

By Senator Holzendorf

21-1461-98

See HB

1 A bill to be entitled
2 An act relating to conditional release;
3 creating s. 947.1491, F.S.; establishing the
4 conditional drug offender release program;
5 specifying eligibility criteria; providing for
6 the Parole Commission to consider inmates for
7 the conditional release program upon the
8 recommendation of the citizens' advisory
9 committee; clarifying that the inmate has no
10 right to conditional drug offender release or
11 review; authorizing the commission to grant or
12 deny conditional drug offender release;
13 requiring that probation or community control
14 be substituted under certain circumstances;
15 requiring the conditional release date to be
16 set based on a system of uniform criteria;
17 authorizing the commission to determine the
18 terms, conditions, and lengths of supervision,
19 determine violations, and adopt rules; creating
20 s. 947.1492, F.S.; establishing a citizens'
21 advisory committee; specifying its purpose and
22 composition; assigning the committee to the
23 commission for staffing and administrative
24 support; requiring that the chair be selected
25 by the members for a term of 1 year; requiring
26 the committee to meet a minimum of five times
27 annually; specifying that a majority of the
28 membership constitutes a quorum; requiring the
29 chair to record proceedings of the committee;
30 authorizing per diem and travel expenses for
31 members; amending s. 947.141, F.S.; providing

1 for issuance of arrest warrant for an offender
2 who has violated conditional drug offender
3 release terms and conditions; providing for
4 detention without bond of the offender upon
5 arrest on a felony charge; requiring a hearing
6 within a specified period after notice to the
7 Parole Commission of the arrest; providing for
8 orders of revocation of conditional drug
9 offender release under specified circumstances;
10 reenacting s. 947.146(12) and (14), F.S.,
11 relating to Control Release Authority, and s.
12 947.149(5), F.S., relating to conditional
13 medical release, to incorporate the amendment
14 in references; conforming cross-references;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 947.1491, Florida Statutes, is
20 created to read:

21 947.1491 Conditional drug offender release program.--

22 (1) There shall be established a conditional drug
23 offender release program.

24 (2) Any inmate who is serving a prison sentence for a
25 drug offense conviction pursuant to s. 893.13 or s. 893.135
26 shall be eligible for consideration for the conditional drug
27 offender release program.

28 (3) Notwithstanding any provision to the contrary, any
29 person deemed eligible under this section, sentenced to the
30 custody of the department and housed in a state or private
31 correctional facility may, only upon the recommendation of the

1 citizens' advisory committee, be considered for conditional
2 drug offender release by the commission. No inmate has a
3 right to conditional drug offender release or to a review by
4 either the commission or the advisory committee.

5 (4) The authority to recommend conditional drug
6 offender release rests solely within the discretion of the
7 committee.

8 (5) The authority to grant conditional drug offender
9 release and establish conditions of release rests solely
10 within the discretion of the commission.

11 (6) If an inmate has received a term of probation or
12 community control supervision to be served after release from
13 incarceration, the period of probation or community control
14 must be substituted for the conditional drug offender release
15 supervision.

16 (7) A panel of no fewer than two commissioners shall
17 set the conditional release date pursuant to this section
18 based upon a system of uniform criteria, which shall include,
19 but not be limited to, present offenses for which the person
20 is committed, past criminal conduct, length of cumulative
21 sentences, and age of the offender at the time of commitment,
22 together with any aggravating or mitigating circumstances.

23 (8) In implementing the provisions of this section,
24 the commission has the power and duty to:

25 (a) Determine the terms, conditions, and length of
26 supervision for persons released pursuant to this section.

27 (b) Determine violations of conditional release and
28 the necessary actions resulting from the violations.

29 (c) Adopt rules to implement the provisions of this
30 section.

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1 Section 2. Section 947.1492, Florida Statutes, is
2 created to read:

3 947.1492 Citizens' advisory committee.--

4 (1) There shall be established a citizens' advisory
5 committee. The primary purpose of the committee shall be to
6 advise and make recommendations to the commission on the
7 conditional release of drug offenders.

8 (2) The committee shall consist of five members
9 appointed by the Governor subject to confirmation by the
10 Senate. The initial members of the committee shall be
11 appointed by October 1, 1998. Members of the committee shall
12 serve terms of 4 years each, except that two of the initial
13 members shall be appointed for terms of 2 years each. Members
14 of the committee shall consist of a psychiatrist; a licensed
15 psychologist; a certified law enforcement officer; a person
16 employed by the private sector; and a former state inmate who
17 has demonstrated successful reintegration back into the
18 community. The committee's membership should, to the extent
19 possible, contain persons who are knowledgeable about public
20 safety, substance abuse issues, and drug offender
21 rehabilitation.

22 (3) The committee is assigned to the Parole Commission
23 for staffing, administrative, and fiscal accountability
24 purposes, but shall otherwise function independently of the
25 control and direction of the Parole Commission.

26 (4) The chair of the committee shall be selected by
27 the members for a term of 1 year.

28 (5) The committee shall hold a minimum of five regular
29 meetings annually, and other meetings may be called by the
30 chair upon giving at least 7 days' notice to all members and
31 to the public pursuant to chapter 120. The meetings of the

1 committee shall be held in the central office of the Parole
2 Commission in Tallahassee unless the chair determines that
3 special circumstances warrant a meeting at another location.

4 (6) A majority of the membership of the committee
5 constitutes a quorum at any meeting of the committee. An
6 action of the committee is not binding unless the action is
7 taken pursuant to an affirmative vote of a majority of the
8 members present, but not fewer than three members of the
9 committee must be present, and the vote must be recorded in
10 the minutes of the meeting.

11 (7) The chair shall cause to be made a complete record
12 of the proceedings of the committee, which record shall be
13 open for public inspection.

14 (8) Members of the committee are entitled to per diem
15 and travel expenses pursuant to s. 112.061.

16 Section 3. Subsections (1), (2), (3), (4), and (6) of
17 section 947.141, Florida Statutes, are amended to read:

18 947.141 Violations of conditional release, control
19 release, ~~or~~ conditional medical release, or conditional drug
20 offender release.--

21 (1) If a member of the commission or a duly authorized
22 representative of the commission has reasonable grounds to
23 believe that an offender who is on release supervision under
24 s. 947.1405, s. 947.146, ~~or~~ s. 947.149, or s. 947.1491 has
25 violated the terms and conditions of the release in a material
26 respect, such member or representative may cause a warrant to
27 be issued for the arrest of the releasee; if the offender was
28 found to be a sexual predator, the warrant must be issued.

29 (2) Upon the arrest on a felony charge of an offender
30 who is on release supervision under s. 947.1405, s. 947.146,
31 ~~or~~ s. 947.149, or s. 947.1491, the offender must be detained

1 without bond until the initial appearance of the offender at
2 which a judicial determination of probable cause is made. If
3 the magistrate determines that there was no probable cause for
4 the arrest, the offender may be released. If the magistrate
5 determines that there was probable cause for the arrest, such
6 determination also constitutes reasonable grounds to believe
7 that the offender violated the conditions of the release.
8 Within 24 hours after the magistrate's finding of probable
9 cause, the detention facility administrator or designee shall
10 notify the commission and the department of the finding and
11 transmit to each a facsimile copy of the probable cause
12 affidavit or the sworn offense report upon which the
13 magistrate's probable cause determination is based. The
14 offender must continue to be detained without bond for a
15 period not exceeding 72 hours excluding weekends and holidays
16 after the date of the probable cause determination, pending a
17 decision by the commission whether to issue a warrant charging
18 the offender with violation of the conditions of release. Upon
19 the issuance of the commission's warrant, the offender must
20 continue to be held in custody pending a revocation hearing
21 held in accordance with this section.

22 (3) Within 45 days after notice to the Parole
23 Commission of the arrest of a releasee charged with a
24 violation of the terms and conditions of conditional release,
25 control release, ~~or~~ conditional medical release, or
26 conditional drug offender release, the releasee must be
27 afforded a hearing conducted by a commissioner or a duly
28 authorized representative thereof. If the releasee elects to
29 proceed with a hearing, the releasee must be informed orally
30 and in writing of the following:

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1 (a) The alleged violation with which the releasee is
2 charged.
3 (b) The releasee's right to be represented by counsel.
4 (c) The releasee's right to be heard in person.
5 (d) The releasee's right to secure, present, and
6 compel the attendance of witnesses relevant to the proceeding.
7 (e) The releasee's right to produce documents on the
8 releasee's own behalf.
9 (f) The releasee's right of access to all evidence
10 used against the releasee and to confront and cross-examine
11 adverse witnesses.
12 (g) The releasee's right to waive the hearing.
13 (4) Within a reasonable time following the hearing,
14 the commissioner or the commissioner's duly authorized
15 representative who conducted the hearing shall make findings
16 of fact in regard to the alleged violation. A panel of no
17 fewer than two commissioners shall enter an order determining
18 whether the charge of violation of conditional release,
19 control release, ~~or~~ conditional medical release, or
20 conditional drug offender release has been sustained based
21 upon the findings of fact presented by the hearing
22 commissioner or authorized representative. By such order, the
23 panel may revoke conditional release, control release, ~~or~~
24 conditional medical release, or conditional drug offender
25 release and thereby return the releasee to prison to serve the
26 sentence imposed, reinstate the original order granting the
27 release, or enter such other order as it considers proper.
28 Effective for inmates whose offenses were committed on or
29 after July 1, 1995, the panel may order the placement of a
30 releasee, upon a finding of violation pursuant to this
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1 subsection, into a local detention facility as a condition of
2 supervision.

3 (6) Whenever a conditional release, control release,
4 ~~or conditional medical release,~~ or conditional drug offender
5 release is revoked by a panel of no fewer than two
6 commissioners and the releasee is ordered to be returned to
7 prison, the releasee, by reason of the misconduct, shall be
8 deemed to have forfeited all gain-time or commutation of time
9 for good conduct, as provided for by law, earned up to the
10 date of release. However, if a conditional medical release is
11 revoked due to the improved medical or physical condition of
12 the releasee, the releasee shall not forfeit gain-time accrued
13 before the date of conditional medical release. This
14 subsection does not deprive the prisoner of the right to
15 gain-time or commutation of time for good conduct, as provided
16 by law, from the date of return to prison.

17 Section 4. For the purpose of incorporating the
18 amendment made by this act to section 947.141, Florida
19 Statutes, in a reference thereto, subsections (12) and (14) of
20 section 947.146, Florida Statutes, are reenacted to read:

21 947.146 Control Release Authority.--

22 (12) When the authority has reasonable grounds to
23 believe that an offender released under this section has
24 violated the terms and conditions of control release, such
25 offender shall be subject to the provisions of s. 947.141 and
26 shall be subject to forfeiture of gain-time pursuant to s.
27 944.28(1).

28 (14) Effective July 1, 1996, all control release dates
29 established prior to such date become void and no inmate shall
30 be eligible for release under any previously established
31 control release date. Offenders who are under control release

1 supervision as of July 1, 1996, shall be subject to the
2 conditions established by the authority until such offenders
3 have been discharged from supervision. Offenders who have
4 warrants outstanding based on violation of supervision as of
5 July 1, 1996, or who violate the terms of their supervision
6 subsequent to July 1, 1996, shall be subject to the provisions
7 of s. 947.141.

8 Section 5. For the purpose of incorporating the
9 amendment made by this act to section 947.141, Florida
10 Statutes, in a reference thereto, subsection (5) of section
11 947.149, Florida Statutes, is reenacted to read:

12 947.149 Conditional medical release.--

13 (5)(a) If it is discovered during the conditional
14 medical release that the medical or physical condition of the
15 medical releasee has improved to the extent that she or he
16 would no longer be eligible for conditional medical release
17 under this section, the commission may order that the releasee
18 be returned to the custody of the department for a conditional
19 medical release revocation hearing, in accordance with s.
20 947.141. If conditional medical release is revoked due to
21 improvement in the medical or physical condition of the
22 releasee, she or he shall serve the balance of her or his
23 sentence with credit for the time served on conditional
24 medical release and without forfeiture of any gain-time
25 accrued prior to conditional medical release. If the person
26 whose conditional medical release is revoked due to an
27 improvement in medical or physical condition would otherwise
28 be eligible for parole or any other release program, the
29 person may be considered for such release program pursuant to
30 law.

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1 (b) In addition to revocation of conditional medical
2 release pursuant to paragraph (a), conditional medical release
3 may also be revoked for violation of any condition of the
4 release established by the commission, in accordance with s.
5 947.141, and the releasee's gain-time may be forfeited
6 pursuant to s. 944.28(1).

7 Section 6. This act shall take effect upon becoming a
8 law.

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11 LEGISLATIVE SUMMARY

12 Establishes a conditional drug offender release program.
13 Specifies eligibility criteria. Provides for the Parole
14 Commission to consider inmates for the conditional
15 release program upon the recommendation of the citizens'
16 advisory committee. Clarifies that the inmate has no
17 right to conditional drug offender release or review.
18 Authorizes the commission to grant or deny conditional
19 drug offender release. Requires that probation or
20 community control be substituted under certain
21 circumstances. Requires the conditional release date to
22 be set based on a system of uniform criteria. Authorizes
23 the commission to determine the terms, conditions, and
24 lengths of supervision, determine violations, and adopt
25 rules. Establishes a citizens' advisory committee.
26 Specifies its purpose and composition. Assigns the
27 committee to the commission for staffing and
28 administrative support. Authorizes per diem and travel
29 expenses for members. Provides for issuance of arrest
30 warrant for offender who has violated conditional drug
31 offender release terms and conditions. Provides for
detention without bond of the offender upon arrest on a
felony charge. Requires a hearing within a specified
period after notice to the Parole Commission of the
arrest. Provides for orders of revocation of conditional
drug offender release under specified circumstances.