STORAGE NAME: h0581a.cor
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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CORRECTIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 581

RELATING TO: Parole

SPONSOR(S): Representative Putnam

STATUTE(S) AFFECTED: ss. 947.16, 947.174 and 947.1745

COMPANION BILL(S): SB 258

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

(1) CORRECTIONS YEAS 5 NAYS 2
(2) CRIMINAL JUSTICE APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

HB 581 reduces the frequency (from every two years to every five years) in which parole-eligible inmates are interviewed for parole consideration.

In addition, the time requirements will change for an inmate being re-interviewed and reviewed for the establishment or extension of a presumptive parole release date from every two years to once every five years.

The bill is projected by the Parole Commission to reduce the number of scheduled interviews annually from approximately 1,500 to 600 and result in a workload reduction of 1.77 FTEs.

II. SUBSTANTIVE ANALYSIS:

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 14 years ago, there is and will be a small number of inmates each year who will be granted parole and released on parole supervision. For FY 1995-96, there were 62 inmates released on parole. There are currently 2,602 (as of 1/31/96) offenders on parole supervision.

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.

B. EFFECT OF PROPOSED CHANGES:

The bill will change the time limits in which a parole-eligible inmate is required to be interviewed from within two years to once every five years.

In addition, the time requirements for a parole-eligible inmate to be interviewed, re-interviewed, and reviewed for the extension or establishment of a presumptive parole release date would be changed from within two years to once every five years.

Likewise, an inmate whose parole release has been vacated by the court will incur a limit on the review and re-establishment of parole release dates. The Parole Commission would interview the inmate once within five years after the date of receipt of the vacated order as compared to within two years and all subsequent interviews would be limited to once every five years instead of every two years.

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 reduces the authority of the Parole Commission by limiting the number of parole hearings within a specified time.

(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?

The bill may reduce the opportunity of an inmate to be released on parole.

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

This bill may reduce the workload of the Parole Commission by decreasing the number of parole hearings.

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

None.

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

None.

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

N/A

2. <u>Lower Taxes:</u>

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?

The bill reduces an inmates' opportunity to be released on parole by reducing the number of hearings.

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?

This bill will increase the options of a victims' family to conduct their own affairs by possibly requiring less travel to attend parole hearings thereby reducing the frequency of emotional anguish.

However, the inmates' family may be adversely by this bill because they will be given fewer opportunities to influence the parole decision-making process.

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?

No.

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. SECTION-BY-SECTION ANALYSIS:

NONE

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   HB 581 will reduce the number of scheduled interviews from 1,500 per year to 600 per year, and result in a reduced workload by central office and field staff. The Parole Commission projects the fiscal impact to be minimal and eliminate the need for 1.77 FTEs.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   See III.A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

Inmates Whose Tentative Release Date Is Earlier Than Presumptive Parole Release Date

A possible unintended consequence of this bill may be to prevent parole consideration for approximately 1,500 inmates who will expire their sentence (tentative release date) and be released with no restrictions or period of supervision.

Under current law and practice, the Parole Commission may either seek maximum incarceration (tentative release date) in lieu of parole OR may grant parole (presumptive parole release date) with community supervision for the remainder of the sentence. As part of the community supervision, which may extend to 100% of sentence, the Commission may require certain conditions such as no contact with the victim or payment of restitution.

House Bill 581, by reducing the frequency of subsequent interviews, restricts the Commission's ability to offer parole to inmates whose tentative release date is closer than the presumptive parole release date.

Effective Date and How New Interview Schedule Will Be Implemented

HB 581 provides an effective date of October 1, 1997 but is silent on exactly how the new interview schedule will be implemented. One interpretation is that the initial and subsequent interviews which were set prior to the law change will be canceled and the inmate's parole interview will be reset automatically and delayed by three years.

Another interpretation is that the initial and subsequent interviews which were set prior to the law change will stand and only subsequent interviews conducted after October, 1997 will conform to the 5 year schedule. This interpretation effectively delays the impact of the bill for approximately 2 years. Staff recommends clarifying the effective date to eliminate ambiguity on this point. Recent case law suggests inmates have a constitutional right to notice of such a change prior to its actual implementation.

Constitutional Issues

Recent case law has raised some doubts about the Legislature's ability to alter parole review procedures without violating the ex post facto clause. The United States Supreme Court has developed a two-pronged analysis in evaluating a law under the ex post facto clause. The first prong requires that the law must be retrospective (i.e., applying to events occurring before its enactment) The second prong requires that the law disadvantage the offender affected by it (i.e., by altering the definition of criminal conduct or increasing the punishment for the crime). *Collins v. Youngblood*, 497 U.S. 37, 50 (1990).

In 1991, the United States Court of Appeals for the Eleventh Circuit struck down changes to Georgia's parole procedures that lengthened the frequency of reconsideration hearings for all inmates who have been denied parole from annually to every eight years. *Akins v. Snow*, 922 F. 2d 1558 (11th Cir. 1991). Holding that the change violated the ex post facto clause, the court stated that altering the period between hearings increased the time a prisoner must spend in prison before becoming eligible for parole and, therefore, substantially disadvantaged the prisoner. Further, the court concluded that the new rule changing the dates of parole review hearings was not merely a procedural change and was, in practice, an important component of a prisoner's parole eligibility. *Akins*, 922 F.2d at 1565.

In 1995, the United States Supreme Court ruled that amendments to California's parole consideration procedures lengthening the frequency of reconsideration hearings did not violate the ex post facto clause. *California Department of Corrections v. Morales*, 514 U.S._, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995). Unlike the parole hearing procedures in the Akins case (and the proposals in House Bill 581) however, California's revised procedures applied to a narrow group of inmates, those convicted of more than one murder. In addition, at the initial parole denial proceeding, parole authorities were required to make a finding that it was not reasonable to expect that parole would be granted at a hearing during the intervening years. Further, the parole board retained the authority to tailor the frequency of subsequent review hearings.

Applying the ex post facto analysis, the *Morales* court concluded that the amendment to California's parole procedures did not make any change in the "quantum of punishment." *Morales*, 115 S. ct. at 1602. According to the court, the state legislation at issue created only the most speculative and attenuated risk of increasing punishment because the narrow class of prisoners covered by the legislation could not reasonably expect that their prospects for early release on parole would be enhanced by annual hearings allowed prior to the amendment. The court noted that the amendment merely relieved the board from the cost and time of scheduling parole hearings for prisoners who have no reasonable chance of being released. *Morales* at 1602.

While the *Morales* decision was specifically limited to the facts in that case, with the court expressing no view as to the constitutionality of other state statutes that might alter the

timing of parole hearings under different circumstances, it can provide some guidance to the Legislature. Further, due to the narrow scope of *Morales*, the Eleventh Circuit's holding in *Akins* has not been diminished. It would appear that lengthening the frequency of parole reconsideration for all parole eligible inmates (as opposed to a limited class, with specific findings being made and some discretion afforded to the parole review authority) could deny parole eligibility and violate the ex post facto clause.

Finally, it should be noted that the United States Supreme Court appears to be affording greater protections against ex post facto laws in two recent rulings. On February 19, 1997, the Court held that a Florida statute canceling provisional release credits after they had been awarded violated the ex post facto clause. *Lynce v. Mathis*, 65 U.S. L. W. 4131 (U.S. Feb. 19, 1997) (No. 95-7452). A few months earlier, the Court refused to interfere in the Florida Supreme Court's ruling prohibiting the retroactive application of a rule barring the ability of inmates to earn incentive gain-time. *Gwong v. Singletary*, 683 So. 2d 109 (Fla. 1996), reh'g denied, No. 87,824; 1996 WL 673978 (Fla. Nov. 22, 1996), cert denied, 65 U.S. L.W. 3564 (U.S. Fla., Feb. 18, 1997) (No. 96-958). As a result of these decisions, large numbers of inmates, many of them violent offenders, will be released early from state prison. While these cases do not involve parole procedures, they indicate a willingness by the Court to acknowledge ex post facto considerations, despite the impact on inmate release decisions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment #1: Amends s. 947.16, F.S., to narrow the applicability of the 5-year interview schedule for inmates whose parole release order has been vacated to a selected class of offenders: those convicted of murder and sexual battery and those sentenced to a 25 year minimum mandatory sentence. This amendment attempts to address the potential ex post facto concerns related to the bill.

The amendment also provides additional discretion to the Commission to interview certain inmates who are within 7 years of their tentative release date. This portion of the amendment is an attempt to address the possible unintended consequence of preventing parole consideration for approximately 1,500 inmates who will expire their sentence (tentative release date) and be released with no restrictions or period of supervision.

Amendment #2: Conforms to amendment #1 by amending s. 947.174, F.S., to also narrow the applicability of the five-year interview schedule for inmates who receive subsequent interviews and to also provide additional discretion to the Commission to interview certain inmates who are within 7 years of their tentative release date.

Amendment #3: Conforms to amendments #1 and #2 by amending s. 947.1745, F.S., to also narrow the applicability of the five-year interview schedule for inmates who receive a subsequent review when the sentencing judge or the designee objects to the release.

Amendment #4: Clarifies the applicability of the effective date to be prospective and apply to the setting of new interview dates after October 1, 1997.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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