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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 245
RELATING TO: Parole Commission
SPONSOR(S): Representative Brummer

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

The Parole Commission Reform Act of 2001, as this bill is referred to, reduces the Parole Commission's staff by 40 positions and transfers various responsibilities, including pre-conditional release duties, aspects of supervision reviews, and notification responsibilities, from the Parole Commission to the Department of Corrections. The passage of HB 245 would result in a financial savings to the State of Florida by reducing duplication of duties between the Parole Commission and the Department of Corrections.

House Bill 245 has an effective date of July 1, 2001.

A strike-everything amendment was adopted by the Crime Prevention, Corrections & Safety Committee on February 6, 2001, and is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

Brief Review of Parole Commission:

The Parole Commission is authorized in the Constitution of the State of Florida under Article IV, Section 8(c). In 1941, the Commission was created by law to administer the parole program. Since that time, three other post-prison supervision programs have been placed under its administration. These programs are conditional release, conditional medical release and control release. The Parole Commission also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency ("Clemency Board"), in clemency matters. The Parole Commission headquarters are located within the Department of Corrections' central offices in Tallahassee, and there are eleven Parole Commission field offices located throughout the state. During FY 1999-2000, the Parole Commission received legislative funding for 184 staff positions.

Release Programs:

Parole:

Parole is a discretionary prison release program that allows an inmate who has been granted parole to serve the remainder of his prison sentence outside of the confines of prison. Once released, the parolee is subject to conditions of supervision, and if those conditions are violated, the Parole Commission may return the parolee to prison. The parole program has experienced a number of changes over the years, the most significant of which came in 1983. In that year, sentencing guidelines were enacted thereby effectively abolishing parole for those offenders who were sentenced for crimes committed on or after October 1, 1983. It should be noted that it was not until 1995 that offenders who committed capital felonies were eliminated from parole consideration.

Conditional Release:

In 1988, the Florida Legislature created the Conditional Release Program and placed it under the administration of the Parole Commission. This program requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, or who are sentenced as a habitual offender or sexual predator. Unlike parole, conditional release is not a discretionary release program. Upon release from prison, inmates who are subject to the program are supervised for a period of time equal to the gain-time they received in prison. These offenders are subject to various conditions of

supervision set by the Commission and the supervision can be revoked and the releasee returned to prison if the Commission determines that a violation of supervision has occurred.

Control Release:

In 1989, the Florida Legislature created the Control Release Program. This program was a prison population management system administered by the Commission to keep the prison population at its lawful capacity. The commission does not currently review the inmate population for discretionary release under this program, as there are sufficient prison beds for the current prison population. There are, however, a small number of control releasees who are still under supervision. The Commission is responsible for monitoring the progress of these releasees and conducting revocation hearings when alleged violations are reported.

Conditional Medical Release:

In 1992, the Florida Legislature created the Conditional Medical Release Program. This is a discretionary release program that allows the Parole Commission to release inmates on supervision who are "terminally ill" or "permanently incapacitated" and are not a danger to others.

Supervision of Releasees:

The Department of Corrections is responsible for the supervision of offenders released under all the release programs mentioned above.

How Conditional Release Currently Works:

The conditional release process is initiated when the Parole Commission's field office receives a Department of Corrections printout on the inmate under consideration. A Parole Commission examiner reviews the printout to determine the inmate's conditional release eligibility. Once the parole examiner determines the inmate is eligible, the inmate's institutional file and sentence structure are reviewed. The examiner, then, interviews the inmate, reviews the release plan and recommends conditions of supervision. The Parole Commission considers the examiner's recommendations and then sets the terms and conditions of supervision. Once the department releases the inmates ("releasee"), he or she has three days to report to the probation office.

While under conditional release, the releasee is supervised by a Department of Corrections probation officer. During the period of release supervision, the Parole Commission is required to review the releasee's progress on a biennial basis. This process involves a parole examiner conducting a supervision review of the releasee's file and also interviewing the probation officer responsible for supervising the releasee. The parole examiner then prepares and forwards a written report of his review, including whether the releasee is complying with the conditions of supervision and any recommendations for a change in the original terms and conditions, to the Parole Commission for consideration. After each biennial review, the Parole Commission has the option to amend the original terms and conditions of parole or release.

If a releasee violates any condition of his or her release, or commits a new crime, then the revocation process is started. The releasee will be arrested and detained, and a parole examiner will review the charges. A revocation hearing is held (or it can be waived at the releasee's request) and the parole examiner then recommends whether to revoke or restore the conditional release. The recommendations are brought before the Parole Commission which makes the official decision whether to revoke or restore the conditional release supervision.

Notification of Victims and Law Enforcement:

The Parole Commission is statutorily required to notify victims and local law enforcement within six months of an inmate's scheduled release under any post-prison supervision release program. For purposes of this section, law enforcement includes the chief judge of the circuit in which the offender was sentenced, the appropriate state attorney, and the sheriff of the county in which the inmate plans to reside. The Parole Commission also notifies local police departments of potential releasees who plan to reside in their jurisdiction.

It should be noted that both the Department of Corrections and the Parole Commission notify victims of pending releases for offenders being released under conditional release. The Parole Commission notifies victims approximately 6 months before the offender's release, and at the same time asks the victim to recommend any special conditions which the Parole Commission should consider when setting the official conditions for the offender's release. The Parole Commission also contacts victims with regards to restitution issues. During FY 1999-00, the Commission assisted 8,206 victims.

C. EFFECT OF PROPOSED CHANGES:

As a result of passage of HB 245, Parole Commission examiners will no longer be responsible for certain conditional release functions. Such functions include reviewing the files of eligible inmates, interviewing eligible inmates, contacting victims for input with regard to conditions of supervision, making recommendations for terms and conditions of conditional release supervision, and gathering sufficient information and material to allow the Parole Commission to perform the mandatory biennial supervision reviews. With the exception of victim contact, these functions will be assumed by the Department of Corrections. (Please see the Comment Section for discussion of victim notification.)

As a result of the shifts in responsibilities between agencies, the Parole Commission will be required to reduce its staff by 40 positions. The bill does not specify which positions are to be eliminated.

With regards to the release programs authorized by the Parole Commission, the Commission, rather than the courts, will be responsible for determining which offenders will receive electronic monitoring.

D. SECTION-BY-SECTION ANALYSIS:

Section 1

This section provides for the name "Parole Commission Reform Act of 2001."

Section 2

This section removes the Parole Commission from the list of entities required by statute to have an Inspector General.

Section 3

The section amends § 944.605, F.S., dealing with notification of victims and law enforcement. This section places the responsibility of notifying local law enforcement of all pending inmate releases solely upon the Department of Corrections. It gives the responsibility of victim notification to the Department of Corrections or the State Attorney, whichever is considered appropriate. This section removes such responsibility (victim and law enforcement notification) from the Parole Commission

(and from the Control Release Authority, when in existence). Section three also requires the Department of Corrections to notify the county law enforcement within 10 days of inmates who will be released into work release programs in a particular county. State Attorneys and victims are to be notified of inmates placed on work release only upon request.

Section 4

This section amends § 947.04, F.S., and requires that all Parole Commission field offices be located within existing administration buildings at facilities and institutions operated by the Department of Corrections.

Section 5

This section amends § 947.1405, F.S., relating to the conditional release program. This section transfers responsibility of various pre-conditional release functions from the Parole Commission to the Department of Corrections. Specifically, a representative of the Department of Corrections, *rather than a parole examiner*, will be responsible for reviewing the file of an inmate who is scheduled for conditional release, including a review of the inmate's program participation, disciplinary record, psychological and medical records, and criminal records. A representative of the Department of Corrections will also interview the inmate under consideration. After the review is completed, the representative of the department, *rather than a parole examiner*, will forward a release plan along with recommendations for the terms and conditions of the conditional release supervision to the Parole Commission. The Commissioners will review and consider the recommendations suggested by the Department of Corrections employee when setting the official terms and conditions of the supervision.

This section also transfers authority from the court system to the Parole Commission with regards to setting special conditions for releasees who have been convicted of specific offenses (such as sexual battery or lewd or lascivious behavior). These additional conditions are listed in § 947.1405(7)(a) and (b), and include mandatory curfew, participation in sex offender treatment programs, and electronic monitoring when deemed necessary. Currently, the court can modify the times of a releasee's curfew and can also order (or not order) electronic monitoring. This section removes that authority from the court and transfers it to the Parole Commission. This applies only to those offenders who are convicted of specific crimes and are released under conditional release, parole, conditional medical release, or control release (when in existence). It does not apply to offenders on regular probation.

This section also adds the words "of any form" when referring to electronic monitoring in § 947.1405(7)(b)5, F.S. Currently, the forms of electronic monitoring used by the Department of Corrections are radio frequency monitoring and Global Positioning System (GPS).

Section 6

This section amends § 947.24, F.S., with regards to supervision reviews. Rather than a parole examiner gathering all the information necessary to conduct the biennial supervision reviews, it will be the responsibility of the Department of Corrections to gather and review such information, and then to forward a written report of the supervision review to the Parole Commission.

Section 7

This section repeals § 947.175, F.S., and § 947.177, F.S. These two sections deal with notification of law enforcement and victims of pending offender releases. The issues raised in these statute sections are almost identical to those addressed in § 944.605, F.S., which is amended in Section 3 of this bill.

Section 8

As a result of the transference of duties from the Parole Commission to the Department of Corrections, this section mandates a reduction in Parole Commission staff by 40 positions. The bill does not specify which positions are to be eliminated.

Section 9

This section provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Corrections has indicated they can absorb the duties and responsibilities that will be shifted from the Parole Commission with no additional staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Reports and documentation issued by the Florida Corrections Commission and also the Governor's office indicate that the transference of responsibilities from the Parole Commission to the Department of Corrections (resulting in an elimination of a number of FTEs from the Parole Commission's staff) would result in a financial savings to the state of Florida. The Corrections Commission determined that a transfer of 32 positions would result in a General Revenue savings of \$1.9 million, and a transfer of 44 positions would result in a savings of \$2.4 million. Because HB 245 involves a transfer of 40 positions, the savings to General Revenue would most likely fall into this range.

The Governor's Office has determined that co-locating the Parole Commission staff in existing Department of Corrections office space would achieve a financial savings of approximately \$311,103 in General Revenue through the reduction of separate rental fees for Parole Commission office space.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

- Section 5 of HB 245 mentions the use of electronic monitoring "of any form." The Department of Corrections is making an effort to move away from using radio frequency monitoring and toward the sole use of GPS. If radio frequency is phased out, that will limit the Parole Commission's options when ordering electronic monitoring as a condition of release.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike-everything amendment was adopted by a vote of 9 to 0 at the Crime Prevention, Corrections & Safety Committee meeting on February 6, 2001, and is traveling with the bill. Representative Brummer, the sponsor of the bill, offered the amendment. The amendment makes both technical and substantive changes to the bill.

The technical changes clarify and address several issues: 1) the co-location of the Parole Commission's field offices, 2) the department's responsibility for gathering all the information (including pertinent victim information) necessary for the Parole Commission to use when determining the terms, conditions, and restitution responsibilities for an offender on conditional release, 3) the deletion of an incorrect statutory cross-reference, 4) the ability of the Parole Commission to use additional information other than that provided by the Department of Corrections when making determinations with regard to conditional release, and 5) direct contact with minors for offenders convicted of certain sexual crimes and released on conditional release.

The substantive changes address two issues: rule-making authority, and conditional release supervision for an offender with a split sentence or multiple sentences. The amendment gives the

Parole Commission the authority to promulgate rules necessary to implement the conditional release program.

The amendment also changes the "split sentence" provision of § 947.1405, F.S., (conditional release) by stating that offenders who require conditional release supervision **and** who have a split sentence (meaning they've been sentenced by the court to a period of incarceration to be followed by a period of supervision) shall be supervised by the Department of Corrections, and the Parole Commission shall **defer** to the department's supervision. This deferment also applies to offenders eligible for conditional release who have multiple sentences where one sentence requires probation and another does not.

Currently, when such split sentence or multiple sentence situations arise, the period of court-ordered probation is **substituted** for conditional release. For example, if an offender has 90 days of probation, but 180 days of conditional release supervision, the probation cancels the conditional release and the offender will only serve the 90 days of probation.

The amendment also stipulates that if the period of conditional release for a split sentence offender exceeds that of court-ordered probation or community control, then supervision of the offender will **revert** back to the Parole Commission once the sentence of probation or community control has been served.

Finally, the amendment changes the revocation process for split sentence or multiple sentence offenders by stating that if a court revokes the probation or community control of an offender, such revocation is sufficient to also revoke the conditional release supervision of the offender without the Parole Commission having to conduct a separate hearing. Currently, the Parole Commission must still conduct their own hearing, regardless of the court's decision.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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