

By Senator Silver

38-867-99

See HB

1                                   A bill to be entitled  
2           An act relating to postrelease supervision of  
3           offenders; creating the "Supervision of Violent  
4           Offenders Act of 1999"; amending s. 947.1405,  
5           F.S., relating to the Conditional Release  
6           Program Act; revising criteria for eligibility  
7           for conditional release; providing that an  
8           inmate who has committed any of specified  
9           crimes but who has not served at least one  
10          prior felony commitment may be subject to  
11          conditional release supervision; specifying  
12          that certain inmates are to be released under  
13          "conditional release" supervision; revising  
14          terms and conditions of conditional release  
15          supervision applicable to certain inmates  
16          convicted of specified offenses or sentenced as  
17          a habitual or violent felony offender or a  
18          violent career criminal; providing for  
19          applicability of such supervision to all  
20          sentences under specified circumstances when an  
21          inmate's overall term of sentences includes one  
22          or more sentences on which the eligibility for  
23          control release supervision is based; requiring  
24          supervision by the Department of Corrections,  
25          according to the conditions imposed by the  
26          court when the inmate who is placed on  
27          conditional release supervision also is subject  
28          to probation or community control resulting  
29          from a split sentence within the overall term  
30          of sentences; providing for revocation of the  
31          conditional release supervision without further

1 hearing by the commission in those cases when  
2 the court revokes probation or community  
3 control; providing for forfeiture of all  
4 gain-time under specified circumstances, and  
5 authorizing the Parole Commission to revoke the  
6 resulting deferred conditional release  
7 supervision and take other appropriate action;  
8 providing for the supervision to revert to the  
9 authority of the commission and be subject to  
10 the conditions of the commission in certain  
11 cases when the term of the probation or  
12 community control expires before that of the  
13 conditional release supervision; providing for  
14 applicability of various changes made by the  
15 act to certain inmates convicted of crimes  
16 committed before, on, or after July 1, 1999;  
17 providing for applicability of certain  
18 provisions relating to the authority of the  
19 commission to establish terms and conditions of  
20 such release and to determine whether a  
21 violation has occurred or revocation is  
22 warranted; providing for applicability of a  
23 requirement that certain offenders submit to  
24 random substance abuse testing throughout the  
25 term of such conditional release supervision;  
26 reenacting s. 775.084(4)(i), relating to  
27 violent career criminals, habitual felony  
28 offenders, and habitual violent felony  
29 offenders, s. 921.001(10), F.S., relating to  
30 the Sentencing Commission and sentencing  
31 guidelines, s. 944.70(1), relating to

1 conditions for release from incarceration, s.  
2 947.13(1)(f), F.S., relating to powers and  
3 duties of the Parole Commission, and s.  
4 947.141(1) and (2), F.S., relating to  
5 violations of conditional release, control  
6 release, or conditional medical release, to  
7 incorporate the amendment in references;  
8 providing an effective date.

9  
10 WHEREAS, the current sentencing guidelines are no  
11 longer based on the four category levels of severity which  
12 served as the criteria for conditional release eligibility,  
13 and

14 WHEREAS, inmates who commit serious violent offenses  
15 should be required to serve a period of time under strict  
16 conditions of supervision when released from custody as a  
17 result of accumulated gain-time, and

18 WHEREAS, the serious violent crimes which require a  
19 period of strict supervision should be specified in statute  
20 and include any attempt, solicitation, or conspiracy to commit  
21 these serious violent crimes, and

22 WHEREAS, a conviction for one of the specified serious  
23 violent crimes is sufficient in itself, without the necessity  
24 of a prior felony commitment, to require imposition of a  
25 period of strict conditional release supervision, and

26 WHEREAS, any violation of these strict conditions of  
27 release which results in revocation of supervision should  
28 result in the forfeiture of all accumulated gain-time, and

29 WHEREAS, when an inmate also has been subject to  
30 conditions of probation or community control following release  
31 from incarceration, and the inmate has violated these

1 conditions with the result that the probation or community  
2 control is revoked in a proceeding before a judge, the Florida  
3 Parole Commission should not be required to conduct a second  
4 administrative proceeding to revoke any concurrent or  
5 consecutive term of conditional release supervision, and

6 WHEREAS, such a second administrative proceeding is not  
7 constitutionally required and is an unjustified and  
8 inefficient use of limited state resources, NOW, THEREFORE,

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. This act may be cited as the "Supervision  
13 of Violent Offenders Act of 1999."

14 Section 2. Section 947.1405, Florida Statutes, is  
15 amended to read:

16 947.1405 Conditional release program.--

17 (1) This section and s. 947.141 may be cited as the  
18 "Conditional Release Program Act."

19 (2) Any inmate who:

20 (a)1. Is convicted of a crime committed on or after  
21 October 1, 1988, and before January 1, 1994, and any inmate  
22 who is convicted of a crime committed on or after January 1,  
23 1994, and before July 1, 1999, which crime is or was contained  
24 in category 1, category 2, category 3, or category 4 of Rule  
25 3.701 and Rule 3.988, Florida Rules of Criminal Procedure  
26 (1993), and who has served at least one prior felony  
27 commitment at a state or federal correctional institution;

28 2.(b) Is sentenced as a habitual or violent habitual  
29 offender or a violent career criminal pursuant to s. 775.084  
30 based on an offense committed before July 1, 1999; or

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1           ~~3.(c)~~ Is found to be a sexual predator under s. 775.21  
2 or former s. 775.23, based on an offense committed before July  
3 1, 1999,  
4  
5 shall, upon reaching the tentative release date or provisional  
6 release date, whichever is earlier, as established by the  
7 Department of Corrections, be released under conditional  
8 release supervision subject to specified terms and conditions,  
9 including payment of the cost of supervision pursuant to s.  
10 948.09. Such supervision shall be applicable to all sentences  
11 within the overall term of sentences if an inmate's overall  
12 term of sentences includes one or more sentences that are  
13 eligible for conditional release supervision as provided  
14 herein. Effective July 1, 1994, and applicable for offenses  
15 committed on or after that date, the commission may require,  
16 as a condition of conditional release, that the releasee make  
17 payment of the debt due and owing to a county or municipal  
18 detention facility under s. 951.032 for medical care,  
19 treatment, hospitalization, or transportation received by the  
20 releasee while in that detention facility. The commission, in  
21 determining whether to order such repayment and the amount of  
22 such repayment, shall consider the amount of the debt, whether  
23 there was any fault of the institution for the medical  
24 expenses incurred, the financial resources of the releasee,  
25 the present and potential future financial needs and earning  
26 ability of the releasee, and dependents, and other appropriate  
27 factors. If any inmate placed on conditional release  
28 supervision is also subject to probation or community control  
29 resulting from a probationary or community control split  
30 sentence within the overall term of sentences, the Department  
31 of Corrections shall supervise such person according to the

1 conditions imposed by the court, and the commission shall  
2 defer to such supervision. If the court revokes probation or  
3 community control and resentences the offender to a term of  
4 incarceration, such revocation also constitutes a sufficient  
5 basis for the revocation of the conditional release  
6 supervision on any nonprobationary or non-community-control  
7 sentence without further hearing by the commission. If any  
8 such supervision on any nonprobationary or  
9 non-community-control sentence is revoked, such revocation may  
10 result in a forfeiture of all gain-time, and the commission  
11 may revoke the resulting deferred conditional release  
12 supervision or take other action it considers appropriate. If  
13 the term of conditional release supervision exceeds that of  
14 the probation or community control, then, upon expiration of  
15 the probation or community control, authority for the  
16 supervision shall revert to the commission, and the  
17 supervision shall be subject to the conditions of the  
18 commission.~~If an inmate has received a term of probation or~~  
19 ~~community control supervision to be served after release from~~  
20 ~~incarceration, the period of probation or community control~~  
21 ~~must be substituted for the conditional release supervision. A~~  
22 ~~panel of no fewer than two commissioners shall establish the~~  
23 ~~terms and conditions of any such release. If the offense was a~~  
24 ~~controlled substance violation, the conditions shall include a~~  
25 ~~requirement that the offender submit to random substance abuse~~  
26 ~~testing intermittently throughout the term of conditional~~  
27 ~~release supervision, upon the direction of the correctional~~  
28 ~~probation officer as defined in s. 943.10(3). The commission~~  
29 ~~shall also determine whether the terms and conditions of such~~  
30 ~~release have been violated and whether such violation warrants~~  
31 ~~revocation of the conditional release.~~

- 1           (b) Has been convicted of any of the following  
2 offenses committed on or after July 1, 1999, or an attempt,  
3 solicitation, or conspiracy to commit any of the following  
4 offenses committed on or after July 1, 1999:
- 5           1. Sexual battery;
  - 6           2. Lewd, lascivious, or indecent assault or act;
  - 7           3. Murder in the first, second, or third degree;
  - 8           4. Kidnapping;
  - 9           5. Aggravated child abuse;
  - 10          6. False imprisonment;
  - 11          7. Sexual performance by a child;
  - 12          8. Selling or buying of a minor;
  - 13          9. Stalking or aggravated stalking;
  - 14          10. Incest;
  - 15          11. Burglary or armed burglary of an occupied  
16 dwelling, building, or conveyance when any person was  
17 assaulted or battered or a sex act was attempted or completed;
  - 18          12. Any battery or aggravated battery when a sex act  
19 was attempted or completed;
  - 20          13. Resisting a law enforcement officer with violence  
21 to the officer's person;
  - 22          14. Aggravated assault or aggravated battery on a law  
23 enforcement officer;
  - 24          15. Felonious threats or extortion;
  - 25          16. DUI manslaughter;
  - 26          17. Robbery;
  - 27          18. Attempted murder of a law enforcement officer  
28 engaged in duty;
  - 29          19. Arson;
  - 30          20. Carjacking;
  - 31          21. Home invasion robbery;

1           22. Assault or battery upon a district school board  
2 employee; or  
3           23. Written threats to kill or do bodily injury  
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5 or is sentenced as a habitual or violent habitual offender or  
6 a violent career criminal pursuant to s. 775.084 based on an  
7 offense committed on or after July 1, 1999, or is found to be  
8 a sexual predator based on an offense committed on or after  
9 July 1, 1999, under s. 775.21 shall, upon reaching the  
10 tentative release date established by the Department of  
11 Corrections, be released under conditional release supervision  
12 subject to the terms and conditions determined by the  
13 commission as provided in this subsection and subsection (3).  
14 Such supervision shall be applicable to all sentences within  
15 the overall term of sentences if an inmate's overall term of  
16 sentences includes one or more sentences that are eligible for  
17 conditional release supervision as provided herein. If any  
18 inmate placed on conditional release supervision is also  
19 subject to probation or community control resulting from a  
20 probationary or community control split sentence within the  
21 overall term of sentences, the Department of Corrections shall  
22 supervise such person according to the conditions imposed by  
23 the court, and the commission shall defer to such supervision.  
24 If the court revokes probation or community control and  
25 resentences the offender to a term of incarceration, such  
26 revocation also constitutes a sufficient basis for the  
27 revocation of the conditional release supervision on any  
28 nonprobationary or non-community-control sentence, without  
29 further hearing by the commission. If any such supervision on  
30 any nonprobationary or non-community-control sentence is  
31 revoked, such revocation may result in a forfeiture of all



2 gain-time, and the commission may revoke the resulting

3 it considers appropriate. If the term of conditional release  
4 supervision exceeds that of the probation or community

5 \_\_\_\_\_  
6 control, authority for the supervision shall revert to the  
7 commission, and the supervision shall be subject to the

8 \_\_\_\_\_  
9 (c) A panel of no fewer than two commissioners shall  
10 establish the terms and conditions of any conditional release.

11 \_\_\_\_\_  
12 conditions shall include a requirement that the offender  
13 submit, upon the direction of the correctional probation

14 \_\_\_\_\_  
15 testing intermittently throughout the term of conditional  
16 release supervision. The commission shall also determine

17 \_\_\_\_\_  
18 violated and whether such violation warrants revocation of the  
19 conditional release.

20 (3) As part of the conditional release process, the

22 (a) The amount of reparation or restitution.

23 (b) The consequences of the offense as reported by the

25 (c) The aggrieved party's fear of the inmate or  
26 concerns about the release of the inmate.

28 party information regarding the manner in which notice of any  
29 developments concerning the status of the inmate during the

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1           (5) Within 180 days prior to the tentative release  
2 date or provisional release date, whichever is earlier, a  
3 representative of the commission shall interview the inmate.  
4 The commission representative shall review the inmate's  
5 program participation, disciplinary record, psychological and  
6 medical records, and any other information pertinent to the  
7 impending release. A commission representative shall conduct  
8 a personal interview with the inmate for the purpose of  
9 determining the details of the inmate's release plan,  
10 including the inmate's planned residence and employment. The  
11 results of the interview must be forwarded to the commission  
12 in writing.

13           (6) Upon receipt of notice as required under s.  
14 947.175, the commission shall conduct a review of the inmate's  
15 record for the purpose of establishing the terms and  
16 conditions of the conditional release. The commission may  
17 impose any special conditions it considers warranted from its  
18 review of the record. If the commission determines that the  
19 inmate is eligible for release under this section, the  
20 commission shall enter an order establishing the length of  
21 supervision and the conditions attendant thereto. However, an  
22 inmate who has been convicted of a violation of chapter 794 or  
23 found by the court to be a sexual predator is subject to the  
24 maximum level of supervision provided, with the mandatory  
25 conditions as required in subsection (7), and that supervision  
26 shall continue through the end of the releasee's original  
27 court-imposed sentence. The length of supervision must not  
28 exceed the maximum penalty imposed by the court.

29           (7)(a) Any inmate who is convicted of a crime  
30 committed on or after October 1, 1995, or who has been  
31 previously convicted of a crime committed on or after October

1 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071,  
2 or s. 847.0145, and is subject to conditional release  
3 supervision, shall have, in addition to any other conditions  
4 imposed, the following special conditions imposed by the  
5 commission:

6 1. A mandatory curfew from 10 p.m. to 6 a.m. The court  
7 may designate another 8-hour period if the offender's  
8 employment precludes the above specified time, and such  
9 alternative is recommended by the Department of Corrections.  
10 If the court determines that imposing a curfew would endanger  
11 the victim, the court may consider alternative sanctions.

12 2. If the victim was under the age of 18, a  
13 prohibition on living within 1,000 feet of a school, day care  
14 center, park, playground, or other place where children  
15 regularly congregate.

16 3. Active participation in and successful completion  
17 of a sex offender treatment program with therapists  
18 specifically trained to treat sex offenders, at the releasee's  
19 own expense. If a specially trained therapist is not available  
20 within a 50-mile radius of the releasee's residence, the  
21 offender shall participate in other appropriate therapy.

22 4. A prohibition on any contact with the victim,  
23 directly or indirectly, including through a third person,  
24 unless approved by the victim, the offender's therapist, and  
25 the sentencing court.

26 5. If the victim was under the age of 18, a  
27 prohibition, until successful completion of a sex offender  
28 treatment program, on unsupervised contact with a child under  
29 the age of 18, unless authorized by the commission without  
30 another adult present who is responsible for the child's  
31

1 welfare, has been advised of the crime, and is approved by the  
2 commission.

3           6. If the victim was under age 18, a prohibition on  
4 working for pay or as a volunteer at any school, day care  
5 center, park, playground, or other place where children  
6 regularly congregate, as prescribed by the commission.

7           7. Unless otherwise indicated in the treatment plan  
8 provided by the sexual offender treatment program, a  
9 prohibition on viewing, owning, or possessing any obscene,  
10 pornographic, or sexually stimulating visual or auditory  
11 material, including telephone, electronic media, computer  
12 programs, or computer services that are relevant to the  
13 offender's deviant behavior pattern.

14           8. A requirement that the releasee must submit two  
15 specimens of blood to the Florida Department of Law  
16 Enforcement to be registered with the DNA database.

17           9. A requirement that the releasee make restitution to  
18 the victim, as determined by the sentencing court or the  
19 commission, for all necessary medical and related professional  
20 services relating to physical, psychiatric, and psychological  
21 care.

22           10. Submission to a warrantless search by the  
23 community control or probation officer of the probationer's or  
24 community controllee's person, residence, or vehicle.

25           (b) For a releasee whose crime was committed on or  
26 after October 1, 1997, in violation of chapter 794, s. 800.04,  
27 s. 827.071, or s. 847.0145, and who is subject to conditional  
28 release supervision, in addition to any other provision of  
29 this subsection, the commission shall impose the following  
30 additional conditions of conditional release supervision:

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2 minimum of one annual polygraph examination to obtain  
3 information necessary for risk management and treatment and to  
5 examination must be conducted by a polygrapher trained  
6 specifically in the use of the polygraph for the monitoring of  
8 offender. The results of the polygraph examination shall not  
9 be used as evidence in a hearing to prove that a violation of

11           2. Maintenance of a driving log and a prohibition  
12 against driving a motor vehicle alone without the prior

14           3. A prohibition against obtaining or using a post  
15 office box without the prior approval of the supervising

17           4. If there was sexual contact, a submission to, at  
18 the probationer's or community controllee's expense, an HIV  
20 victim's parent or guardian.

21           5. Electronic monitoring when deemed necessary by the  
23 supervisor, and ordered by the court at the recommendation of  
24 the Department of Corrections.

26 population of offenders released from state prison into the  
27 community who meet the conditional release criteria poses the  
29 offenders under community supervision. Therefore, the  
30 Department of Corrections is to provide intensive supervision

1 release offenders. Subject to specific appropriation by the  
2 Legislature, caseloads may be restricted to a maximum of 40  
3 conditional release offenders per officer to provide for  
4 enhanced public safety and to effectively monitor conditions  
5 of electronic monitoring or curfews, if so ordered by the  
6 commission.

7 Section 3. For the purpose of incorporating the  
8 amendments made by this act to section 947.1405, Florida  
9 Statutes, in references thereto, paragraph (i) of subsection  
10 (4) of section 775.084, Florida Statutes, 1998 Supplement, is  
11 reenacted to read:

12 775.084 Violent career criminals; habitual felony  
13 offenders and habitual violent felony offenders; definitions;  
14 procedure; enhanced penalties.--

15 (4)

16 (i) The provisions of s. 947.1405 shall apply to  
17 persons sentenced as habitual felony offenders and persons  
18 sentenced as habitual violent felony offenders.

19 Section 4. For the purpose of incorporating the  
20 amendments made by this act to section 947.1405, Florida  
21 Statutes, in references thereto, subsection (1) of section  
22 944.70, Florida Statutes, 1998 Supplement, is reenacted to  
23 read:

24 944.70 Conditions for release from incarceration.--

25 (1)(a) A person who is convicted of a crime committed  
26 on or after October 1, 1983, but before January 1, 1994, may  
27 be released from incarceration only:

- 28 1. Upon expiration of the person's sentence;  
29 2. Upon expiration of the person's sentence as reduced  
30 by accumulated gain-time;

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- 1           3. As directed by an executive order granting  
2 clemency;
- 3           4. Upon attaining the provisional release date;
- 4           5. Upon placement in a conditional release program  
5 pursuant to s. 947.1405; or
- 6           6. Upon the granting of control release pursuant to s.  
7 947.146.
- 8           (b) A person who is convicted of a crime committed on  
9 or after January 1, 1994, may be released from incarceration  
10 only:
- 11           1. Upon expiration of the person's sentence;
- 12           2. Upon expiration of the person's sentence as reduced  
13 by accumulated meritorious or incentive gain-time;
- 14           3. As directed by an executive order granting  
15 clemency;
- 16           4. Upon placement in a conditional release program  
17 pursuant to s. 947.1405 or a conditional medical release  
18 program pursuant to s. 947.149; or
- 19           5. Upon the granting of control release, including  
20 emergency control release, pursuant to s. 947.146.
- 21           Section 5. For the purpose of incorporating the  
22 amendments made by this act to section 947.1405, Florida  
23 Statutes, in references thereto, paragraph (f) of subsection  
24 (1) of section 947.13, Florida Statutes, is reenacted to read:
- 25           947.13 Powers and duties of commission.--
- 26           (1) The commission shall have the powers and perform  
27 the duties of:
- 28           (f) Establishing the terms and conditions of persons  
29 released on conditional release under s. 947.1405, and  
30 determining subsequent ineligibility for conditional release  
31

1 due to a violation of the terms or conditions of conditional  
2 release and taking action with respect to such a violation.

3 Section 6. For the purpose of incorporating the  
4 amendments made by this act to section 947.1405, Florida  
5 Statutes, in references thereto, subsections (1) and (2) of  
6 section 947.141, Florida Statutes, are reenacted to read:

7 947.141 Violations of conditional release, control  
8 release, or conditional medical release.--

9 (1) If a member of the commission or a duly authorized  
10 representative of the commission has reasonable grounds to  
11 believe that an offender who is on release supervision under  
12 s. 947.1405, s. 947.146, or s. 947.149 has violated the terms  
13 and conditions of the release in a material respect, such  
14 member or representative may cause a warrant to be issued for  
15 the arrest of the releasee; if the offender was found to be a  
16 sexual predator, the warrant must be issued.

17 (2) Upon the arrest on a felony charge of an offender  
18 who is on release supervision under s. 947.1405, s. 947.146,  
19 or s. 947.149, the offender must be detained without bond  
20 until the initial appearance of the offender at which a  
21 judicial determination of probable cause is made. If the  
22 magistrate determines that there was no probable cause for the  
23 arrest, the offender may be released. If the magistrate  
24 determines that there was probable cause for the arrest, such  
25 determination also constitutes reasonable grounds to believe  
26 that the offender violated the conditions of the release.  
27 Within 24 hours after the magistrate's finding of probable  
28 cause, the detention facility administrator or designee shall  
29 notify the commission and the department of the finding and  
30 transmit to each a facsimile copy of the probable cause  
31 affidavit or the sworn offense report upon which the



1 magistrate's probable cause determination is based. The  
2 offender must continue to be detained without bond for a  
3 period not exceeding 72 hours excluding weekends and holidays  
4 after the date of the probable cause determination, pending a  
5 decision by the commission whether to issue a warrant charging  
6 the offender with violation of the conditions of release. Upon  
7 the issuance of the commission's warrant, the offender must  
8 continue to be held in custody pending a revocation hearing  
9 held in accordance with this section.

10 Section 7. This act shall take effect July 1, 1999.

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12  
13 LEGISLATIVE SUMMARY

14  
15 Revises the Conditional Release Program Act. Revises  
16 criteria for eligibility for conditional release. Revises  
17 terms and conditions of conditional release supervision  
18 applicable to an inmate convicted of any of specified  
19 offenses or sentenced as a habitual or violent felony  
20 offender or a violent career criminal. Provides that an  
21 inmate who has committed any of specified crimes but who  
22 has not served at least one prior felony commitment may  
23 be subject to conditional release supervision. Requires  
24 supervision by the Department of Corrections, according  
25 to the conditions imposed by the court, when the inmate  
26 who is placed on conditional release supervision also is  
27 subject to probation or community control resulting from  
28 a split sentence within the overall term of sentences.  
29 Provides for revocation of the conditional release  
30 supervision without further hearing by the commission in  
31 those cases when the court revokes probation or community  
control. Provides for forfeiture of all gain-time under  
specified circumstances. Provides for applicability of  
various changes made by the act to certain inmates  
convicted of crimes committed before, on, or after July  
1, 1999. (See bill for details.)