

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1428

SPONSOR: Criminal Justice Committee and Senator Silver

SUBJECT: Postrelease Supervision of Offenders

DATE: March 17, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1428 would create the "Supervision of Violent Offenders Act of 1999" by expanding the statutory imposition of conditional release supervision upon persons convicted of certain offenses on or after July 1, 1999. It would additionally update qualifying-offense descriptions made in the conditional release statute to eliminate references to crime "categories," which were eliminated in 1993.

The CS increases the number of parole commissioners from three to four commissioners, which would take effect on July 1, 1999.

This CS substantially amends sections 947.1405 and 947.01 of the Florida Statutes.

II. Present Situation:

Conditional release is a type of community supervision that is statutorily-required for certain types of offenders. The Parole Commission administers the conditional release program. The Parole Commission uses its quasi-judicial powers to set conditions and make decisions relating to alleged violations. The Department of Corrections' correctional probation officers perform the actual supervision of offenders on conditional release supervision.

The Department of Corrections supervises offenders who qualify for conditional release after their release from prison under the administration of the Parole Commission. The departmental "correctional probation officers" must notify the Parole Commission in the event a conditional releasee violates one or more conditions. This statute targets "high risk" inmates convicted of murder, manslaughter, sexual offenses, robbery, violent personal crimes, and habitual offenders who are being released early due to gain time but still require conditional supervision for the public's safety. Upon reaching the tentative release date which becomes the expiration of sentence date (EOS), the inmate is under supervision subject to specific terms and conditions. *See*, s. 947.1405, F.S.

There is no discretion as to "which" prison inmates will have to be placed on conditional release after they have served their time. Conditional release is not a form of early release from prison; rather, it imposes mandatory supervision for up to 100 percent of an offender's court-imposed sentence. It is essentially the same as a split sentence (a sentence of incarceration followed by probation), except that the statutes impose the subsequent community supervision (conditional release) rather than a judge as in cases of split sentences.

Currently, s. 947.1405, F.S., identifies which inmates are subject to mandatory conditional release by referencing sentencing guidelines categories that were used prior to changes to the sentencing guidelines in the 1993 Special Session B. As the law is currently written, it is quite confusing to determine what types of offenders are required to be placed on conditional release. Section 947.1405, F.S., requires conditional release supervision for any inmate who:

1. Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, which crime is contained in categories 1 - 4 under the 1993 sentencing guidelines, **and**
 - (a) has served at least one prior felony commitment at a state or federal correctional institution, **or**
 - (b) is sentenced as a habitual or violent habitual offender pursuant to s. 775.084, F.S.

OR

2. Is convicted of a crime committed on or after January 1, 1994, for a crime that is or was contained in categories 1 - 4 under the 1993 sentencing guidelines, **and**
 - (a) has served at least one prior felony commitment at a state or federal correctional institution; **or**
 - (b) is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; **or**
 - (c) is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.

The sentencing guidelines changed drastically in 1993, which were effective January 1, 1994. The sentencing guidelines underwent subsequent dramatic changes which were ultimately replaced by the sentencing mechanism called the Criminal Punishment Code. The Criminal Punishment Code passed in the 1997 Regular Session, but did not become effective for crimes committed on or after October 1, 1998.

The changes made to the sentencing guidelines in 1993 converted groupings of offenses, based on seriousness and severity, from "categories" to "levels." The Criminal Punishment Code has continued with ranking offenses in "levels" almost identically to those under the sentencing guidelines in 1996. Nevertheless, the conditional release statute, s. 947.1405, F.S., continued to cite "categories" from the 1993 sentencing guidelines to the present date. Crimes included in the categories under the 1993 sentencing guidelines are as follows:

- Category 1: All homicides proscribed in chapter 782, F.S., except capital murder, and including DUI manslaughter by automobiles and vessels under ss. 316.193 (3)(c)3. and 327.351 (2), F.S.
- Category 2: Sexual offenses, including sexual batteries under chapter 794, F.S., certain felony lewdness and indecent exposure offenses under chapter 800, F.S., incest under s. 826.03, F.S., sexual misconduct by a psychotherapist under s. 491.0112, F.S., and violation of sexual predator registration under s. 775.22, F.S.
- Category 3: Robbery under s. 812.13, F.S., carjacking under s. 812.131, F.S., and home-invasion robbery under s. 812.135, F.S.
- Category 4: Violent personal crimes which included assault or battery upon a district school board employee under s. 231.06, F.S., aggravated assault and aggravated battery under chapter 784, F.S., certain threats and extortion under s. 836.05, F.S., written threats to kill or do bodily harm under s. 836.10, F.S., resisting arrest under chapter 843, F.S., and battery on an HRS employee under s. 381.411 (4) (b), F.S.

The Fourth District Court of Appeal in *Cooper v. Florida Parole Commission*, Case No. 96-3641 (1997), issued an opinion holding that when sentences are served concurrently, the inmate's last date of conditional release supervision should be calculated with reference only to those sentences that are subject to the conditional release statute. In other words, when the statutorily enumerated offense which qualifies the inmate for conditional release expires, the inmate is no longer eligible for supervision after release from prison when the inmate is serving a longer sentence on another concurrently imposed sentence that does not fall under the enumerated offenses. In such a situation, the inmate must be released unconditionally. In 1997, the law was changed to clarify the prior legislative intent with respect to the application of the conditional release program. Inmates are still subject to conditional release after serving a longer sentence for a "non-qualifying" offense sentence because a conditional release eligible offense was part of the *total* incarcerative sentence of the inmate.

Presently, the Department of Corrections (DOC) identifies and notifies the Parole Commission of the inmates who are statutorily-required to be placed on conditional release. Once notification is received, the Parole Commission has its employees perform certain tasks in preparation for determinations to be made regarding supervision. Parole examiners talk to the inmate, talk to DOC personnel, and review DOC information and files prior to the release of the inmate on conditional release for the possibility of placing "special" conditions of supervision on the inmate in addition to standard conditions.

Currently, there are standard conditions that are set for every person that is placed on conditional release. The Parole Commission may also set other special conditions of conditional release supervision. In order to set appropriate special conditions, the Parole Commission communicates to relevant Department of Corrections personnel and reviews departmental files and information.

While being supervised in the community subsequent to his or her expiration of prison sentence, a person on conditional release must comply with all of the terms and conditions that have been either statutorily set or specially set by the Parole Commission. If a conditional releasee is found

to have violated a condition of his or her supervision, the Parole Commission may revoke the conditional release supervision, forfeit gain-time that had previously been earned by the conditional releasee to EOS from prison before serving 100 percent of his or her sentence, and return the person to prison. The offender would be subject to serving the remainder, or balance, left on his or her court-imposed sentence and the offender's EOS date back in the prison system.

Originally authorized by statute in 1941, the Parole Commission's membership has increased and decreased throughout the years. On July 1, 1990, the number of commissioners was increased to the commission's highest when the membership of the Parole Commission was increased to nine members. However, effective October 6, 1995, the membership was reduced to seven members. *See*, Ch. 95-283, s. 39, 1995 *Laws of Fla.* 2649, 2669. The membership was to be further reduced to six members when the first vacancy in the membership occurred for any reason other than expiration of his or her term. *Id.* This reduction to six members occurred the following year when a commissioner retired from his seat. In 1996, the Legislature again reduced the number of commissioners of the Parole Commission. Effective July 1, 1996, the membership of the commission was three members. *See*, Ch. 96-422, s. 12, 1996 *Laws of Fla.* 3310, 3318-19.

At the time the membership was reduced to three, the Legislature considered the dwindling workload of the Parole Commission. Early releases of inmates on the Control Release Program ended in December of 1994. Administering the Control Release Program accounted for a major portion of the commission's workload. However, the 1996 Legislature eliminated unnecessary activities of the commission that were still being performed by the Parole Commission for the "defunct" Control Release Program. Furthermore, the decreasing number of persons either out of prison on parole or in prison and "parole-eligible" was a fact considered by the Legislature in reducing the number of commissioners. The number of inmates who were in and who were projected to be in the status population of conditional releasees in the community were also considered. At the time, projections were estimated to see a fairly constant number of persons on conditional release. Looking at fiscal year 1997-98, the quarterly numbers demonstrate that the number of persons on conditional release were, if fact, constant.

The following table provides quarterly numbers of persons on a post-prison supervision that is administered by the Parole Commission and relate to the workload of the Parole Commission.

Program	9/30/97	12/31/97	3/31/98	6/30/98
Florida Parole	1,052	1,071	1,045	1,044
Other State Parole	1,451	1,448	1,423	1,412
Conditional Release	3,832	4,110	3,779	3,633
Control Release (not including administrative control release)	1,029	882	732	634

Program	9/30/97	12/31/97	3/31/98	6/30/98
Conditional Medical Release	11	11	10	7

Source: Department of Corrections, 1997-98 Annual Report, p. 121 (Tallahassee, Florida).

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1428 would create the “Supervision of Violent Offenders Act of 1999.” The conditional release program would be updated and it would be expanded in its application to felony offenders.

The crimes that have been subject to conditional release supervision which have always been referenced to as “categories,” which were eliminated in the 1993 changes to the sentencing guidelines, will be listed out. In listing out the offenses, new substantive offenses are added as being subject to conditional release. In addition, any attempts, conspiracies, or solicitations to commit any of the listed offenses will also be offenses whereupon conditional release supervision is mandatory.

Under CS/SB 1428, the persons that will be subject to conditional release supervision are:

- A. a person convicted of any of the following offenses committed on or after July 1, 1999, or an attempt, solicitation, or conspiracy to commit any of the following offenses committed on or after July 1, 1999:
 - 1. sexual battery;
 - 2. lewd, lascivious, or indecent assault or act;
 - 3. murder in the first, second, or third degree;
 - 4. kidnapping;
 - 5. aggravated child abuse;
 - 6. false imprisonment;
 - 7. sexual performance by a child;
 - 8. selling or buying of a minor;
 - 9. stalking or aggravated stalking;
 - 10. incest;
 - 11. burglary or armed burglary of an occupied dwelling, building, or conveyance when any person was assaulted or battered or a sex act was attempted or completed;
 - 12. any battery or aggravated battery when a sex act was attempted or completed;
 - 13. resisting a law enforcement officer with violence to the officer’s person;
 - 14. aggravated assault or aggravated battery on a law enforcement officer;
 - 15. felonious threats or extortion;
 - 16. DUI manslaughter;
 - 17. robbery;
 - 18. attempted murder of a law enforcement officer engaged in duty;
 - 19. arson;
 - 20. carjacking;
 - 21. home invasion robbery;

22. assault or battery upon a district school board employee; or
23. written threats to kill or do bodily injury.

OR

- B. a person sentenced as a habitual offender, violent habitual offender, or a violent career criminal pursuant to s. 775.084, F.S.

OR

- C. a person who is found to be a sexual predator based on an offense committed on or after July 1, 1999, under s. 775.21, F.S.

For the list of offenses above, **no prior commitment to a state or federal correctional institution would be required** under this change in law. Obviously, this would mainly change current law pertaining to the offenses listed in part “A” above because parts “B” and “C” would almost always involve a prior prison commitment. Therefore, there will be a shift in policy to have first-time offenders who are serving a sentence for one of the offenses listed above whereas that is not the case under current law. Under the Criminal Punishment Code (Code) this is particularly relevant because under the Code, any first-time offender could be sentenced to prison where that was not necessarily the case under the old sentencing guidelines. Once a first-time offender is in prison for committing a listed offense, this would trigger the requirement that he or she be supervised under conditional release at EOS.

In making this conversion to a listing out of the offenses subject to conditional release supervision, there will be a “closing date” of July 1, 1999, for this last group of inmates who were subject to conditional release supervision. A new “window” will be created, which will make the listed offenses that are committed on or after July 1, 1999, subject to conditional release supervision to begin when the inmates prison sentence has expired. Just as under the current conditional release program, such persons will be supervised for the “balance” of the court-imposed sentence. In other words, the maximum length of conditional release supervision will be for the difference in time between the offender’s expiration of sentence (EOS) and court-imposed sentence.

The practical effect of having to serve the balance of one’s court-imposed sentence on conditional release supervision is that the length of time will become shorter. For crimes committed on or after October 1, 1995, all offenders must serve at least 85 percent of their court-imposed sentence. This means that the maximum amount of gain-time such inmates can earn is 15 percent of his or her court-imposed sentence. This means that the increasing number of persons who are subject to the 85 percent rule will be able to be supervised by the Parole Commission for a maximum of 15 percent of the court-imposed sentence for offenders with the *best* institutional behavior record. The time to supervise offenders with a blemished institutional record will be even less time on conditional release supervision.

Committee Substitute for Senate Bill 1428 would reiterate and continue applying the language that was inserted to clarify legislative intent after the *Cooper* decision in 1997. This language states that conditional release supervision will be applicable to *all* sentences within an offender’s

overall term of sentences if an inmate's overall term of sentences includes one or more sentences that are subject to conditional release supervision as required by the newly created paragraph (b) under s. 947.1405 (2), F.S.

Clarification is made on the continued practice that conditional release supervision will defer to probation or community control supervision that is subject to a court-imposed split sentence. If the term of conditional release supervision exceeds the term of probation or community control imposed by a split sentence, then upon expiration of the probation or community control, authority for the supervision will revert to the commission to be continued.

Rather than repeating the violation hearing where there has already been a court finding of a violation of probation or community control and that supervision is revoked, that revocation will constitute a sufficient basis for the revocation of the conditional release supervision without any further hearing by the commission on the violation of conditional release supervision. If the offender is not on any other probation or community control at the time of the revocation, the commission may take whatever action it deems appropriate, including forfeiture of all gain-time and revocation of the resulting deferred conditional release supervision.

For offenses committed on or after July 1, 1999, the commission would continue the practice of having at least two commissioners establish the terms and conditions of any conditional release. For offenses committed after this date, if the offense was a controlled substance violation, the conditions of supervision would, by statute, have the standard condition of submission to a random substance abuse testing throughout the term of supervision. The occasions for testing would be upon the direction of the correctional probation officer.

For all conditional release cases without simultaneous probation or community control, the commission would continue to determine whether the terms and conditions of conditional release supervision have been violated and whether such violation warrants a revocation of the conditional release.

The number of commissioners on the Parole Commission would be increased from three to four members.

The changes made in this CS would be effective July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As there would be an increase in the numbers of offenders who would be supervised on conditional release because of the increase in the types of offenses subject to the supervision, many more criminal offenders will be subject to payment of his or her cost of supervision to the Department of Corrections.

There would be an indeterminate positive fiscal impact upon the public through cost avoidance in thwarting crime if, in fact, intensive supervision after release from prison assists in reducing the reoffending rate for this population. Costs associated with the commissions of crime that do not take place because of supervision would be avoided by the public.

C. Government Sector Impact:

There would be a negative fiscal impact upon the state for the cost of processing the setting of terms and conditions, examining alleged violations, and making determinations where violations are found. The amount of the fiscal impact for case processing is currently unknown; however, absent details, the Parole Commission has indicated that this increase in workload would help substantiate the argument that an additional commissioner is needed. To provide members with some information regarding the recurring fiscal impact of adding to the workload of the Parole Commission if the Conditional Release Program is expanded pursuant to this CS, the Senate Proposed General Appropriations for FY 1999-2000 states the following regarding the fiscal implications of adding a fourth commissioner:

From the funds in Specific Appropriations 1020, 1022, and 1023, \$87,274 and 3 positions, \$15,790, and \$9,906, respectively, from General Revenue are contingent upon legislation becoming law authorizing a fourth Parole Commissioner. *See*, 1999 Florida Senate, Proposed General Appropriations for Fiscal Year 1999-2000, p. 211 (March 13, 1999).

There would also be a negative fiscal impact upon the state for supervision of the increased number of offenders who would be subject to conditional release supervision who previously were not under s. 947.1405, F.S. According to the Department of Corrections, the following chart represents the anticipated increase to the supervised population over the next five years as a result of the proposal. These numbers exclude those offenders anticipated to receive a split sentence, based on current admissions for the specified offenses:

Anticipated Increases to the Supervised Population

Year	Admissions to Program	Status Population of Program in June
2000	18	9
2001	326	166
2002	984	496
2003	1733	874
2004	2494	1258

The fiscal impact on the Department of Corrections would be the increased FTE that would be required by the department to supervise the additional population of conditional release offenders. The department cites s. 947.1405 (8), F.S., as requiring the caseload size for a correctional probation officer to supervise conditional release cases as a 40:1 ratio. The department assigns correctional probation “specialists,” who are officers with an increased amount of experience and expertise in the supervision of sexual and other high-risk offenders, to supervise conditional releasees. The department provided the following numbers to indicate the number of FTE needed to supervise the additional status population. These numbers represent the additional staff needed by the department each year and the associated costs.

Fiscal Year Total	Specialists	Supervisors	Clerical Support	Cost
1999-2000	0	0	0	0
2000-2001	4	0	1	\$288,286
2001-2002	8	1	3	\$738,111
2002-2003	10	1	4	\$1,036,686
2003-2004	9	1	3	\$1,095,035
Total	31	3	11	\$3,158,118

Source: Department of Corrections (March 8, 1999).

Local governments would also be negatively impacted to the extent that there would be an increase in the number of persons who are held in local jails because of violations of conditional release supervision by virtue of the increase in the types of offenses that would be subject to conditional release supervision. Currently, when a person is arrested for an alleged violation of conditional release supervision, that person is held in a local detention facility until the commission has an examiner investigate the alleged violation and conduct a hearing on the alleged violation. The parole examiner then makes a recommendation to the commission, whereby the commission reviews the records of the offender and the hearing, and makes a determination on the violation. It is only after that point that an offender is released from the custody of a local jail to return him or her to prison or back into the community. There would be an increase in the number of persons held on violations of conditional release simply because so many more offenders would be subject to mandatory

conditional release supervision after prison. The estimated increased number of persons that may be subject to temporary custody in local jails is currently indeterminate.

Although it is indeterminate, there may be a positive fiscal impact on government if the intense supervision of offenders on conditional release thwarts crimes from occurring. If crime during this time of supervision is, in fact, decreased for these persons, there is some cost avoidance associated with the prosecution and punishment for crimes that would have otherwise been committed during the immediate time out of prison.

VI. Technical Deficiencies:

None.

VII. Related Issues:

For every commissioner position funded, there is actually three FTE associated with the commissioner position if the commissioner position is authorized by law and funded in the state budget.

VIII. Amendments:

None.