

STORAGE NAME: HB 2005.cor

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
ANALYSIS**

BILL #: HB 2005 (PCB COR 99-01)

RELATING TO: Post Release Supervision of Offenders (Supervision of Violent Offenders Act of 1999)

SPONSOR(S): CORRECTIONS & Representative Trovillion

COMPANION BILL(S): SB 1428(s)

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

(1) CORRECTIONS YEAS 7 NAYS 0

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(4)

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I. SUMMARY:

This bill revises the criteria for conditional release by eliminating the requirement that an offender have a prior prison commitment to be eligible for conditional release, and providing that all inmates released from incarceration be placed on conditional release for the period of time remaining on their sentence. Conditional release is not an early release mechanism but provides supervision in the community for up to the remaining period of time of the offender's maximum sentence. Conditional release supervision, in the case of a split sentence, is deferred rather than substituted and if the period of supervision terminates earlier than the period of conditional release, supervision of the offender continues under the terms and conditions of the conditional release as set by the Commission.

If the offender violates the supervision portion of the split sentence and is revoked by the court, then the court's determination of a violation is sufficient for the offender's conditional release supervision to be revoked by the Parole Commission without an additional hearing.

Additionally, in compliance with the "Jimmy Ryce Act", language was added to toll or suspend the required conditional release supervision until the sexually violent predator has been discharged from treatment and released back into society.

This bill also increases the Parole Commission membership by one.

The bill provides for an effective date of July 1, 1999.

The Parole Commission estimates that an additional commissioner will cost \$110,160 annually. Other costs associated with the bill are indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Discussed below is the present situation within two areas concerning the Parole Commission potentially impacted by this bill: membership of the commission and conditional release.

Parole Commission Membership

In 1941, the Legislature created a state administered probation and parole system for the State of Florida. Laws 1941, c. 20519. Since 1941, the Legislature modified the number of members on the commission and the requirement to be a member on several occasions.¹ The Parole Commission has had as many as nine member and recently as few as three. Previously, there were even requirements that members, not only be Florida residents but also have a knowledge of penology and social welfare. Since July 1, 1996, the commission has had three members with the only requirement that they be Florida residents.

In 1996, the Legislature reduced the number of parole commissioners in response to the "end" of control release. At that time, future projections indicated that there would be a reduction of cases handled by the commission thus requiring less commissioners. While there has been a reduction in the total caseload of the commission, there has been a significant increase in the number of cases handled per commissioner.

In 1992-93 there were 7 commissioners with a commission caseload of 39,561 averaging 6,433 cases per commissioner. In 1999, there are 3 commissioners, handling a commission caseload of 17,125 averaging 7,965 cases. The number of cases per commissioner has increased from 1992-1993 to 1999-2000, an additional 1532 cases per commissioner per year.

In order to complete its work, the commission has had to hire temporary retired commissioners. From July 1998 through October 7, 1998, retired commissioners worked a total of 56 days at a cost of \$5,600.00. During the period of October 7, 1998 through December 30, 1998, the commission planned to schedule a retired commissioner for voting at a cost of \$9600.00. In addition, each docket requires at least 4 days work by the Administrative Assistant II at a cost of \$17.50 per hour. The actual cost for retired commissions and administrative assistant IIs for FY 1997/98 totaled \$26,735.56 with \$21,314.70 expended on commissioners and \$5,420 expended on administrative assistants.

Conditional Release Program

Conditional Release is a post release supervision program for offenders who have been convicted of specific crimes. It mandates supervision after the full term of incarceration for the remaining time of the sentence imposed for up to the amount of gain time earned for serious offenders. A conditional release eligible offender often accrues less gain time than other incarcerated offenders due to the nature of the offense. Current law specifies that inmates convicted of crimes contained in 1983 Sentencing Guidelines categories 1 through 4, as well as habitual and violent offenders, are required to be under conditional release supervision upon expiration of sentence if the sentence served was imposed for a crime committed on or after October 1, 1994, that is contained in categories 1 through 4 of the 1993 Florida Rules of Criminal Procedure. Current conditional release applies to offenders convicted of murder/manslaughter, sexual offenses, robbery or other violent personal crimes, and who have a previous commitment to a state or federal institution or have been convicted as a

¹Laws 1995, c. 95-283, § 39; Laws 1990, c. 90-337, § 9; Laws 1988, c. 88-122, § 15; Laws 1987, c. 87-300, § 4; Laws 1986, c. 86-183, § 25; Laws 1985, c. 85-288, § 13; Laws 1983, c. 83-131, § 23; Laws 1979, c. 79-3, § 102; Laws 1978, c. 78-417, § 4; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-120, § 84; Laws 1974, c. 74-112, § 30; Laws 1965, c. 65-453, § 1; Laws 1963, c. 63-83, § 1; Laws 1941, c. 20519, § 1.

Habitual Offender or Sexual Predator². 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.

The Parole Commission through a panel of no fewer than two parole commissioners establishes the terms and conditions for the conditional releasee. Conditional release offenders are provided intensive supervision by Department of Correction correctional probation officers who statutorially may be restricted to a maximum case load of forty conditional release offenders.

Commissioners or their duly authorized representatives may issue warrants when they have reasonable grounds to believe that a conditional release offender has violated the terms and conditions of their release in a material respect. The Parole Commission conducts revocation hearings and may revoke conditional release upon a finding of a violation. The commission must still conduct a separate hearing even if the offender was on probation or community control and a court revoked the supervision and sentenced the offender to a term of incarceration.

The 1997-1998 Department of Corrections Annual Report listed 4,235 conditional release admissions for FY 1997-98 accounting for 4.4 percent of offenders under community supervision. Of these 4,235 admissions, 5 originated from other states, 64 were classified as life felonies, 56 classified as first degree/life felonies, 535 classified as first degree felonies, 2,278 classified as second degree felonies, 1,293 as third degree felonies, 1 as a misdemeanor with data unavailable for 8.

Sentence Length for Supervision Admissions for FY 1997-98

◆ 1 year or less of supervision remaining,	2,246
◆ less than 2 years more that one year,	846
◆ less than 3 years more than 2 years,	422
◆ less than 4 years more than 3 years,	245
◆ less than 5 years more than 4 years,	167
◆ less than 6 years more than 5 years,	107
◆ less than 7 years more than 6 years,	60
◆ less than 8 years more than 7 years,	40
◆ less than 9 years more than 8 years,	44
◆ less than 10 years more than 9 years,	11
◆ less than 12 years more than 10 years,	8
◆ less than 15 years more than 12 years,	1
◆ less than 20 years more than 15 years,	1
◆ and more than 50 years.	1

Statistics were unavailable on 36 conditional release offenders.

Concerning prior prison commitments: 361 had one prior prison commitment, 1,366 had two prior prison commitments, 1,131 had three prior prison commitments, 767 had four prior prison commitments and 601 had five more prison commitments.

The Department of Corrections counted 4,103 conditional release offenders released from supervision for FY 1997-98. Releases for revocations accounted for 701 for a new felony, 344 for a new misdemeanor and 1,127 for technical violations. Three were pardoned, 32 died and 1,473 terminated normally. Five were terminated early and 418 terminated by court action. Conditional Release offenders accounted for 4.5 percent of supervision releases for FY 1997-98

²The statute previously mentioned Category 1, 2, 3 and 4 offenses as contained within Rules 3.701 and 3.988 of the Florida Rules of Criminal Procedure(1993). Category 1 offenses were Murder/Manslaughter including Chapter 782 - Homicide(except subsection 782.04(1)(a)-capital murder, Subsection 316.193(3)(c)(3) - DUI Manslaughter (automobile) and Subsection 327.351(2) - DUI Manslaughter (vessel). Category 2 offenses were sexual offenses, including Chapter 794 Sexual Battery, Chapter 800 Lewdness, Indecent Exposure, Section 826.04 Incest, Section 491.0112 Sexual Misconduct by a Psychotherapist and Sexual Predator Registration under section 775.22. Category 3 offenses were Robberies s. 812.13 including s. 812.131 Carjacking and s.812.135 Home Invasion Robbery. Category 4 offenses were Violent Personal Crimes including Chapter 784 Assault, Battery, s. 836.05 Threats, Extortion, s. 836.10 written threats to kill or do bodily injury, s. 843.01 Resisting Officer with Violence and subsection 381.411(4)(b) Battery on HRS Employee.

The typical conditional release offender is male (95.7%), black (70.4%), is 34 or younger (51.1%), was convicted of Robbery without a Weapon (13.9%), Sale/Manufacture of Drugs (11.9%), Robbery with Weapon (8.8%), is under supervision for 2 years or less (73.0%), and was convicted in Broward County (14.1%), Dade County (12.7%) and Hillsborough County (11.1%).

The Department of Corrections tracked the primary offenses for admissions to conditional release supervision for FY 1997-98. The results are recorded below. Please note that there are offenses listed that do not appear in Categories 1-4 of the Florida Rules of Criminal Procedure as the Department tracked the conditional release offender's primary offense. An additional offense may have rendered the conditional release offender eligible for conditional release.

Primary Offenses for Conditional Release Offenders

	Admitted to Supervision FY 1997-1998	Supervision Population On June 30, 1998
Murder/Manslaughter	82	134
1st Degree Murder	16	30
2nd Degree Murder	33	52
3rd Degree Murder	3	3
Homicide	0	0
Manslaughter	26	43
DUI Manslaughter	4	6
Sexual Offenses	177	186
Capital Sexual Battery	8	14
Life Sexual Battery	13	17
1st Degree Sexual Battery	12	12
2nd Degree Sexual Battery	34	34
Sexual Assault, Other	0	1
Lewd, Lascivious Behavior	110	108
Robbery	963	897
Robbery with Weapon	371	408
Robbery without Weapon	590	488
Home Invasion, Robbery	2	1
Violent Personal Offenses	999	740
Home Invasion, Other	0	0
Carjacking	2	0
Aggravated Assault	164	109
Assault and Battery	368	314
Assault and Battery on LEO	243	160
Assault/Battery Other	6	4
Aggravated Stalking	4	2
Resisting Arrest with Violence	148	92
Kidnaping	30	35
Arson	18	15
Abuse of Children	3	3
Other Violent Offenses	7	3
Leaving Accident Scene	4	1
DUI Injury	2	2
Burglary	749	654
Burglary, Structure	309	231
Burglary, Dwelling	303	277
Burglary, Armed	52	57
Burglary with Assault	77	81
Burglary/Trespass, Other	8	8
Theft, Forgery, Fraud	306	262
Grand Theft, Other	57	63
Grand Theft Automobile	77	58
Stolen Property	99	83
Forgery/Counterfeiting	25	19
Worthless Checks	2	5
Fraudulent Practices	20	12

	Theft/Property Damage, Other	26	22
Drugs		693	543
	Drugs/Manufacture/Sale/Purchase	505	390
	Drugs, Trafficking	17	26
	Drugs, Possession/Other	171	127
Weapons		155	126
	Weapons, Discharging	27	20
	Weapons, Possession	128	106
	Weapons, Other	0	0
Other Offenses		108	86
	Escape	77	65
	DUI, No Injury	6	5
	Traffic, Other	3	0
	Racketeering	2	3
	Pollution/Hazardous Materials	1	0
	Other	19	13
Data Unavailable		3	5

The U.S. Department of Justice performed a comprehensive recidivism study of prisoners released in 1983. The study looked at 16,000 released prisoners representing 108,580 released prisoners, all of those released from prison in 11 states during 1983. Florida was included among these states which accounted for more than 57% of all State prisoners released in the Nation during the year. Despite this study being completed almost ten years ago, many of the findings are relevant to illustrate the need for conditional release to apply to all prisoners released from incarceration.

The study found that recidivism rates were highest in the first year - 1 out of 4 released prisoners were rearrested in the first 6 months and 2 out of 5 were rearrested within the first year after their release. The more extensive a prisoner's prior arrest record, the higher the rate of recidivism - over 74% of those with 11 or more arrests were rearrested compared to 38% of the first time offenders. Nearly 1 in 3 released violent offenders and 1 in 5 released property offenders were arrested within 3 years for a violent crime following their release from prison. The amount of prior education was also related to recidivism among released prisoners. Prisoners who had graduated from high school or had some college education had somewhat lower rates of rearrest, reconviction and reincarceration than those who failed to complete high school.

When a person is placed on conditional release, the Parole Commission establishes the terms and conditions of release partially based on a prerelease interview conducted by a commission representative. The purpose of this interview is to determine the details of the inmate's planned residence and employment. The correctional probation officer will use this information to assist the conditional releasee in returning to the community. This type of assistance may, in itself, facilitate the offender's adjustment to life outside of the correctional institution.

The Department of Corrections 1997-98 Annual Report states on page 23 that the recidivism rate is 18.8% for offenders released from prison during FY 1994-95, which is a 20.9 point drop from the recidivism rate of offenders released in FY 1988-89 (37.7%). Department of Correction's statistics on inmate releases for FY 1997-98 list 4,362 inmates released on conditional release, not including 109 who had conditional and control release reinstated and 11 on conditional medical release. The Department lists 23,065 released not including 7,956 who were temporary releases. Conditional release would then increase from 18.91% to potentially 99.47% of all releases. This is not counting 120 individuals released to conditional medical release and conditional and control release reinstated. If the numbers from FY 1997-98 remain consistent, of 22,943 released on conditional release, approximately 18%, 4075 offender will be concurrently released on probation or community control.

Department of Corrections' statistics indicated that out of 4,235 conditional release offender commitments for FY 1997-98, 361 had one prior prison commitment, 1,366 had two prior prison commitments, 1,131 had three prior prison commitments, 767 had four prior prison commitments and 601 had five more prison commitments. More than 58 percent, had two or three prior commitments.

The Annual Report further states that during FY 1997-98, the Bureau of Probation and Parole Services implemented a new risk classification system in eight judicial circuits. The new risk classification system allows Community Supervision staff to identify and concentrate resources on the offenders who pose the highest risk to the community. Under this system, offenders are rated by the risks that they pose to the community thus allowing correctional probation officers to carry a caseload where the risks are balanced among the officers. However, under the risk classification, an offender that scored prison under the guidelines would probably rate at a risk classification requiring an officer to make two field contacts per month, and the offender reporting into the probation officer once a month. The correctional officer also collects cost of supervision payments and court ordered monetary.

The Annual Report lists average caseloads for correctional probation officers for FY 1997-98 as:

Community Control	25:1
Community Supervision (includes Probation, Parole, Conditional Release, other Post Prison Release and Pre-Trial Intervention.)	78:1
Drug Offender Probation	86:1

According to the Department's Annual Report, there were 144,733 offenders on community supervision on June 30, 1998. In addition to supervising offenders, community corrections staff perform a number of related duties, including collecting court ordered payments from offenders and conducting investigations. Correctional probation officers conducted 263,714 investigations in 1997-98.

B. EFFECT OF PROPOSED CHANGES:

This bill impacts three areas concerning the Parole Commission: membership, terms of office and conditional release

Membership

This bill increases the membership of the Parole Commission from three to four members. This should reduce the commission's use of temporary (OPS) and retired commissioners. However, even with an additional commissioner, the need for temporary commissioners will not disappear. There will still be a need for temporary commissioners for times of sick and annual leave use as well as when the Chairman is on administrative and legislative duties.

Terms of Office

This bill will allow for the expiration of commissioners' terms to be staggered.

Conditional Release

The current conditional release provisions, pursuant to s. 947.1405, F.S., will only apply to an offense committed before July 1, 1999. Conditional Release will be modified in six ways. First, this bill inserts a new subsection 947.1405(3), effective after July 1, 1999, which allows an offender convicted of attempt, solicitation or conspiracy to commit any offenses on or after July 1, 1999 to be placed on conditional release for the time remaining on her sentence.

Second, this bill provides that if an offender violates the supervision portion of her or his split sentence and a court revokes probation or community control and resentsences the offender to a term of incarceration, that revocation will constitute a sufficient basis for the revocation of the conditional release supervision of any non-probationary or non-community control sentence without a further hearing by the commission. While this aspect of the bill specifically applies when the court imposes any non-probationary or non community control sentence, the commission has a procedure to handle conditional release violations and revocations contained within 23 F.A.C. 23-23.006. Subsection (18): Violation Hearing For Conditional Release defines the violation hearing as a hearing provided to a conditional releasee under warrant and conducted by the Commission, a Commissioner, or a duly authorized representative of the Commission, to determine factually whether the conditional releasee has violated the terms and

conditions of his or her release. A report, with the hearing officer's findings of fact and recommendation, is then submitted to the Commission for determination of further action to be taken. 23 F.A.C. 23-23.006, 23-23.006 Conditional Release Definitions. This new provision would eliminate the need for this procedure solely where the offender is serving a split sentence by allowing the court's revocation of its own probation or community to revoke the community control.

Third, this bill removes the requirement that an offender have a prior commitment to be eligible for conditional release.

Fourth, conditional release supervision, in the case of a split sentence, is deferred rather than substituted and if the period of probation or community control terminates earlier than the period of conditional release, supervision of the offender continues under the terms and conditions of the conditional release as set by the commission.

Fifth, this bill will allow for the suspension of placement on conditional release for an offender subject to control, care and treatment as a sexually violent offender until the offender is discharged from such control, care or treatment. This is in compliance with the Jimmy Ryce Act that was recently passed by the 1998 Legislature. The "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act." established legal procedures by which sexually violent predators could be committed to the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder changes such that the person is safe to be at large.

Lastly, this bill will amend section 947.1405(8) increasing the number of conditional release offenders that may be supervised per correctional probation officer from 40 to 75

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?

If a court revokes probation or community control and resentsences the offender to a term of incarceration, that revocation will constitute a sufficient basis for the revocation of the conditional release supervision without further hearing by the commission.

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

Since a court's revocation of probation or community control will serve to revoke the conditional release, at some point some paperwork and notification may need to be forwarded to the Commission. This may fall within the duties of the correctional probational officer who supervised the conditional releasee prior to the revocation. In any event, some procedure may need to be implemented.

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

There is no entitlement to a government service or benefit.

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

An agency or program is not eliminated or reduced.

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

Concurrent revocations should post no additional costs to the courts.

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

None.

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Only to the extent to fund the salary of the new commissioner. However, some of those costs should be offset by the monies expended to fund the current use of retired commissioners to handle the current caseload.

- 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?

The conditional release offender is required to pay cost of supervision and other fees associated with fulfilling the requirements of her supervision.

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:

This bill does not purport 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?

N/A

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 947.01, 947.03, 947.1405, 947.1405, 775.084(4)(l), 921.001(10)(a)(5), 921.001(10)(b)(4), 944.70(1)(a)(5), 944.70(1)(b)(4), 947.141(1), 947.141(2).

E. SECTION-BY-SECTION ANALYSIS:

- Section 1. States that the act may be cited as the "Supervision of Violent Offenders Act of 1999."
- Section 2. Amends s. 947.01 F.S. by increasing the membership of the Parole Commission from three to four members effective July 1, 1999.
- Section 3. Amends s. 947.03 F.S. by providing that any commissioner in office on July 1, 1999 shall be permitted to remain in office until the completion of their current term.
- Section 4. Amends s. 947.1405 F.S. in the following manner:
- Sets an effective termination date of July 1, 1999 for the statute's current provisions.
 - Implements new provisions effective on or after July 1, 1999 which provide that individuals that have reached a tentative release date established by the Department of Corrections be released under conditional release supervision subject to terms and conditions established by the Parole Commission. This conditional release will apply to convictions of attempt, solicitation or conspiracy to commit any of the enumerated offenses on or after July 1, 1999:
- Section 5. Reenacting sections 947.1405, 775.084(4)(l), 921.001(10)(a)(5), 921.001(10)(b)(4), 944.70(1)(a)(5), 944.70(1)(b)(4), 947.141(1), 947.141(2).
- Section 6. Stating that the act will take effect July 1, 1999.

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:

The Parole Commission estimates the cost of a new Parole Commissioner as \$110,160.00 annually.

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 or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The bill suspends the placement on conditional release for offenders subject to control, care and treatment as a sexually violent predator until the offender is discharged from such control, care or treatment. This provision is to accommodate the provisions of the Jimmy Ryce Act. Concerns have been raised as to whether the Jimmy Ryce Act will pass constitutional muster. The Legislature should however prevail as it has a compelling state interest in protecting its citizens against serious sexual crimes.

Conditional Release offenders are intensively supervised by Department of Correction's correctional probation officers who statutorially may be restricted to a maximum case loads of forty conditional release offenders. Generally, Correctional Probation Specialists supervise these types of offenders. To be a specialist, one must have a bachelor's degree from an accredited college or university and two years experience in probation and parole work, or in the custody, care, classification or counseling of inmates, one year of which must have been at the professional level in classification, or counseling. A master's degree from an accredited college or university with major course of study in an area of criminal justice or in one of the social or behavioral sciences can substitute for one year of professional or non- professional experience as described above. In addition to the above, Florida Statute 943 requires minimum standards.

Adding the crimes of Attempt, Solicitation and Conspiracy to the list of offenders eligible for conditional release may increase the number of offenders eligible for this type of intense supervision, thus incurring some additional cost to the Department of Corrections. However, approximately 35 percent successfully complete conditional release, thus saving costs associated with criminal activities.

According to Department of Corrections' staff increasing the caseload of the correctional probation officer that supervises conditional releases from 40 to 75 is necessary to accommodate additional conditional release offenders. The Department offers this modification to reflect a new conditional release offender population which would include released offenders who were convicted under offenses that were not previously subject to conditional release. Under current conditional release, categories 1 through 4 offenses plus a prior prison commitment would qualify an offender for conditional release. The Department of Corrections reports prison releases by offense categories.

Prison Releases by Offense Category (FY 1997-98)

Murder/Manslaughter (Category 1)	882	
Sexual Offenses (Category 2)	1,387	
Robbery (Category 3)	2,995	
Other Violent (Category 4)	3,202	
Subtotal <i>prior conditional release offenses</i>	8,466	41.57% of releases
Burglary	4,459	
Theft/Forgery/Fraud	2,964	
Drugs	5,560	
Weapons	823	
Other	792	
Subtotal <i>prior non conditional release offenses</i>	14,598	63.29% of releases

These data indicate that there may be a 172% increase in the conditional release population under this bill, while a 40 to 75 caseload increase reflects a 187.5% increase in correctional probation officer caseload.

New Revocation Procedure

This bill allows a court's determination finding a violation of probation, in the case of a split sentence, to be sufficient for the Commission to revoke the conditional release without an addition hearing. Although a defendant may raise a due process challenge to this new procedure, a court may be unlikely to uphold such a challenge. A violation of probation which triggers revocation must be both willful and substantial, and the willful and substantial nature of the violation must be supported by the greater weight of evidence. *Salzano v. State*, 664 So.2d 23 (Fla. 2nd DCA1995); *White v. State*, 619 So.2d 429 (Fla. 1st DCA 1993), review denied 626 So.2d 208; *Jones v. State*, 611 So.2d 26 (Fla. 1st DCA 1992); *Steiner v. State*, 604 So.2d 1265 (Fla. 4th DCA 1992).

While it has been said that trial court has inherent power to revoke probation for misconduct that demonstrates the probationer's unfitness for probation, most cases reflect the view that probation may be revoked only upon showing that the probationer deliberately and willfully violated one or more conditions of probation. *Van Wagner v. State*, 677 So.2d 314 (Fla. 1st DCA 1996). The parole commission revokes conditional release upon a showing that the offender violated her conditional release by the greater weight of the evidence. This standard is identical to the standard used by the court in determining whether a violation of probation occurred. Therefore, a court should find that the defendant was afforded full due process.

In addition, in *Mato v. State*, the court found that a defendant was denied due process in probation revocation proceeding where the hearing took place without prior notice to defendant, without the presence or testimony of the victim and only witness to the alleged violation, without full hearing, without defendant being given adequate time to confer with his counsel appointed at the time of the hearing and without any evidence other than hearsay by police officers and defendant's alleged oral admission made upon his arrest. *Mato v. State*, 278 So.2d 672 (Fla. 3rd DCA 1973). However, even

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in the absence of a separate parole violation hearing, the conditional release defendant still receives a hearing before a judge with full constitutional procedural safeguards.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:
Prepared by:

Staff Director:

Leslie A. Sweet

Ken Winker