

STORAGE NAME: s1714s1.cor

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 1714, First Engrossed

RELATING TO: Parole Commission (RAB)

SPONSOR(S): Criminal Justice and Senator Burt

COMPANION BILL(S): none

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CORRECTIONS
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill eliminates the broad rulemaking authority vested with the Parole Commission in s. 947.07, F.S., and provides specific rulemaking authority to the Parole Commission for a variety of commission functions and duties particularly related to administration, parole, conditional release, control release, and conditional medical release. Specifically, the commission is authorized to adopt rules related to any statutory programs under the jurisdiction and authority of the commission, including, but not limited to, parole, mutual participation program, control release, conditional release and conditional medical release. The rules authorized relate to:

- definitions;
- eligibility;
- interview procedures;
- objective criteria and guidelines;
- salient-factor scoring;
- determinations of release dates;
- voting;
- decisions outside the matrix time ranges;
- actions regarding special cases;
- time in custody calculations;
- administrative review;
- commission notification;
- terms and conditions of supervision;
- arrests and revocation procedures and hearings;
- early termination of supervision; and
- victim participation.

This legislation does not authorize the rules identified by the commission and reported to JAPC as exceeding statutory authority pursuant to the new APA process. Therefore, this legislation is not required pursuant to s. 120.536 (2), F.S.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The APA and the Rule Review by the Parole Commission

The 1996 legislature enacted a comprehensive rewrite of the Florida Administrative Procedures Act (APA) which imposed a stricter standard for rulemaking and included a provision for periodic review of rules by agencies, including the Parole Commission. The APA revisions were designed to draw a closer relationship between rules and the implementing statute and enhance legislative oversight.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies, including the Parole Commission, had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must *implement, interpret, or make specific* the particular powers and duties granted by the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself for an agency to adopt a rule. Likewise, agencies like the Parole Commission need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997. In response, the Parole Commission reported primarily that it did not have authority for it to have rules relating to minority business enterprise procurement.

Rules Identified by the Parole Commission as Exceeding Statutory Authority

Pursuant to s. 120.536 (2), F.S., the commission reported to the Joint Administrative Procedures Committee (JAPC) that it had identified as exceeding statutory authority the following rules in the Florida Administrative Code:

CHAPTER 23-15. PRACTICES AND PROCEDURES (of the Commission)

23-15.040 Definitions. (relating to minority business act)

23-15.041 Purpose and Scope. (relating to minority business act)

23-15.042 Goals for Minority Business Enterprise Procurement.

23-15.043 Procedures for Minority Business Enterprise Procurement.

CHAPTER 23-21. COMMISSION OPERATIONS

23-21.023 Compulsory Conditional Release.¹

In its submittal to JAPC, the commission also proposed revisions to s. 947.07, F.S. However, the proposed legislation submitted to JAPC recommended specific legislation *not* authorizing the identified rules, or portions thereof, but rather authorizing rules that had not been identified as exceeding statutory authority pursuant to the new APA process.

Legislative Review

Section 120.536 (2), F.S., describes the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the *identified* rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

While the Parole Commission identified rules related to minority business procurement and compulsory conditional release, the legislation it submitted pursuant to the process described above did not authorize the *identified* rules, but rather it authorized a wide variety of rules relating to all functions within the Parole Commission.

Rules, Rulemaking Authority and Statutory Functions/Programs

Current law in s. 947.07, F.S., states that the Parole Commission has the power to “make such rules and regulations as it deems best for its governance, including among other things, rules of practice and procedure and rules prescribing qualifications to be possessed by its employees”.

Additionally, s. 947.071, F.S., specifies rulemaking procedures and indexing of orders. The only final orders of the commission which shall be indexed are orders:

- granting parole;
- revoking parole;
- restoring to supervision;
- releasing from custody and further supervision;
- granting early parole termination;
- granting conditional release; and
- revoking conditional release.

The main statutory programs and functions that are operated and performed by the Parole Commission are: parole, conditional release, clemency investigations, control release, and conditional medical release.

¹The statutory authorization for this program in s. 944.598, F.S., was repealed in 1993 in Chapter 93-406.

Chapter 23 of the Florida Administrative Code pertains to the regulations of the Florida Parole Commission. Following is a list of rules regulating the administration and functions of the Parole Commission:

CHAPTER 23-4. INTERSTATE COMPACT FOR PAROLE AND PROBATION SUPERVISION

- 23-4.001 Purpose.
- 23-4.002 Required.
- 23-4.003 Basic Procedures.
- 23-4.004 General Rule.
- 23-4.005 Agreement.

CHAPTER 23-15. PRACTICES AND PROCEDURES (of the Commission)

- 23-15.002 Notice of Meeting and Proposed Rules.
- 23-15.003 Agenda of Meetings and Workshops.
- 23-15.004 Emergency Meetings.
- 23-15.005 Public Access.
- 23-15.006 General Requirements for Declaratory Statement.
- 23-15.007 Petition for Declaratory Statement.
- 23-15.008 Purpose and Use of Declaratory Statement.
- 23-15.009 Commission Disposition of Declaratory Statements.
- 23-15.010 Adoption of Model Rules of Procedure.
- 23-15.011 Commission Voting.
- 23-15.015 Indexing of Orders.
- 23-15.020 Designation of Agency Clerk.
- 23-15.026 Removal or Termination of Senior Management or Selected Exempt Service Employees.
- 23-15.030 Standards of Conduct and Standards for Disciplinary Action for Career Service Employees.
- 23-15.031 Commissioner Leave Time Held in Abeyance.
- 23-15.040 Definitions.
- 23-15.041 Purpose and Scope.
- 23-15.042 Goals for Minority Business Enterprise Procurement.
- 23-15.043 Procedures for Minority Business Enterprise Procurement.
- 23-15.050 Loss Control Management.
- 23-15.055 Florida Clean Indoor Air Act.
- 23-15.060 Resolution of Disputes Arising from the Contract Bidding Process.

CHAPTER 23-19. OBJECTIVE PAROLE CRITERIA

- 23-19.001 Offense Severity Rating.

CHAPTER 23-20. MUTUAL PARTICIPATION PROGRAM

- 23-20.001 Definitions.
- 23-20.002 Scope of Responsibility.
- 23-20.003 Criteria for Program Eligibility.
- 23-20.004 Mutual Participation Program Agreement Provisions.

- 23-20.005 Criteria for Parole Under the Mutual Participation Program.
- 23-20.006 Processing of Mutual Participation Program Agreements.
- 23-20.007 Procedures.

CHAPTER 23-21. COMMISSION OPERATIONS

- 23-21.001 General.
- 23-21.002 Definitions.
- 23-21.003 Commission Organization.
- 23-21.004 Commission Meetings.
- 23-21.005 Parole Application. **(REPEALED)**
- 23-21.0051 Full Commission Reviews.
- 23-21.006 Initial Interview Procedure.
- 23-21.007 Salient Factor Scoring.
- 23-21.008 Severity of Offense Behavior.
- 23-21.009 Matrix Time Ranges.
- 23-21.010 Decisions Outside the Matrix Time Range.
- 23-21.011 Calculating Time in Custody.
- 23-21.012 Inmate Initiated Review of Presumptive Parole Release Date.
- 23-21.013 Biennial Interview Procedure.
- 23-21.014 Special Interviews.
- 23-21.015 Effective Parole Release Data Interview Procedure.
- 23-21.0155 Extraordinary Interview and Review Procedures.
- 23-21.016 Notice to Local Agencies.
- 23-21.0165 Conditions of Parole.
- 23-21.017 Review of Term and Conditions of Parole.
- 23-21.018 Disposition of Special Types of Cases Under the Guidelines.
- 23-21.019 Parole Rescission.
- 23-21.020 Early Termination of Parole.
- 23-21.021 Warrant and Arrest.
- 23-21.022 Revocation of Parole and Compulsory Conditional Release; Preliminary Hearings; Final Hearings.
- 23-21.023 Compulsory Conditional Release.

CHAPTER 23-22. CONTROL RELEASE

- 23-22.001 General.
- 23-22.002 Notice of Meetings, Workshops and Proposed Rules.
- 23-22.003 Agenda of Meetings and Workshops.
- 23-22.004 Emergency Meetings.
- 23-22.005 Commission Meetings and Workshops Pertaining to Control Release.
- 23-22.006 Control Release Definitions.
- 23-22.007 Victim Input.
- 23-22.008 Control Release Evaluation Procedure.
- 23-22.009 Disposition of Special Types of Cases Involving Control Release.
- 23-22.010 Advancing or Extending Control Release Dates.
- 23-22.011 Notice of Release by Control Release.
- 23-22.012 Review of Control Release Dates.
- 23-22.013 Control Release Supervision.
- 23-22.014 Revocation of Control Release.

23-22.015 Control Release Forms.

CHAPTER 23-23. CONDITIONAL RELEASE PROGRAM

23-23.001 General.

23-23.002 Notice of Meetings, Workshops and Proposed Rules.

23-23.003 Agenda of Meetings and Workshops.

23-23.004 Emergency Meetings.

23-23.005 Commission Meetings and Workshops Pertaining to Conditional Release.

23-23.006 Conditional Release Definitions.

23-23.007 Victim Information.

23-23.008 Conditional Release Evaluation Procedure.

23-23.009 Notice of Release by Conditional Release.

23-23.010 Conditional Release Supervision.

23-23.011 Revocation of Conditional Release.

23-23.012 Conditional Release Forms.

CHAPTER 23-24. CONDITIONAL MEDICAL RELEASE PROGRAM

23-24.010 General.

23-24.015 Notice of Meetings, Workshops and Proposed Rules.

23-24.020 Conditional Medical Release Eligibility.

23-24.025 Victim Input into Commission Decisions.

23-24.030 Conditions of Conditional Medical Release.

23-24.040 Conditional Medical Release Recision.

23-24.050 Revocation of Conditional Medical Release.

23-24.060 Conditional Medical Release Forms.

SUBTITLE 23A. PAROLE AND PROBATION COMMISSION QUALIFICATIONS COMMITTEE

CHAPTER 23A-1. PROCEDURAL RULES OF THE PAROLE COMMISSION QUALIFICATIONS COMMITTEE

23A-1.001 Definitions.

23A-1.002 Committee Description and Purpose.

23A-1.003 Procedures for Applications.

23A-1.004 Plan for Evaluation of Qualifications.

23A-1.005 Rulemaking.

23A-1.006 Notice of Meeting or Workshop.

23A-1.007 Agenda of Meetings and Workshops.

23A-1.008 Emergency Meetings.

B. EFFECT OF PROPOSED CHANGES:

CS/SB 1714, first engrossed, eliminates the broad rulemaking authority vested with the Parole Commission in s. 947.07, F.S., and provides specific rulemaking authority to the Parole Commission for a variety of commission functions and duties particularly related to administration, parole, conditional release, control release, and conditional medical release.

Specifically, the commission is authorized to adopt rules related to any statutory programs under the jurisdiction and authority of the commission, including, but not limited to, parole, mutual participation program, control release, conditional release and conditional medical release. The rules authorized relate to:

- definitions;
- eligibility;
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- decisions outside the matrix time ranges;
- actions regarding special cases;
- time in custody calculations;
- administrative review;
- commission notification;
- terms and conditions of supervision;
- arrests and revocation procedures and hearings;
- early termination of supervision; and
- victim participation.

CS/SB 1714, 1st engrossed, does not authorize the rules identified by the commission and reported to JAPC as exceeding statutory authority pursuant to the new APA process. Consequently, it is difficult to determine whether the statutory changes provided in this bill will result in an increase or change in policy related to the Parole Commission's functions and activities. While it would appear that the bill merely makes specific the current general grant of rulemaking authority, the statutory changes may be perceived as an additional grant of authority.

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?

The bill will enable the commission to, theoretically, maintain the current rules that have been adopted. The absence of this legislation would reduce the ability of the commission to maintain their current rules.

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

No

- (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?

N/A

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

N/A

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

N/A

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?

No

4. Individual Freedom:

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

No

- 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?

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 947.07, F.S.

E. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties and municipalities to raise funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Legislative Research Director:

Amanda Cannon

Amanda Cannon