

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 540

SPONSOR: Criminal Justice Committee and Senator Smith

SUBJECT: Parole Releases

DATE: February 24, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	_____	_____	JA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill amends s. 947.06, F.S., to require that the victim or the victim's next of kin be given a copy of the parole examiner's recommendation upon request. It also amends ss. 947.16, 947.174, and 947.1745, F.S., respectively, to add kidnapping to the category of offenses for which an inmate's parole reinterview schedule may be reduced from every 2 years to every 5 years if the commission makes a written finding that parole release is unlikely. Section 947.1405(2), F.S., is amended to provide for conditional release supervision to be served prior to any term of court-ordered supervision if the offender has a split sentence of incarceration followed by community supervision, reversing the current order.

The bill also amends s. 947.1405(7), F.S., to expand the list of places where a sexual offender on conditional release cannot work, or live within 1000 feet of, to include restaurants with attached playgrounds, amusement parks, and business establishments whose primary clients are children. It adds a new restriction against loitering within 1000 feet of the enumerated locations or any other location where children regularly congregate.

The bill also changes certain aspects of the process for violations of commission-supervised released, from modification of arrest powers to revocation proceedings.

This bill substantially amends the following sections of the Florida Statutes: 947.06, 947.071, 947.13, 947.1405, 947.141, 947.16, 947.174, 947.1745, 947.22, and 947.23.

## II. Present Situation:

The Florida Parole Commission administers parole, which is a discretionary prison release mechanism. An inmate who is granted parole is allowed to serve the remainder of his or her

prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections. As of June 30, 2004, there were 669 parolees on parole from Florida sentences.

### *Parole*

Parole is not available for most crimes that were committed on or after October 1, 1983. The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995. There is no parole eligibility for any crime committed on or after October 1, 1995. There are still approximately 5900 Florida inmates who are eligible for parole consideration.

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a parole examiner reviews the inmate's file and makes an initial recommendation. The date of the initial interview depends upon the length and character of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of 7 to 15 years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. An inmate may request one review of the initial PPRD within 60 days after notification.

If the PPRD is more than 2 years after the date of the initial interview, in most cases a hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter. However, the statute provides for less frequent reviews for an inmate whose PPRD is more than 5 years from the date of the initial interview if he or she was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S. In such cases, the interview and review may be conducted every 5 years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each reinterview. At this hearing, the commission considers the written recommendation of the parole examiner, documentary evidence, and any testimony presented on behalf of the victim or the inmate. Although the inmate is not entitled to appear at the hearing, he or she may be represented by an attorney. It is also common for the victim or victim's representative and law enforcement representatives to appear.

The parole examiner conducts a final interview of the inmate within 90 days of the PPRD. The purpose is to establish an effective parole release date and a parole release plan. The commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.

If the sentencing court retained jurisdiction over the offender for purposes of reviewing a parole release order, the commission must send notice of the release order to the sentencing judge and state attorney within 30 days of entry of the order. Retention of jurisdiction is available to the sentencing judge for a number of violent crimes that are enumerated in s. 947.16(4), F.S. If the court enters an order vacating the release order, the court's order is not appealable.

Parole eligibility interviews and re-interviews after a parole release order has been vacated or an effective parole release date interview has been cancelled must be held every 2 years. However, the interviews may be scheduled every 5 years if the inmate was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., and the commission makes a written finding that it is not reasonable to expect that parole will be granted.

### ***Violation of parole***

The process for considering a parolee's violation of parole may be initiated in three ways:

- A member or duly authorized representative of the commission who has reasonable grounds to believe that the parolee has violated the terms and conditions of parole in a material respect may issue a warrant for the parolee's arrest. The commission, a commissioner, or a parole examiner with approval of a supervisor, may release the parolee on bail or her or his own recognizance. If not released, the parolee is committed to jail pending a hearing.
- A parole and probation officer who has reasonable ground to believe that a parolee has violated the terms and conditions of parole in a material respect can arrest the parolee without warrant and bring the parolee before a commissioner or a representative of the commission, with proceedings to follow in the same manner as if a warrant had been issued.
- A law enforcement officer who has probable cause to believe that a parolee has violated the terms and conditions of his or her parole must arrest and take the parolee into custody, and a warrant does not need to be issued.

### ***Conditional Release***

Conditional release 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, violent habitual offender, violent career criminal, or sexual predator. Unlike parole, conditional release is not discretionary. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the commission and this supervision can be revoked and the releasee returned to prison if the commission determines that a violation of supervision has occurred.

Section 947.1405(7), F.S., provides certain requirements for an inmate who is eligible for conditional release and who was convicted for certain sex crimes committed on or after October 1, 1995, in which the victim was a minor. These crimes include violation of ch. 794, F.S. (sexual battery); s. 800.04, F.S. (lewd or lasciviousness offenses committed upon or in the presence of a person under 16 years of age); s. 827.071, F.S. (causing or promoting sexual performance of a child); or s. 847.0145, F.S. (selling or buying of minors). In addition to other statutory conditions, the offender is prohibited from working at or living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate. The offender is also prohibited from having unsupervised contact with children until certain conditions are met.

***Control Release***

The control release program was a prison population management system administered by the commission to keep the prison population at its lawful capacity. It is not currently active because there are sufficient prison beds, but there are a small number of control releasees still under supervision. The commission monitors the progress of these releasees and conducts revocation hearings for alleged violations.

***Conditional Medical Release***

Conditional medical release is a discretionary release that allows the commission to release inmates on supervision who are “terminally ill” or “permanently incapacitated” and who are not a danger to others.

***Addiction Recovery Supervision***

The addiction-recovery supervision program provides mandatory post-prison supervision for offenders released from a state correctional facility, who are convicted of a crime committed on or after July 1, 2001; who have a history of substance abuse or addiction or have participated in any drug treatment; and have not been convicted of a disqualifying offense. The commission is to set the term and conditions of supervision, and considers revocation of supervision if the offender fails to abide by the conditions of supervision. During FY 2003-2004, 719 offenders were placed in the program.

***Violations***

The process for considering a violation of conditions of conditional release, control release, conditional medical release, or addiction-recovery supervision may be initiated in several ways:

- A member or representative of the commission who has reasonable grounds to believe that the offender has violated the terms and conditions of release in a material respect may cause a warrant to be issued for the offender’s arrest, and must issue a warrant if the offender is a sexual predator.
- A law enforcement officer who has probable cause to believe that the offender has violated the terms and conditions of release by committing a felony offense must arrest the offender without a warrant.
- A parole and probation officer who has reasonable ground to believe that a control releasee or conditional releasee has violated the terms and conditions of control release or conditional release in a material respect, has the right to arrest the releasee without warrant.

**III. Effect of Proposed Changes:**

Section 1 of the bill amends s. 947.06, F.S., to require that the victim or the victim’s next of kin be given a copy of the parole examiner’s recommendation upon request.

Section 2 of the bill amends s. 947.071, F.S., to add conditional medical release, control release, and addiction recovery supervision final orders to the list of orders required to be indexed pursuant to Ch. 120, F.S.

Section 3 of the bill amends s. 947.13, F.S., to add language clarifying the commission's powers and duties with regard to addiction-recovery supervision. The commission is responsible for supervision offenders in the addiction-recovery supervision program pursuant to s. 944.4731, F.S.

Section 4 of the bill amends s. 947.1405, F.S., in two significant ways. Section 947.1405(2), F.S., is amended to provide that conditional release supervision is to be served prior to any term of court-ordered supervision if the offender has a split sentence of incarceration followed by community supervision. This reverses the current order of serving court-ordered community supervision before conditional release. It creates a progression from the most serious restraint of incarceration, to the next most stringent restraint of conditional release, to the lesser restraint of court-ordered community supervision.

Section 947.1405(7), F.S., is amended to add restaurants with attached playgrounds, amusement parks, and business establishments whose primary clients are children to the places where a releasee is restricted from working or living within 1000 feet. The prohibition against working is clarified to prohibit working for pay or as a volunteer. Also, a prohibition against loitering within 1000 feet of the enumerated locations has been added.

Section 947.1405(6), F.S., is also amended to provide specific authority for the commission to modify the conditions of conditional supervision.

Section 5 of the bill amends s. 947.141, F.S., in relation to arrest authority and processing of persons alleged to have violated the conditions of conditional release, control release, conditional medical release, or addiction-recovery supervision. It amends subsection (1) to authorize any parole and probation officer, any officer authorized to serve criminal process, or any peace officer to execute an arrest warrant. After arrest, an offender may be released on his or her own recognizance by the commission, a commissioner, or a parole examiner with approval of their supervisor. The offender must be kept in jail if not released.

Subsection (2) is newly created to permit a parole and probation officer to arrest and take an offender into custody without a warrant if the officer has reasonable ground to believe the release conditions have been violated in a material respect. The offender may be held for 72 hours, excluding weekends and holidays, pending the commission's decision on whether to issue a warrant. If a warrant is issued, the offender continues to be held pending a revocation hearing.

Subsection (3) is newly created to require a law enforcement officer to arrest an offender without a warrant if he or she has probable cause to believe that the offender has violated release conditions by committing a felony offense. It is not required that a warrant be subsequently issued.

Subsection (5) is newly created to provide that the supervision period is tolled until the commission enters a ruling on the alleged violation. However, jurisdiction is retained for any

violations committed during that tolling period, and the parole and probation officer continues to supervise the offender if the offender is available for supervision.

Subsection (3) is redesignated as (6) and amended to add language that currently applies only to parole violation hearings. It provides that a commissioner or authorized representative of the commission can administer oaths and compel attendance of witnesses at hearings by issuing summons, subpoenas, or subpoenas duces tecum. Names of witnesses to be subpoenaed must be provided to the commission at least 10 days prior to the hearing date. Subpoenas and subpoenas duces tecum are enforceable in circuit court, with willful failure to comply with a court order constituting contempt of court. The commission can decline to issue a subpoena if the testimony or evidence to be subpoenaed is found to be cumulative, irrelevant, or nonprobative.

New language is also added to codify that that evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, even if not admissible in a judicial proceeding.

This section of the bill also provides that the commission may impose a period of community residential treatment following a violation hearing, and specifically provides rulemaking authority to administer the section.

Sections 6 through 8 of the bill amend ss. 947.16(4)(g), 947.174, and s. 947.1745, F.S., respectively to add kidnapping to the category of offenses for which an inmate's reinterview schedule may be reduced from every 2 years to every 5 years if the commission makes a written finding that parole release is unlikely in the intervening period.

Section 9 of the bill amends s. 947.22, F.S., to remove references to control releasees, conditional releasees, and the Control Release Authority. It also provides that an offender who is arrested by a parole and probation officer may be held for up to 72 hours, excluding weekends and holidays, pending the commission's decision on whether to issue a warrant. If a warrant is issued, the offender continues to be held pending a revocation hearing. The section is also amended to provide the same provisions regarding tolling of the supervision period as were added for persons on conditional release.

Section 10 of the bill amends s. 947.23(3), F.S., to add new language codifying that evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, even if not admissible in a judicial proceeding. This is consistent with amendments made to the statute governing conditional release.

Section 11 provides an effective date of July 1, 2005.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Although parole is a matter of grace and is not a right, alteration of parole-consideration procedures must be considered in light of the constitutional prohibition against ex post facto laws. It appears that the addition of kidnapping to the category of crimes for which interviews may be conducted every 5 years would not be an impermissible ex post facto law under the United States Supreme Court holdings in *California Department of Corrections v. Morales*, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) and *Garner v. Jones*, 529 U.S. 244, 120 S.Ct. 1362, 146 L.Ed.2d 236 (2000). However, an individual inmate may be able to present evidence that the change creates a significant risk of increasing his punishment. *Garner*, supra; see also *Harris v. Hammonds*, 217 F.3d 1346 (11th Cir. 2000).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill may result in the reduction of the frequency of parole hearings for the class of offenders whose crime was the offense of kidnapping. To the extent that hearings are held less frequently, there will be a reduction in costs incurred by victims and victim representatives, as well as families of inmates, who attend the hearings. The amount of reduction cannot be determined because a reduction of frequency will be determined depending upon the individual merits of the inmate's case, and the cost to attend hearings is variable depending upon individual circumstances.

The expansion of restrictions on where a conditional releasee who has been convicted of certain sex offenses can live or work further limits the ability of such offenders to find employment or a place to live. Such persons may be forced to incur additional costs to move to a new community or state in order to work or reside.

**C. Government Sector Impact:**

Any reduction in the frequency of parole hearings for kidnappers has the potential to reduce the number of hearings conducted by the commission, which may result in a cost savings to the commission. However, the amount of such savings cannot be determined

until the commission considers individual cases and makes a decision on whether to apply its new authority to the case.

Expansion of the restrictions on workplace and residence of certain sex offenders on conditional release may result in increased violations and reincarceration of such offenders.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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