

By the Committee on Criminal Justice and Senator Silver

307-1801-99

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. 947.01,  
5           F.S., relating to the number of members on the  
6           Parole Commission; increasing the number of  
7           commissioners; amending s. 947.1405, F.S.,  
8           relating to the Conditional Release Program  
9           Act; revising criteria for eligibility for  
10          conditional release; providing that an inmate  
11          who has committed any of specified crimes but  
12          who has not served at least one prior felony  
13          commitment may be subject to conditional  
14          release supervision; specifying that certain  
15          inmates are to be released under "conditional  
16          release" supervision; revising terms and  
17          conditions of conditional release supervision  
18          applicable to certain inmates convicted of  
19          specified offenses or sentenced as a habitual  
20          or violent felony offender or a violent career  
21          criminal; providing for applicability of such  
22          supervision to all sentences under specified  
23          circumstances when an inmate's overall term of  
24          sentences includes one or more sentences on  
25          which the eligibility for control release  
26          supervision is based; requiring supervision by  
27          the Department of Corrections, according to the  
28          conditions imposed by the court when the inmate  
29          who is placed on conditional release  
30          supervision also is subject to probation or  
31          community control resulting from a split

1 sentence within the overall term of sentences;  
2 providing for revocation of the conditional  
3 release supervision without further hearing by  
4 the commission in those cases when the court  
5 revokes probation or community control;  
6 providing for forfeiture of all gain-time under  
7 specified circumstances, and authorizing the  
8 Parole Commission to revoke the resulting  
9 deferred conditional release supervision and  
10 take other appropriate action; providing for  
11 the supervision to revert to the authority of  
12 the commission and be subject to the conditions  
13 of the commission in certain cases when the  
14 term of the probation or community control  
15 expires before that of the conditional release  
16 supervision; providing for applicability of  
17 various changes made by the act to certain  
18 inmates convicted of crimes committed before,  
19 on, or after July 1, 1999; providing for  
20 applicability of certain provisions relating to  
21 the authority of the commission to establish  
22 terms and conditions of such release and to  
23 determine whether a violation has occurred or  
24 revocation is warranted; providing for  
25 applicability of a requirement that certain  
26 offenders submit to random substance abuse  
27 testing throughout the term of such conditional  
28 release supervision; reenacting s.  
29 775.084(4)(i), relating to violent career  
30 criminals, habitual felony offenders, and  
31 habitual violent felony offenders, s.

1           921.001(10), F.S., relating to the Sentencing  
2           Commission and sentencing guidelines, s.  
3           944.70(1), relating to conditions for release  
4           from incarceration, s. 947.13(1)(f), F.S.,  
5           relating to powers and duties of the Parole  
6           Commission, and s. 947.141(1) and (2), F.S.,  
7           relating to violations of conditional release,  
8           control release, or conditional medical  
9           release, to incorporate the amendment in  
10          references; providing an effective date.

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

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

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

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

28          WHEREAS, any violation of these strict conditions of  
29 release which results in revocation of supervision should  
30 result in the forfeiture of all accumulated gain-time, and  
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1           WHEREAS, when an inmate also has been subject to  
2 conditions of probation or community control following release  
3 from incarceration, and the inmate has violated these  
4 conditions with the result that the probation or community  
5 control is revoked in a proceeding before a judge, the Florida  
6 Parole Commission should not be required to conduct a second  
7 administrative proceeding to revoke any concurrent or  
8 consecutive term of conditional release supervision, and

9           WHEREAS, such a second administrative proceeding is not  
10 constitutionally required and is an unjustified and  
11 inefficient use of limited state resources, NOW, THEREFORE,

12  
13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. This act may be cited as the "Supervision  
16 of Violent Offenders Act of 1999."

17           Section 2. Section 947.01, Florida Statutes, is  
18 amended to read:

19           947.01 Parole Commission; creation; number of  
20 members.--A Parole Commission is created to consist of six  
21 members who are residents of the state. Effective July 1,  
22 1999, the membership of the commission shall be four members.  
23 ~~Effective July 1, 1996, the membership of the commission shall~~  
24 ~~be three members.~~

25           Section 3. Section 947.1405, Florida Statutes, is  
26 amended to read:

27           947.1405 Conditional release program.--

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

30           (2) Any inmate who:  
31

1           (a)1. Is convicted of a crime committed on or after  
2 October 1, 1988, and before January 1, 1994, and any inmate  
3 who is convicted of a crime committed on or after January 1,  
4 1994, and before July 1, 1999, which crime is or was contained  
5 in category 1, category 2, category 3, or category 4 of Rule  
6 3.701 and Rule 3.988, Florida Rules of Criminal Procedure  
7 (1993), and who has served at least one prior felony  
8 commitment at a state or federal correctional institution;  
9           2.(b) Is sentenced as a habitual or violent habitual  
10 offender or a violent career criminal pursuant to s. 775.084  
11 based on an offense committed before July 1, 1999; or  
12           3.(c) Is found to be a sexual predator under s. 775.21  
13 or former s. 775.23, based on an offense committed before July  
14 1, 1999,  
15  
16 shall, upon reaching the tentative release date or provisional  
17 release date, whichever is earlier, as established by the  
18 Department of Corrections, be released under conditional  
19 release supervision subject to specified terms and conditions,  
20 including payment of the cost of supervision pursuant to s.  
21 948.09. Such supervision shall be applicable to all sentences  
22 within the overall term of sentences if an inmate's overall  
23 term of sentences includes one or more sentences that are  
24 eligible for conditional release supervision as provided  
25 herein. Effective July 1, 1994, and applicable for offenses  
26 committed on or after that date, the commission may require,  
27 as a condition of conditional release, that the releasee make  
28 payment of the debt due and owing to a county or municipal  
29 detention facility under s. 951.032 for medical care,  
30 treatment, hospitalization, or transportation received by the  
31 releasee while in that detention facility. The commission, in

1 determining whether to order such repayment and the amount of  
2 such repayment, shall consider the amount of the debt, whether  
3 there was any fault of the institution for the medical  
4 expenses incurred, the financial resources of the releasee,  
5 the present and potential future financial needs and earning  
6 ability of the releasee, and dependents, and other appropriate  
7 factors. If any inmate placed on conditional release  
8 supervision is also subject to probation or community control  
9 resulting from a probationary or community control split  
10 sentence within the overall term of sentences, the Department  
11 of Corrections shall supervise such person according to the  
12 conditions imposed by the court, and the commission shall  
13 defer to such supervision. If the court revokes probation or  
14 community control and resentsences the offender to a term of  
15 incarceration, such revocation also constitutes a sufficient  
16 basis for the revocation of the conditional release  
17 supervision on any nonprobationary or non-community-control  
18 sentence without further hearing by the commission. If any  
19 such supervision on any nonprobationary or  
20 non-community-control sentence is revoked, such revocation may  
21 result in a forfeiture of all gain-time, and the commission  
22 may revoke the resulting deferred conditional release  
23 supervision or take other action it considers appropriate. If  
24 the term of conditional release supervision exceeds that of  
25 the probation or community control, then, upon expiration of  
26 the probation or community control, authority for the  
27 supervision shall revert to the commission, and the  
28 supervision shall be subject to the conditions of the  
29 ~~commission. If an inmate has received a term of probation or~~  
30 ~~community control supervision to be served after release from~~  
31 ~~incarceration, the period of probation or community control~~

1 ~~must be substituted for the conditional release supervision. A~~  
2 ~~panel of no fewer than two commissioners shall establish the~~  
3 ~~terms and conditions of any such release. If the offense was a~~  
4 ~~controlled substance violation, the conditions shall include a~~  
5 ~~requirement that the offender submit to random substance abuse~~  
6 ~~testing intermittently throughout the term of conditional~~  
7 ~~release supervision, upon the direction of the correctional~~  
8 ~~probation officer as defined in s. 943.10(3). The commission~~  
9 ~~shall also determine whether the terms and conditions of such~~  
10 ~~release have been violated and whether such violation warrants~~  
11 ~~revocation of the conditional release.~~

12 (b) Has been convicted of any of the following  
13 offenses committed on or after July 1, 1999, or an attempt,  
14 solicitation, or conspiracy to commit any of the following  
15 offenses committed on or after July 1, 1999:

- 16 1. Sexual battery;
- 17 2. Lewd, lascivious, or indecent assault or act;
- 18 3. Murder in the first, second, or third degree;
- 19 4. Kidnapping;
- 20 5. Aggravated child abuse;
- 21 6. False imprisonment;
- 22 7. Sexual performance by a child;
- 23 8. Selling or buying of a minor;
- 24 9. Stalking or aggravated stalking;
- 25 10. Incest;
- 26 11. Burglary or armed burglary of an occupied  
27 dwelling, building, or conveyance when any person was  
28 assaulted or battered or a sex act was attempted or completed;
- 29 12. Any battery or aggravated battery when a sex act  
30 was attempted or completed;

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1           13. Resisting a law enforcement officer with violence  
2 to the officer's person;  
3           14. Aggravated assault or aggravated battery on a law  
4 enforcement officer;  
5           15. Felonious threats or extortion;  
6           16. DUI manslaughter;  
7           17. Robbery;  
8           18. Attempted murder of a law enforcement officer  
9 engaged in duty;  
10           19. Arson;  
11           20. Carjacking;  
12           21. Home invasion robbery;  
13           22. Assault or battery upon a district school board  
14 employee; or  
15           23. Written threats to kill or do bodily injury  
16  
17 or is sentenced as a habitual or violent habitual offender or  
18 a violent career criminal pursuant to s. 775.084 based on an  
19 offense committed on or after July 1, 1999, or is found to be  
20 a sexual predator based on an offense committed on or after  
21 July 1, 1999, under s. 775.21 shall, upon reaching the  
22 tentative release date established by the Department of  
23 Corrections, be released under conditional release supervision  
24 subject to the terms and conditions determined by the  
25 commission as provided in this section. Such supervision  
26 shall be applicable to all sentences within the overall term  
27 of sentences if an inmate's overall term of sentences includes  
28 one or more sentences that are eligible for conditional  
29 release supervision as provided herein. If any inmate placed  
30 on conditional release supervision is also subject to  
31 probation or community control resulting from a probationary



1 or community control split sentence within the overall term of  
2 sentences, the Department of Corrections shall supervise such  
3 person according to the conditions imposed by the court, and  
4 the commission shall defer to such supervision. If the court  
5 revokes probation or community control and resentences the  
6 offender to a term of incarceration, such revocation also  
7 constitutes a sufficient basis for the revocation of the  
8 conditional release supervision on any nonprobationary or  
9 non-community-control sentence, without further hearing by the  
10 commission. If any such supervision on any nonprobationary or  
11 non-community-control sentence is revoked, such revocation may  
12 result in a forfeiture of all gain-time, and the commission  
13 may revoke the resulting deferred conditional release  
14 supervision or take other action it considers appropriate. If  
15 the term of conditional release supervision exceeds that of  
16 the probation or community control, then, upon expiration of  
17 the probation or community control, authority for the  
18 supervision shall revert to the commission, and the  
19 supervision shall be subject to the conditions of the  
20 commission.

21 (c) A panel of no fewer than two commissioners shall  
22 establish the terms and conditions of any conditional release.  
23 If the offense was a controlled substance violation, the  
24 conditions shall include a requirement that the offender  
25 submit, upon the direction of the correctional probation  
26 officer as defined in s. 943.10(3), to random substance abuse  
27 testing intermittently throughout the term of conditional  
28 release supervision. The commission shall also determine  
29 whether the terms and conditions of such release have been  
30 violated and whether such violation warrants revocation of the  
31 conditional release.

1           (3) As part of the conditional release process, the  
2 commission shall determine:

3           (a) The amount of reparation or restitution.

4           (b) The consequences of the offense as reported by the  
5 aggrieved party.

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

8           (4) The commission shall provide to the aggrieved  
9 party information regarding the manner in which notice of any  
10 developments concerning the status of the inmate during the  
11 term of conditional release may be requested.

12           (5) Within 180 days prior to the tentative release  
13 date or provisional release date, whichever is earlier, a  
14 representative of the commission shall interview the inmate.  
15 The commission representative shall review the inmate's  
16 program participation, disciplinary record, psychological and  
17 medical records, and any other information pertinent to the  
18 impending release. A commission representative shall conduct  
19 a personal interview with the inmate for the purpose of  
20 determining the details of the inmate's release plan,  
21 including the inmate's planned residence and employment. The  
22 results of the interview must be forwarded to the commission  
23 in writing.

24           (6) Upon receipt of notice as required under s.  
25 947.175, the commission shall conduct a review of the inmate's  
26 record for the purpose of establishing the terms and  
27 conditions of the conditional release. The commission may  
28 impose any special conditions it considers warranted from its  
29 review of the record. If the commission determines that the  
30 inmate is eligible for release under this section, the  
31 commission shall enter an order establishing the length of

1 supervision and the conditions attendant thereto. However, an  
2 inmate who has been convicted of a violation of chapter 794 or  
3 found by the court to be a sexual predator is subject to the  
4 maximum level of supervision provided, with the mandatory  
5 conditions as required in subsection (7), and that supervision  
6 shall continue through the end of the releasee's original  
7 court-imposed sentence. The length of supervision must not  
8 exceed the maximum penalty imposed by the court.

9 (7)(a) Any inmate who is convicted of a crime  
10 committed on or after October 1, 1995, or who has been  
11 previously convicted of a crime committed on or after October  
12 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071,  
13 or s. 847.0145, and is subject to conditional release  
14 supervision, shall have, in addition to any other conditions  
15 imposed, the following special conditions imposed by the  
16 commission:

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

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

27 3. Active participation in and successful completion  
28 of a sex offender treatment program with therapists  
29 specifically trained to treat sex offenders, at the releasee's  
30 own expense. If a specially trained therapist is not available  
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1 within a 50-mile radius of the releasee's residence, the  
2 offender shall participate in other appropriate therapy.

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

7 5. If the victim was under the age of 18, a  
8 prohibition, until successful completion of a sex offender  
9 treatment program, on unsupervised contact with a child under  
10 the age of 18, unless authorized by the commission without  
11 another adult present who is responsible for the child's  
12 welfare, has been advised of the crime, and is approved by the  
13 commission.

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

18 7. Unless otherwise indicated in the treatment plan  
19 provided by the sexual offender treatment program, a  
20 prohibition on viewing, owning, or possessing any obscene,  
21 pornographic, or sexually stimulating visual or auditory  
22 material, including telephone, electronic media, computer  
23 programs, or computer services that are relevant to the  
24 offender's deviant behavior pattern.

25 8. A requirement that the releasee must submit two  
26 specimens of blood to the Florida Department of Law  
27 Enforcement to be registered with the DNA database.

28 9. A requirement that the releasee make restitution to  
29 the victim, as determined by the sentencing court or the  
30 commission, for all necessary medical and related professional  
31

1 services relating to physical, psychiatric, and psychological  
2 care.

3 10. Submission to a warrantless search by the  
4 community control or probation officer of the probationer's or  
5 community controllee's person, residence, or vehicle.

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

12 1. As part of a treatment program, participation in a  
13 minimum of one annual polygraph examination to obtain  
14 information necessary for risk management and treatment and to  
15 reduce the sex offender's denial mechanisms. The polygraph  
16 examination must be conducted by a polygrapher trained  
17 specifically in the use of the polygraph for the monitoring of  
18 sex offenders, where available, and at the expense of the sex  
19 offender. The results of the polygraph examination shall not  
20 be used as evidence in a hearing to prove that a violation of  
21 supervision has occurred.

22 2. Maintenance of a driving log and a prohibition  
23 against driving a motor vehicle alone without the prior  
24 approval of the supervising officer.

25 3. A prohibition against obtaining or using a post  
26 office box without the prior approval of the supervising  
27 officer.

28 4. If there was sexual contact, a submission to, at  
29 the probationer's or community controllee's expense, an HIV  
30 test with the results to be released to the victim or the  
31 victim's parent or guardian.

1           5. Electronic monitoring when deemed necessary by the  
2 community control or probation officer and his or her  
3 supervisor, and ordered by the court at the recommendation of  
4 the Department of Corrections.

5           (8) It is the finding of the Legislature that the  
6 population of offenders released from state prison into the  
7 community who meet the conditional release criteria poses the  
8 greatest threat to the public safety of the groups of  
9 offenders under community supervision. Therefore, the  
10 Department of Corrections is to provide intensive supervision  
11 by experienced correctional probation officers to conditional  
12 release offenders. Subject to specific appropriation by the  
13 Legislature, caseloads may be restricted to a maximum of 40  
14 conditional release offenders per officer to provide for  
15 enhanced public safety and to effectively monitor conditions  
16 of electronic monitoring or curfews, if so ordered by the  
17 commission.

18           Section 4. For the purpose of incorporating the  
19 amendments made by this act to section 947.1405, Florida  
20 Statutes, in references thereto, paragraph (i) of subsection  
21 (4) of section 775.084, Florida Statutes, 1998 Supplement, is  
22 reenacted to read:

23           775.084 Violent career criminals; habitual felony  
24 offenders and habitual violent felony offenders; definitions;  
25 procedure; enhanced penalties.--

26           (4)

27           (i) The provisions of s. 947.1405 shall apply to  
28 persons sentenced as habitual felony offenders and persons  
29 sentenced as habitual violent felony offenders.

30           Section 5. For the purpose of incorporating the  
31 amendments made by this act to section 947.1405, Florida

1 Statutes, in references thereto, subsection (1) of section  
2 944.70, Florida Statutes, 1998 Supplement, is reenacted to  
3 read:

4 944.70 Conditions for release from incarceration.--

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

8 1. Upon expiration of the person's sentence;

9 2. Upon expiration of the person's sentence as reduced  
10 by accumulated gain-time;

11 3. As directed by an executive order granting  
12 clemency;

13 4. Upon attaining the provisional release date;

14 5. Upon placement in a conditional release program  
15 pursuant to s. 947.1405; or

16 6. Upon the granting of control release pursuant to s.  
17 947.146.

18 (b) A person who is convicted of a crime committed on  
19 or after January 1, 1994, may be released from incarceration  
20 only:

21 1. Upon expiration of the person's sentence;

22 2. Upon expiration of the person's sentence as reduced  
23 by accumulated meritorious or incentive gain-time;

24 3. As directed by an executive order granting  
25 clemency;

26 4. Upon placement in a conditional release program  
27 pursuant to s. 947.1405 or a conditional medical release  
28 program pursuant to s. 947.149; or

29 5. Upon the granting of control release, including  
30 emergency control release, pursuant to s. 947.146.

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1           Section 6. For the purpose of incorporating the  
2 amendments made by this act to section 947.1405, Florida  
3 Statutes, in references thereto, paragraph (f) of subsection  
4 (1) of section 947.13, Florida Statutes, is reenacted to read:

5           947.13 Powers and duties of commission.--

6           (1) The commission shall have the powers and perform  
7 the duties of:

8           (f) Establishing the terms and conditions of persons  
9 released on conditional release under s. 947.1405, and  
10 determining subsequent ineligibility for conditional release  
11 due to a violation of the terms or conditions of conditional  
12 release and taking action with respect to such a violation.

13           Section 7. For the purpose of incorporating the  
14 amendments made by this act to section 947.1405, Florida  
15 Statutes, in references thereto, subsections (1) and (2) of  
16 section 947.141, Florida Statutes, are reenacted to read:

17           947.141 Violations of conditional release, control  
18 release, or conditional medical release.--

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

27           (2) Upon the arrest on a felony charge of an offender  
28 who is on release supervision under s. 947.1405, s. 947.146,  
29 or s. 947.149, the offender must be detained without bond  
30 until the initial appearance of the offender at which a  
31 judicial determination of probable cause is made. If the



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

20 Section 8. This act shall take effect July 1, 1999.

21  
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
23 COMMITTEE SUBSTITUTE FOR  
24 Senate Bill 1428

25 Provides for the addition of a fourth commissioner to the  
26 Parole Commission.  
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