

**STORAGE NAME:** H3791.cor  
**DATE:** March 26, 1998

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

**BILL #:** HB 3791  
**RELATING TO:** Drug Offenders/ Conditional Release  
**SPONSOR(S):** Representative Reddick  
**COMPANION BILL(S):** SB 1858 (I)

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

- (1) CORRECTIONS
  - (2) CRIME & PUNISHMENT
  - (3) GOVERNMENTAL RULES & REGULATIONS
  - (4) CRIMINAL JUSTICE APPROPRIATIONS
  - (5)
- 

I. SUMMARY:

HB 3791 establishes a conditional drug offender release program. The bill further:

provides for the Parole Commission to consider eligible inmates for the conditional release program upon recommendation of the citizen's advisory committee;

clarifies that no inmate has no right to conditional drug offender release or review and authorizes the commission to grant or deny conditional drug offender release;

requires that probation or community control be substituted under certain circumstances and requires the conditional release date to be set based on a system of uniform criteria;

authorizes the commission to determine the terms, conditions and lengths of supervision, violations and adopt rules;

establishes a citizen's advisory committee, specifying its purpose, composition, as well as, terms and duties of the chairman and assigning the committee to the Parole Commission for staffing and administrative purpose;

provides for issuance of an arrest warrant for an offender who has violated conditional drug offender release terms and conditions; and 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; and

provides for the orders of revocation of conditional drug offender release under specified circumstances.

The fiscal impact of this bill is XXXXXXXXXXX

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**The Florida Constitution**

Article IV, Section 8(c), of the Florida Constitution, provides that "...there may be created by law a parole and probation commission with the power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crimes." The commission was authorized by this Constitutional Amendment in 1940 and created by statute (Chapter 947) in 1941.

**The Purpose of the Parole Commission**

The Commission's purpose is to provide the state a professional, independent, and non-political, decision-making body to provide a fair and uniform consideration for early release from prison all statutorily eligible inmates. The Commission is authorized to set general and specific conditions of the release and return to prison those offenders who violate the conditions of their release and demonstrate a risk to the public.

Programs within the Commission include parole, control release, conditional release, and conditional medical release. Parole is the release of an inmate prior to the expiration of sentence with a period of supervision to follow. In a parole release agreement ordered by the Commission, the terms and conditions of the supervision are specified.

**The Creation of Sentencing Guidelines and Abolition of Parole**

In 1983, the Legislature enacted sentencing guidelines and the Commission retained the authority to parole only those inmates whose offenses were committed prior to October 1, 1983. This change caused the gradual but significant reduction in the Commission's workload. Also, the 1983 Legislature enacted a "sunset provision" for the Commission which remained in effect for 10 years until it was repealed by the 1993 Legislature.

**The Parole Eligible Inmates in Florida**

Although the Legislature abolished parole for offenders who committed a non-capital felony on or after October 1, 1983, there are 6,076 (as of 1/31/97) offenders who are "parole-eligible" in the prison system because they committed their crime prior to October 1, 1983. It is expected that this number will essentially never increase, except for parole supervision violators, because parole was basically abolished for capital felonies by the passage of 95-294, Laws of Florida.

Despite the abolition of parole 15 years ago, except for those offenders sentenced for offenses committed prior to October 1, 1983, caseloads have increased. These increases are attributed to other state cases which have transferred for supervision within Florida.

**The Review of Parole-Eligible Inmates**

Parole-eligible inmates have initial parole interviews with a hearing examiner with the Parole Commission pursuant to the requirements and schedules specified in law. For certain violent offenses, the sentencing court may enter an order retaining jurisdiction over the offenders. If the Parole Commission issues a parole release order, the court that retains jurisdiction may vacate the release order and the order is not appealable by statute. For each inmate whose parole release order has been vacated by the court, the Parole Commission must re-interview the inmate within two years after the date of receipt of the vacated order and every two years thereafter.

Upon initial interview with the Parole Commission, an inmate is given a presumptive parole release date. For presumptive parole release dates that fall more than two years after the date of the inmates' initial interview, a hearing examiner must schedule an interview for review of the presumptive parole release date. These subsequent interviews must take place within two years after the initial interview and every two years thereafter.

### **Conditional Release**

An inmate sentenced to murder/manslaughter, sexual offenses, robbery or other violent personal crimes, and who has a previous commitment to a state or federal institution or has been convicted as a habitual offender or a sexual predator, meets the criteria for conditional release. Upon reaching the release date with accrued gain-time, an inmate is placed on conditional release to serve up to the remainder of the length of sentence. A conditional release eligible inmate often accrues less gain-time than other inmates due to the nature of the offense. Conditional release is not technically an "early release" mechanism as it merely provides for post release supervision for those considered serious offenders for up to the amount of gain-time accrued.

### **CONDITIONAL RELEASE; CONTROL RELEASE**

The increased prison admissions during the mid-1980's required the Legislature to develop early release programs in order to stay under the federally mandated prison system cap of 133% of design capacity. Since the implementation of these programs, thousands of inmates have been released with either no supervision or supervision of less than 90 days. In 1988, the Legislature recognized this as a problem and created the Conditional Release Program (Chapter 88-122, Laws of Florida) in an attempt to ensure that certain violent and chronic offenders receive lengthy supervision upon release. The Parole Commission was authorized to implement the program and to set the terms and conditions of release, with the Department of Corrections being responsible for the supervision of the offenders.

A deadly incident, involving two Metro-Dade police officers and an offender who was released early, brought the Legislature back to the drawing board to develop an early release program which would result in violent offenders staying in prison longer. In 1989, the Legislature created the Control Release Authority, which is composed of the members of the Parole Commission (s. 947.146, F.S.), to more closely scrutinize who is released.

The control release process begins at intake where inmates are scored by a risk classification instrument and placed in one of four different pools: immediate; advanceable; fixed date; and maximum. Those inmates in the immediate pool are

immediately released. For those in the maximum pool, the authority will attempt to keep them in prison until they serve most of their sentence. Those inmates in the advanceable and fixed-date pools make up the bulk of the releases. The advanceable pool is the largest, but recently has been dwindling due to the increase in statutorily ineligible offenders coming into the system and the large number of offenders being placed in the maximum pool by the Control Release Authority.

Because of the decrease in the advanceable pool, the Control Release Authority had to begin a review process in which they re-examined offenders who were originally placed into the maximum category. This reclassification process is very tedious and requires many staff hours. Additionally, it was originally believed that the department would send status updates on control release eligible offenders on a regular basis. Some updates have been received by the authority; however, most of the updates concern disciplinary problems.

Budget cuts have had a devastating effect on the Parole Commission. Since the Parole Commission is a small agency, it has less personnel to cover unfilled positions. One area which has been identified as an unnecessary task by the Control Release Authority is the setting of control release dates for inmates who are incarcerated in other states' correctional institutions. Since the control release program was established as a mechanism to control the prison population, these out-of-state offenders have no impact on Florida's prison population figures.

On occasion, the department recommends to inmates who have recently been medically treated, that they stay in the institution until they get better. If the inmate is within a month of his control release date, this practice results in the department requesting the Control Release Authority to postpone the release due to the medical treatment. However, there exists no procedure or criteria for inmates whose control release was postponed due to medical reasons. In addition, it is not clear under what authority the state can keep an inmate past his control release date due to a current medical condition.

Section 947.146, F.S., tracks the same language for an inmate's eligibility for control release as is contained in the provisional credits statute, explained above.

### **CONDITIONAL MEDICAL RELEASE**

The Department of Corrections currently has a policy which recommends, to the Parole Commission, parole for terminally ill and severely disabled inmates, or if the inmate received a guideline sentence, to the Board of Executive Clemency (DC Rule 33-19.008). However, the process is very restrictive and many inmates die before they are released. **In the last year, 72 inmates were recommended by institutional physicians for early release (parole or clemency). Forty-five (45) were approved by the Assistant Secretary for Health Services, but only one (1) inmate received clemency--one day before she died.**

The needs of terminally ill, permanently incapacitated, and older inmates have been brought to the forefront in Florida corrections for two reasons. First, corrections experts are concerned that these inmates may be occupying prison beds at a security level higher than what is warranted by the inmates' conditions. Secondly, because higher

security prison beds are more expensive to construct and maintain, taxpayers' dollars may be more effectively spent transferring these inmates who pose lower security risks to lower-security housing reserved specifically for such inmates. **Approximately, sixty (60%) percent of these offenders are classified as close custody.**

The process which recommends terminally ill inmates for parole or clemency begins at the institutional level. The chief medical officer at the institution, upon examining an inmate believed to be terminally ill, must make sure the inmate meets three criteria before recommending release (DC Health Care Standard 25.02.02):

- (1) The inmate has a terminal illness; and
- (2) Death is reasonably expected within 6-12 months; and
- (3) The inmate's physical condition has deteriorated to the point where he will not be able to participate in a crime.

Once it is determined that the inmate meets this criteria, the chief medical officer then sends his medical recommendation, along with the clinical evaluation and information on the availability of required care following release, to the department's Office of Health Services. The Assistant Secretary for Health Services reviews the recommendation and does one of the following:

- (1) Rejects the recommendation;
- (2) Defers the recommendation pending additional investigation to assess response to current treatment; or
- (3) Recommends approval and forwards the recommendation to the institution's chief medical officer.

Medical recommendations which receive concurrence from the Assistant Secretary for Health Services will then be returned to the institution's classification office. The classification staff then evaluates the medical recommendation based on the crime committed and the inmate's risk to the community. If the classification staff, due to security reasons, does not concur with the medical recommendation by health services, then the medical release process is halted. Only if the classification staff concurs is the medical recommendation forwarded to the superintendent. Once the recommendation is approved by the superintendent, it is then considered a valid institutional recommendation and forwarded to the Adult Services Program Office which then reviews all available information and refers the recommendation, whether favorable or unfavorable, to the Parole Commission or the Board of Executive Clemency.

### **Drug Offender Population**

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**B. EFFECT OF PROPOSED CHANGES:**

N/A

**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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A



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:

N/A

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

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:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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