

STORAGE NAME: h1483.grr

DATE: March 9, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 1483 (PCB COR 00-07a)

RELATING TO: Post Release Supervision of Offenders (Supervision of Violent Offenders Act of 2000)

SPONSOR(S): Committee on Corrections and Representative Trovillion

TIED BILL(S):

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

- (1) CORRECTIONS YEAS 8 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill revises several sections of chapter 947, F.S., dealing with the Parole Commission (commission) and conditional release supervision of inmates. It also amends the following statutes to fix cross-references which are incorporated in the bill: s. 775.21, F.S., s. 775.084, F.S., s. 921.001, F.S., s. 944.70, F.S., s. 947.13, F.S., and s. 947.141, F.S.,.

This bill increases the Parole Commission membership from three to four. It revises eligibility criteria for conditional release by increasing the number of violent crimes subject to conditional release supervision and by stating that offenders convicted of any of the specified crimes on or after July 1, 2000 (including attempt, solicitation, or conspiracy to commit such crimes), do not have to have a prior felony commitment to be eligible for conditional release. The bill provides that 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 rather 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 (meaning an offender is sentenced to a term of incarceration to be followed by a period of probation or community control), shall be the responsibility of the Department of Corrections and shall be carried out according to conditions set by the court. If the period of conditional release supervision exceeds that of probation or community control, then authority for the supervision shall revert to the commission, subject to 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.

The Parole Commission estimates that an additional commissioner will cost the state approximately \$153,731 annually.

This bill provides for an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

By eliminating the requirement for a previous felony commitment to make an offender eligible for conditional release supervision, and by expanding the category of eligible offenders and to clarify that those convicted of attempt, solicitation, or conspiracy to commit the specified crimes, the bill will increase the number of offenders who will require conditional release supervision. Consequently, there will be an increase in the workload of the Parole Commission and the Department of Corrections.

B. PRESENT SITUATION:

To facilitate understanding of this analysis, the following terms are defined¹ :

- **Parole** - The release of an inmate prior to the expiration of his or her sentence with a period of supervision to be successfully completed by compliance with the numbered conditions and terms of the release agreement as ordered by the commission.
- **Control Release** - The release of an inmate prior to the expiration of the inmate's sentence, which is required to maintain the prison population within its lawful capacity.²
- **Conditional Release** - The mandatory release of any inmate into community supervision at the expiration of their prison term, less any gain time awardments. To be eligible, an inmate must have been convicted of certain assaultive crimes, and must have had a prior state or federal prison term, or have been sentenced as a habitual or violent offender with supervision to follow. The commission may issue enhanced types of supervision, including curfews, electronic monitoring, and house arrest-type provisions.

¹As defined by the FY 1996/1997 - FY 2000/2001 Agency Strategic Plan for the Florida Parole Commission, page 12.

²Control release supervision was eliminated by the Florida Legislature in 1996 (96-422, Laws of Florida) and then reinstated in 1997 (97-194, Laws of Florida).

- **Conditional Medical Release** - The release of an inmate from custody by the commission under conditions of release and supervision, as a result of being referred by the Department of Corrections as permanently incapacitated or terminally ill.

Parole Commission

In 1941, the Legislature created a state administered probation and parole system for the State of Florida. The purpose of the Parole Commission is to provide for public safety and protect the rights of victims by administering effective post-incarceration services including offender release, offender revocation, clemency, and victim assistance. The Parole Commission is organized into three functional areas: Clemency, Operations, and Administration.

Since 1941, the Legislature has made several modifications to the number of members and the requirement to be a member of the commission. The commission has had as many as nine members and recently as few as three. Section 947.02, F.S., currently provides that the Parole Commission shall consist of three members who are appointed by the Governor and Cabinet and confirmed by the Senate.

Due to the high caseload and the numerous administrative duties of the Chairman of the Commission, the Parole Commission has had to hire temporary retired commissioners in recent years to help the commission complete its work. During FY 1998-99, retired commissioners worked a total of 216 days for the commission.

Conditional Release Program

Conditional release is a mandatory 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. Conditional release is not technically an "early release" mechanism as it merely provides for post release supervision for those serious offenders for a period of time not to exceed the amount of gain time accrued.

Current law specifies that inmates convicted of crimes contained in 1983 Sentencing Guidelines categories 1 through 4, as well as habitual and violent offenders and sexual predators, 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, 1988. 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 habitual offender or sexual predator.³

³The 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 Car jacking 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 Parole Commission, through a panel of no fewer than two parole commissioners, establishes the terms and conditions for the conditional release. Conditional release offenders are provided intensive supervision by Department of Corrections correctional probation officers who statutorily may be restricted to a maximum case load of forty conditional release offenders.⁴

When a person is placed on conditional release, the Parole Commission establishes the terms and conditions of release partially based on a pre-release 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 Annual Report lists average caseloads for correctional probation officers for FY 1998-99 as:

Community Control <i>(Intensive supervised custody)</i>	25:1
Community Supervision <i>(includes Probation, Parole, Conditional Release, and other Post Prison Release)</i>	76:1
Drug Offender Probation	75:1

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 the release. The Parole Commission conducts revocation hearings and may revoke conditional release upon a finding of a violation. Currently, 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.

C. EFFECT OF PROPOSED CHANGES:

This bill impacts two areas concerning the Parole Commission: membership and conditional release.

Membership

This bill increases the membership of the Parole Commission from three to four members. This additional commissioner should reduce the Parole Commission's reliance on temporary (OPS) and retired commissioners.

Conditional release

⁴ s. 947.1405(8), F.S.

Conditional release will be modified in accordance with the bill in 4 ways:

- Allows an offender convicted of attempt, solicitation or conspiracy to commit any of the crimes enumerated in the bill is to be placed on conditional release for the time remaining on his or her sentence, regardless of whether or not they have a previous felony commitment. The current conditional release provisions, pursuant to s. 947.1405, F.S., will only apply to an offense committed before July 1, 2000.
- Removes the requirement that an offender convicted on or after July 1, 2000, have a prior commitment to be eligible for conditional release.
- In the case of a split sentence, defers to the Department of Corrections conditional release supervision to be carried out according to conditions imposed by the court, rather than be replaced by probation or community control. If the term of conditional release exceeds that of the probation or community control, authority for the conditional release supervision shall revert back to the commission, and such supervision shall be subject to the conditions of the commission.
- Provides that if an offender violates the supervision portion of his or her 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 further hearing by the commission.

SECTION-BY-SECTION ANALYSIS:

- Section 1.** States that the title of the act shall be the "Supervision of Violent Offenders Act of 2000."
- Section 2.** Increases the membership of the Parole Commission from three to four.
- Section 3.** Gives the commission the authority to adopt rules to implement its statutory authority.
- Section 4.** Amends the section of the chapter dealing with the conditional release program.

Placement

This section simplifies criteria for offenders who will be released under the conditional release program. Currently, offenders must fall into one of three categories in order to be placed in the conditional release program: 1) offenders must be convicted of crimes committed on or before July 1, 2000, which fall into categories 1 through 4 of the Florida Rules of Criminal Procedure (1993), and they must have served at least one prior felony commitment in a state or federal correctional institution; or 2) offenders must be sentenced as habitual or violent habitual offenders or violent career criminals; or 3) offenders must be found to be sexual predators. Subsequent to the passage of this legislation, the number of eligible crimes will be increased, and offenders will no longer need to have a prior felony commitment to be placed under conditional release. Also, because the state no longer uses the category

system, each crime for which an offender will require conditional release has been individually set out.

Split Sentence

For offenders who have a split sentence (of incarceration to be followed by a period of probation or community control), this section states that the Department of Corrections shall be responsible for the supervision of the offender according to conditions imposed by the court. In such an instance, the commission shall defer to the department. Currently, if an offender has a split sentence, he will serve his period of probation or community control, and that will take the place of conditional release supervision. Subsequent to the passage of this legislation, the split sentence offender will serve a period of conditional release concurrent to the period of probation or community control, and such supervision will be the responsibility of the department. This section also adds language that if the term of conditional release exceeds that of probation or community control, then the supervision of the offender shall revert back to the commission.

Revocation

This section adds language that if a court revokes the probation or community control of an offender with a split sentence, such revocation is sufficient for the commission to revoke the sentence of conditional release as well, without an additional hearing.

Establishing the terms and conditions of conditional release

This section amends the review process by stating that, for the purpose of establishing the terms and conditions of the conditional release, the commission shall conduct a review of the inmate's record and other such information as they deem necessary. They will not have to conduct a personal interview with the inmate, as they are currently required to do. This section allows the commission to impose any special release condition which the commission feels is necessary, including electronic monitoring.

Rules

This section adds language providing the commission the authority to adopt rules necessary to implement the section.

Section 5. Corrects a cross-reference within s. 775.21, F.S. to conform to the proposed legislation.

Section 6. Corrects cross-references within the following sections to conform to the proposed legislation:

s. 775.084, F.S.

s. 921.001, F.S.

s. 944.70, F.S.

s. 947.13, F.S.

s. 947.141, F.S.

Section 7. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No revenues will be generated as a result of passage of this legislation.

2. Expenditures:

Resources will need to be appropriated to pay for the costs of appointing a new commissioner. The Parole Commission anticipates that a new commissioner will cost approximately \$153,731 annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Adding crimes of Attempt, Solicitation, and Conspiracy to the list of offenders eligible for conditional release, and removing the requirement of a prior prison commitment, will increase the number of offenders eligible for this type of intense supervision, thus incurring some additional cost to the Department of Corrections. As of February 15, the department had not provided such fiscal information.

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 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:

A. CONSTITUTIONAL ISSUES:

New revocation procedure

This bill allows a court's determination of a violation of probation, in the case of a split sentence, to be sufficient for the commission to revoke the conditional release without an additional hearing. Although a due process challenge to this new procedure may be filed, case law suggests that the courts would 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.⁵

Some assert that the trial court has inherent power to revoke probation for misconduct that demonstrates the probationer's unfitness for probation; however, 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.⁶ The Parole Commission revokes conditional release upon a showing that the offender violated his or 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.

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 the defendant, without the presence or testimony of the victim, without full hearing, without defendant being given adequate time to confer with counsel, and without any evidence other than hearsay by police officers and the defendant's alleged oral admission made upon his arrest.⁷ However, even in the absence of a separate parole violation hearing, the conditional release defendant still receives a hearing before a judge with full constitutional procedure safeguards.

B. RULE-MAKING AUTHORITY:

Section 3 of the bill gives the commission the authority to adopt rules to implement its statutory authority and section 4 authorizes the commission to adopt rules to implement the section.

⁵*Salzano v. State*, 664 So.2d 23 (Fla. 2nd DCA 1995); *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).

⁶*Van Wagner v. State*, 677 So.2d 314 (Fla. 1st DCA 1996)

⁷*Mato v. State*, 278 So.2d 672 (Fla. 3rd DCA 1973)

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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