

**STORAGE NAME:** h1741.cor

**DATE:** March 30, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CORRECTIONS  
ANALYSIS**

**BILL #:** HB 1741

**RELATING TO:** Drug Offenders/Conditional Release

**SPONSOR(S):** Representative Reddick

**COMPANION BILL(S):**

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

- (1) CORRECTIONS
  - (2) CRIME & PUNISHMENT
  - (3) CRIMINAL JUSTICE APPROPRIATIONS
  - (4)
  - (5)
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**I. SUMMARY:**

HB 1741 establishes a conditional drug offender release program. Any inmate serving a prison sentence for the sale, manufacture, possession, delivery or trafficking of controlled substances would be eligible for consideration of conditional drug offender release. The bill provides for the Parole Commission to consider inmates for conditional drug offender release after recommendation from a newly established citizen's advisory committee.

Although, the bill assigns the citizen's advisory committee to the commission for staffing, administrative, and fiscal accountability purposes, the commission otherwise functions independently of the commission. HB 1741 authorizes only the commission to grant and deny conditional drug offender releases.

Members of the citizen's advisory committee shall consist of a psychiatrist; a licensed psychologist; a certified law enforcement officer; a person employed by the private sector; and a former state inmate who has demonstrated successful reintegration back into the community. The citizen's advisory committee's membership should, to the extent possible, contain persons who are knowledgeable about public safety, substance abuse issues and drug offender rehabilitation.

This bill would take effect upon becoming law and is applicable to the inmates currently incarcerated.

The bill would have an indeterminate but significant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Parole and The Parole Commission**

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 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 all statutorily eligible inmates early release from prison. 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, clemency and conditional medical release. In a parole release agreement ordered by the commission, the terms and conditions of the supervision are specified.

Parole is the release of an inmate prior to the expiration of sentence with a period of supervision to follow. Parole is also a post-prison supervision program where eligible inmates have the terms and conditions of parole set by the commission. Parole supervision is provided by the Department of Corrections. There are currently 1,056 active Florida parolees, 1,468 parolees from other states under Florida supervision, and 6,036 Florida inmates eligible for 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. However, in 1996, the legislature reduced the commission's budget by about one-third.

Under current law and practice, there are two release mechanisms which provide discretion to the commission to make early release decisions: parole and conditional medical release. Both of these discretionary release mechanisms are designed with specific purposes in mind and are narrow in their use. Parole release decisions by the commission are only available for the 6,036 eligible inmates remaining in the prison system. While the state no longer has parole except for inmates sentenced to offenses committed prior to 1983 and for certain inmates sentenced to 25 mandatory term of years prior to 1996, there remains a small but dwindling eligible population.

The commission, in its discretion, granted parole 66 times last fiscal year. The granting of conditional medical release to terminally ill and physically incapacitated inmates by the commission is likewise limited by its very nature and accordingly only 15 inmates were granted such a release last fiscal year.

**Minimum Service of Sentence**

For offenses committed on or after October 1, 1995, inmates are required to serve a minimum of 85% of their sentences. Since some of the inmates in prison today committed their crimes before that date, the 85% rule does not apply to them, though the percentage of their sentence they are serving continues to rise. The average percentage of sentence served by inmates released in June 1998 was 74%, as compared to 34% only five years ago. Approximately 2,898 drug offenders are serving under the 85% time provision. Specific lengths for this particular population range from 1 to 40 years.

**Conditional Release**

The 1988 legislature enacted s. 947.1405, F.S., and established the conditional release program to ensure that certain violent and repeat offenders be supervised upon release. Any inmate sentenced to murder/manslaughter, sexual offenses, robbery or other violent personal crimes, who has a previous commitment to a state or federal institution or who has been convicted as a

habitual offender or a sexual predator, is eligible for conditional release. Upon reaching the release date with accrued gain-time, an inmate is placed on conditional release to serve up to the remainder of the length of sentence. A conditional release eligible inmate often accrues less gain-time than other inmates due to the nature of the offense. Conditional release is not technically an "early release" mechanism as it merely provides for post release supervision for those considered serious offenders for up to the amount of gain-time accrued. According to the Department of Corrections' 1997-1998 Annual Report, the total number of inmates released under the conditional release program was 4,362. The DOC report also indicates that 109 conditional and control releases were reinstated.

**Conditional Medical Release**

The 1992 legislature enacted section 947.149, F.S., which established the conditional medical release program to permit the commission to release inmates prior to the expenditure of their sentence who are terminally ill and permanently incapacitated. No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

Upon referral by the DOC, any inmate determined eligible and sentenced to the department may be considered for conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for any inmate who is under a sentence of death.

In considering an inmate for conditional medical release, the commission may require that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

The process is very restrictive and many inmates die before they are released. In the FY 1997-1998, 11 inmates were released due to medical conditions.

**Laws Governing Drug Offenses and Drug Offender Population**

Section 893.13, F.S., specifies that it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

The statute prohibits any person to sell, manufacture, or deliver, or possess a controlled substance with intent to sell, manufacture, or deliver, a controlled substance in specific locations. The list of controlled substances is extensive.

Section 893.135, F.S., defines trafficking and the conspiracy to engage in trafficking. Mandatory sentences and the suspension or reduction of sentences are authorized in this section.

Of the total inmate population of 66,280 on June 30, 1998, there were 10,465 drug offenders, which comprised 15.8% of the total inmate population. A breakdown by drug offenses is as follows:

<b>Drug Offenders in the Inmate Population June 30, 1998</b>		
<b>Drug Offenses</b>	<b>Number of Offenders</b>	<b>Percent of Total Population</b>

<b>Drug Offenders in the Inmate Population June 30, 1998</b>		
<b>Sale/Purchase/ Manufacturing</b>	<b>6,215</b>	<b>9.4%</b>
<b>Trafficking</b>	<b>2,286</b>	<b>3.4%</b>
<b>Possession/Other</b>	<b>1,964</b>	<b>3.0%</b>
<b>Total</b>	<b>10,465</b>	<b>15.8%</b>

Source: Florida Department of Corrections

Drug offense admissions for the fiscal year comprised 24.4% of the total inmate admissions. There were 5,530 drug offenders admitted during the 1997-98 fiscal year. Most of them (57.4%) had prior Florida prison commitments. For the first time in eight years, drug admissions have increased.

The typical new drug admission was for the conviction of the sale or manufacture of drugs which comprised 14.10% of the total admissions for the fiscal year.

The Criminal Justice Estimating Conference held in October, 1997 documented the trend that admissions to prison for trafficking and possession drugs showed no significant changes since 1994. However, the prison admissions for the purchase and sale of drugs experienced a slight increase from 1994 through the last quarter of 1997.

<b>TOTAL DRUG ADMISSIONS (FY 97-98)</b>		
<b>Type of Drug Offense</b>	<b>Number of Offenders</b>	<b>Percent of Total Drug Admissions</b>
<b>Sale/Purchase/ Manufacturing</b>	<b>3,203</b>	<b>57.9%</b>
<b>Trafficking</b>	<b>846</b>	<b>15.3%</b>
<b>Possession/Other</b>	<b>1,481</b>	<b>26.8%</b>
<b>Total</b>	<b>5,530</b>	<b>100.00%</b>

Source: Florida Department of Corrections

In FY 97-98, 23,065 inmates were released from Florida's prisons. A total of 5,560 were drug offenders which comprised 24.1% of the total number of releases. Releases for drug offenses are also declining.

<b>TOTAL DRUG RELEASES (FY 97-98)</b>		
<b>Type of Drug Offense</b>	<b>Number of Offenders</b>	<b>Percent of Total Drug Releases</b>
<b>Sale/Purchase/Manufacturing</b>	<b>3,513</b>	<b>63.2%</b>
<b>Trafficking</b>	<b>676</b>	<b>12.2%</b>
<b>Possession/Other</b>	<b>1,371</b>	<b>24.6%</b>
<b>Total</b>	<b>5,560</b>	<b>100.00%</b>

The average time-served for all offenders released in FY 97-98 was 37.5 months or 71.8% of their court-imposed sentence while drug offenders served an average number of 31.2 months or 73.6% of their court imposed sentence.

<b>DRUG SENTENCES (FY 97-98)</b>		
<b>Type of Drug Offense</b>	<b>Avg. Mos. Served</b>	<b>Avg. Pct. Served</b>
<b>Sale/Purchase/Manufacturing</b>	<b>31.7</b>	<b>75%</b>
<b>Trafficking</b>	<b>43.2</b>	<b>43.2%</b>
<b>Possession/Other</b>	<b>24.3</b>	<b>75.5%</b>

Source: Florida Department of Corrections

**B. EFFECT OF PROPOSED CHANGES:**

The bill creates a new section (s. 947.1491, F.S) of law to establish a conditional drug offender release program. The bill:

- specifies that any inmate who is serving a prison sentence for a drug offense conviction pursuant to s. 893.13, F.S., or s. 893.135, F.S., shall be eligible for consideration for the conditional drug offender release program;
- clarifies that no inmate has a right to a conditional drug offender release or to a review by either the commission or the advisory committee;
- authorizes the recommendations of conditional drug release to rest solely within the discretion of the committee;
- authorizes the granting of conditional drug offender release and the conditions of release to rest solely with the discretion of the commission;

- requires that if an inmate has received a term of probation of community control supervision to be served after release from incarceration, the period of probation or community control must be substituted for the conditional drug offender release supervision;
- requires the conditional release date to be set based on a system of uniform criteria. The date shall be set by a panel of no fewer than 2 commissioners. The uniform criteria shall include, but not be limited to: present offenses for which the person is committed, past criminal conduct, length of cumulative sentences, and age of the offender at the time of commitment, together with any aggravating or mitigating circumstances; and
- authorizes the commission to determine the terms, conditions and lengths of supervision of persons released.

The bill authorizes the commission to determine violations of conditional release and the necessary actions resulting from violations. The commission is required to adopt rules to implement the provisions of the bill .

The bill also:

- establishes a citizen's advisory committee with the purpose to advise and make recommendations to the commission on the conditional release of drug offenders;
- specifies the composition and qualifications of the committee;
- assigns the committee to the commission for staffing, administrative, and fiscal accountability purposes, but shall otherwise function independently of the commission;
- requires the chair of the committee to be selected by the membership of the committee and serve for a one year term;
- requires a minimum number of regular meetings annually. Additional meetings may be called by the chair upon giving at least a 7 day notice to all members and the public pursuant to chapter 120. This subsection specifies the location of meetings unless determined by the chair that another location is warranted;
- specifies that a majority of the membership of the committee constitutes a quorum at any committee meeting. This subsection also specifies when an action of the committee is binding;
- requires the chair to have made a complete record of the proceedings which shall be open for public inspection; and
- entitles the committee members to per diem and travel expenses pursuant to s. 112.061, F.S..

Subsections (1), (2), (3), (4), and (6) of section 947.141, F.S., are amended to provide for technical clarification.

Section 947.146 (12) and (14), F. S., relating to the Control Release Authority, and section 947.14(5), F.S., relating to conditional medical release are reenacted to incorporate and conform cross references.

This bill shall take effect upon becoming law.

**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?

Yes, the bill authorizes the Parole Commission to adopt rules to determine the terms, conditions and lengths of supervision for a conditional drug offender release program.

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

The bill establishes a citizen's advisory committee which is administratively assigned to the Parole Commission.

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

No.

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

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

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?

No.

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

N/A

4. Individual Freedom:

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

No.

- 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. STATUTE(S) AFFECTED:**

ss. 947.141, 947.146, 947.146, 947.149, F.S.

**E. SECTION-BY-SECTION ANALYSIS:**

Section 1. Establishes a conditional drug offender release program; specifies eligibility criteria; provides for the Parole Commission to consider inmates for the conditional release program upon the recommendation of the citizens' advisory committee; clarifies that the inmate has no right to conditional drug offender release or review; authorizes the commission to grant or deny conditional drug offender release; requires that probation or community control be substituted under certain circumstances; requires the conditional release date to be set based on a system of uniform criteria; and authorizes the commission to determine the terms, conditions, and length of supervision, determine violations, and adopt rules.

Section 2. Establishes a citizens' advisory committee; specifies its purpose and composition; assigns the committee to the commission for staffing and administrative support; and authorizes per diem and travel expenses.

Section 3. Provides for issuance of arrest warrant for offender who has violated conditional drug offender release terms and conditions; provides for detention without bond of the offender upon arrest on felony charge; requires a hearing within a specified period after notice to the Parole Commission of the arrest; and provides for orders of revocation of conditional offender release under specified circumstances.

Section 4. Conforms cross references.

Section 5. Provides for an effective date.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

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:

Approximately 4,458 drug offenders will be released in FY 99-00. The commission estimates the additional resources will be necessary to implement this bill. The commission, reports that the increased travel expenses, meetings scheduled and staffing costs could not be absorbed within its current budget. Per diem and travel costs are uncertain depending on the membership of committee and their county of residence.

The commission reports that the workload of this program would require additional staff and resources to conduct interviews, make recommendations, and schedule the cases for consideration and review by the citizen's committee. Inmates in violation of the conditional drug offender release program would be processed similarly, however the volume of such cases is unknown.

The department notes that additional FTE will be necessary if the bill intends for the department to supervise the conditional drug offender releases. If the intent is, also, for the department to provide drug treatment, additional resources may be necessary for the community corrections division.

To date, the Criminal Justice Estimating Conference has not met to determine the impact of this bill.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This 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 or municipalities.

V. **COMMENTS:**

Both the department and the Parole commission note a concern involving ex post facto consideration. This is an area of law that is currently involved in extensive litigation. Concerns are of how and whether these programs can be subsequently canceled or repealed with serious legal consequences. The bill should be prospective to avoid ex post facto problems and regard recent Supreme Court decisions pertaining to early release.

Concerns of both the department and the commission are that the bill does not:

- note what actually constitutes a conditional drug offender release;
- specify how an inmate is selected for consideration by the citizen's advisory committee; and
- address the volume of annual releases per year.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

N/A

VII. **SIGNATURES:**

**COMMITTEE ON CORRECTIONS:**

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