxes, both rates and revenues?

      No.

   d. Does the bill reduce total fees, both rates and revenues?

      No.

   e. Does the bill authorize any fee or tax increase by any local government?

      No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      No.

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      Not applicable.

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      Not applicable.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. - Title section.

Section 2. - Amends s. 775.082, F.S., as discussed in section II, B.

Section 3. - Amends s. 944.705, F.S., to create a provision requiring the Department of Corrections to provide notice to all inmates who will qualify for sentencing under the provisions of this bill.

Section 4. - Amends s. 947.141, F.S., as discussed in section II, B.

Section 5. - Amends s. 948.06, F.S., as discussed in section II, B.

Section 6. - Reenacts s. 948.01, F.S., s. 958.14, F.S. for purposes of incorporating the amendment to s. 948.06, F.S.

Section 7. - Provides an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, see *Fiscal Comments.*

2. Recurring Effects:

	FY 97-98	FY 98-99	FY 99-00
Department of Corrections	$1,534,314	$8,179,058	$21,877,498

See *Fiscal Comments* for information regarding action by the Criminal Justice Appropriations Committee.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, see *Fiscal Comments.*

4. Total Revenues and Expenditures:

See A.1., 2., and 3. Above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   Indeterminate, see *Fiscal Comments.*

2. Recurring Effects:

   Indeterminate, see *Fiscal Comments.*

3. Long Run Effects Other Than Normal Growth:

   Indeterminate, see *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Not applicable.

2. Direct Private Sector Benefits:

   Not applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Not applicable.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference (CJEC) addressed CS/HB 1371 on March 21, 1997 to determine the prison bed impact of the bill. The CJEC projected the first two years impact to be 778 additional beds. Assuming the current CJEC forecast holds for the next two years, the current prison bed surplus could absorb the initial impact of the bill. The subsequent years' projections would deplete the surplus by the year 2000. If any other bills with projected bed impact pass this legislative session, the combined impacts could deplete the current surplus prior to 2000 and additional beds would be necessary.

On March 27, 1997, The Criminal Justice Appropriations Committed passed CS/HB 1371 as a committee substitute with one amendment. As of the date of this analysis, the CJEC had not determined the prison bed impact of the Appropriations Committee amendment, but is scheduled to address the impact on April three, 1997. The amendment is expected to change the impact on prison beds, thus changing the fiscal impact.

The long term impacts of this bill are difficult to estimate due to prosecutorial and judicial behavior, but will probably be substantial in both the operating and capital costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

1. CS/HB 1371 Compared to the Habitual Offender Statute

While "habitual offenders" committing new (non-specific) felonies within five years would fall within the scope of the habitual offender statute, this bill is distinguishable from the habitual offender statute in its certainty of punishment, and its mandatory nature. The habitual offender statute basically doubles the statutory maximum periods of incarceration under s. 775.082 as a potential maximum sentence for the offender. On the other hand, the minimum mandatory prison terms are lower under the habitual violent felony offender statute, than those provided under the bill. In addition, a court may decline to impose a habitual offender or habitual violent offender sentence.

2. Prison Management

Because the penalties involved under the bill are minimum mandatory sentences, the Department of Corrections may face some disciplinary problems with those offenders serving sentences with no prospect for gain time awarded for good behavior.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

This second CS has made the following changes to the first CS:

- The penalties provided for under the bill will apply to all inmates who commit a qualifying offense within 3 years of release.

- The qualifying offenses have been expanded to include:
  - Aggravated Stalking
  - Aggravated Assault

- Burglary of an Occupied Structure or Dwelling
- Armed Burglary
- Any Burglary if the person has two prior felony convictions
- Child Abuse
- Any felony which involves the use of threat of physical force or violence against an individual

- Amends s. 948.06, F.S., to allow law enforcement officers to arrest, without a warrant, probation and community control violators to the same extent probation officers can under the current law.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Legislative Research Director:
David De La Paz	Willis Renuart

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:	Legislative Research Director:
Mary Cintron	Mary Cintron