

By the Committee on Criminal Justice; and Senator Smith

591-1650-05

1 A bill to be entitled
 2 An act relating to the Parole Commission;
 3 amending s. 947.06, F.S.; requiring that the
 4 victim of a crime or the victim's next of kin
 5 be given a copy of the parole examiner's
 6 recommendation upon request; amending s.
 7 947.071, F.S.; providing for the indexing of
 8 additional final orders; amending s. 947.13,
 9 F.S.; clarifying the powers and duties of the
 10 Parole Commission; amending s. 947.1405, F.S.;
 11 clarifying provisions of the Conditional
 12 Release Program Act; clarifying conditional
 13 release eligibility; providing that probation
 14 or community control follows the term of
 15 conditional release supervision; clarifying
 16 that the Parole Commission may consider all
 17 relevant information when setting special
 18 conditions of conditional release supervision;
 19 clarifying that the Parole Commission may amend
 20 the conditions of conditional release
 21 supervision; establishing additional special
 22 conditions of conditional release supervision
 23 pertaining to sex offenders; amending s.
 24 947.141, F.S.; clarifying revocation
 25 proceedings with respect to offenders under
 26 conditional release, control release,
 27 conditional medical release, or
 28 addiction-recovery supervision; providing for
 29 the execution of a warrant; providing for the
 30 detention of a releasee pending a revocation
 31 hearing; providing for release on recognizance;

1 providing for arrest without a warrant;
2 providing for tolling of supervision; providing
3 for the issuance and enforcement of subpoenas
4 in revocation hearings; providing that the
5 strict rules of evidence are not applicable to
6 revocation hearings; providing for rulemaking;
7 amending s. 947.16, F.S.; requiring that an
8 inmate convicted of kidnapping whose parole
9 release order has been vacated by the court be
10 reinterviewed at 5-year intervals following the
11 vacated release order; amending s. 947.174,
12 F.S.; requiring that an inmate convicted of
13 kidnapping whose presumptive parole release
14 date is more than 5 years after the initial
15 interview be reinterviewed thereafter at 5-year
16 intervals; amending s. 947.1745, F.S.;
17 permitting an inmate convicted of kidnapping to
18 be scheduled for an effective parole release
19 date interview at 5-year intervals; amending
20 s. 947.22, F.S., relating to parolees; removing
21 provisions relating to bail; providing
22 conforming provisions; amending s. 947.23,
23 F.S.; providing that the strict rules of
24 evidence are not applicable to parole
25 revocation hearings; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 947.06, Florida Statutes, is
31 amended to read:

1 947.06 Meeting; when commission may act.--The
2 commission shall meet at regularly scheduled intervals and
3 from time to time as may otherwise be determined by the chair.
4 The making of recommendations to the Governor and Cabinet in
5 matters relating to modifications of acts and decisions of the
6 chair as provided in s. 947.04(1) shall be by a majority vote
7 of the commission. No prisoner shall be placed on parole
8 except as provided in ss. 947.172 and 947.174 by a panel of no
9 fewer than two commissioners appointed by the chair. All
10 matters relating to the granting, denying, or revoking of
11 parole shall be decided in a meeting at which the public shall
12 have the right to be present. Upon request, the victim, or the
13 victim's next of kin, shall be given a copy of the parole
14 examiner's recommendation related to the case. Victims of the
15 crime committed by the inmate shall be permitted to make an
16 oral statement or submit a written statement regarding their
17 views as to the granting, denying, or revoking of parole.
18 Persons not members or employees of the commission or victims
19 of the crime committed by the inmate may be permitted to
20 participate in deliberations concerning the granting and
21 revoking of paroles only upon the prior written approval of
22 the chair of the commission. To facilitate the ability of
23 victims and other persons to attend commission meetings, the
24 commission shall meet in various counties including, but not
25 limited to, Broward, Dade, Duval, Escambia, Hillsborough,
26 Leon, Orange, and Palm Beach, with the location chosen being
27 as close as possible to the location where the parole-eligible
28 inmate committed the offense for which the parole-eligible
29 inmate was sentenced. The commission shall adopt rules
30 governing the oral participation of victims and the submission
31 of written statements by victims.

1 Section 2. Subsection (2) of section 947.071, Florida
2 Statutes, is amended to read:

3 947.071 Rulemaking procedures; indexing of orders.--

4 (2) The only final orders of the commission which
5 shall be indexed pursuant to chapter 120 are:

6 (a) Orders granting parole.

7 (b) Orders revoking parole.

8 (c) Orders restoring to supervision.

9 (d) Orders releasing from custody and further
10 supervision.

11 (e) Early parole termination orders.

12 (f) Orders granting conditional release.

13 (g) Orders revoking conditional release.

14 (h) Orders granting conditional medical release.

15 (i) Orders revoking conditional medical release.

16 (j) Orders granting control release.

17 (k) Orders revoking control release.

18 (l) Orders granting addiction-recovery supervision.

19 (m) Orders revoking addiction-recovery supervision.

20 Section 3. Subsection (1) of section 947.13, Florida
21 Statutes, is amended to read:

22 947.13 Powers and duties of commission.--

23 (1) The commission shall have the powers and perform
24 the duties of:

25 (a) Determining which ~~what~~ persons shall be placed on
26 parole, subject to the provisions of ss. 947.172 and 947.174.

27 (b) Establishing the term ~~Fixing the time~~ and
28 conditions of parole, as provided in this chapter.

29 (c) Determining whether a person has violated parole
30 and taking action with respect to such a violation.

31 (d) Making such investigations as may be necessary.

1 (e) Reporting to the Board of Executive Clemency the
2 circumstances, the criminal records, and the social, physical,
3 mental, and psychiatric conditions and histories of persons
4 under consideration by the board for pardon, commutation of
5 sentence, or remission of fine, penalty, or forfeiture.

6 (f) Establishing the term ~~terms~~ and conditions of
7 persons released on conditional release under s. 947.1405, and
8 determining subsequent ineligibility for conditional release
9 due to a violation of the ~~terms or~~ conditions of conditional
10 release and taking action with respect to such a violation.

11 (g) As the Control Release Authority, determining
12 which ~~what~~ persons will be released on control release under
13 s. 947.146, establishing the term ~~time~~ and conditions of
14 control release, if any, and determining whether a person has
15 violated the conditions of control release and taking action
16 with respect to such a violation.

17 (h) Determining which ~~what~~ persons will be released on
18 conditional medical release under s. 947.149, establishing the
19 conditions of conditional medical release, and determining
20 whether a person has violated the conditions of conditional
21 medical release and taking action with respect to such a
22 violation.

23 (i) Determining which persons will be released on
24 addiction-recovery supervision under s. 944.4731, establishing
25 the term and conditions of addiction-recovery supervision, and
26 determining whether a person has violated the conditions of
27 addiction-recovery supervision and taking action with respect
28 to such a violation.

29 Section 4. Section 947.1405, Florida Statutes, is
30 amended to read:

31 947.1405 Conditional release program.--

1 (1) This section ~~and s. 947.141~~ may be cited as the
2 "Conditional Release Program Act."

3 (2) Any inmate who:

4 (a) Is convicted of a crime committed on or after
5 October 1, 1988, and before January 1, 1994, and any inmate
6 who is convicted of a crime committed on or after January 1,
7 1994, which crime is or was contained in category 1, category
8 2, category 3, or category 4 of Rule 3.701 and Rule 3.988,
9 Florida Rules of Criminal Procedure (1993), and who has served
10 at least one prior felony commitment at a state or federal
11 correctional institution;

12 (b) Is sentenced as a habitual or violent habitual
13 offender or a violent career criminal pursuant to s. 775.084;
14 or

15 (c) Is found to be a sexual predator under s. 775.21
16 or former s. 775.23,

17
18 shall, upon reaching the tentative release date or provisional
19 release date, whichever is earlier, as established by the
20 Department of Corrections, be released under supervision
21 subject to specified terms and conditions, including payment
22 of the cost of supervision pursuant to s. 948.09. Such
23 supervision shall be applicable to all sentences within the
24 overall term of sentences if an inmate's overall term of
25 sentences includes one or more sentences that are eligible for
26 conditional release supervision as provided herein. If the
27 inmate is found to be a sexual predator, he or she is eligible
28 for conditional release until such designation is removed by a
29 court of competent jurisdiction regardless of the inmate's
30 current sentence. Effective July 1, 1994, and applicable for
31 offenses committed on or after that date, the commission may

1 | require, as a condition of conditional release, that the
2 | releasee make payment of the debt due and owing to a county or
3 | municipal detention facility under s. 951.032 for medical
4 | care, treatment, hospitalization, or transportation received
5 | by the releasee while in that detention facility. The
6 | commission, in determining whether to order such repayment and
7 | the amount of such repayment, shall consider the amount of the
8 | debt, whether there was any fault of the institution for the
9 | medical expenses incurred, the financial resources of the
10 | releasee, the present and potential future financial needs and
11 | earning ability of the releasee, and dependents, and other
12 | appropriate factors. If any inmate placed on conditional
13 | release supervision is also subject to court-ordered community
14 | supervision, the period of court-ordered community supervision
15 | may not be substituted for conditional release supervision and
16 | shall follow the term of conditional release supervision. ~~If~~
17 | ~~any inmate placed on conditional release supervision is also~~
18 | ~~subject to probation or community control, resulting from a~~
19 | ~~probationary or community control split sentence within the~~
20 | ~~overall term of sentences, the Department of Corrections shall~~
21 | ~~supervise such person according to the conditions imposed by~~
22 | ~~the court and the commission shall defer to such supervision.~~
23 | ~~If the court revokes probation or community control and~~
24 | ~~resentsences the offender to a term of incarceration, such~~
25 | ~~revocation also constitutes a sufficient basis for the~~
26 | ~~revocation of the conditional release supervision on any~~
27 | ~~nonprobationary or noncommunity control sentence without~~
28 | ~~further hearing by the commission. If any such supervision on~~
29 | ~~any nonprobationary or noncommunity control sentence is~~
30 | ~~revoked, such revocation may result in a forfeiture of all~~
31 | ~~gain time, and the commission may revoke the resulting~~

1 ~~deferred conditional release supervision or take other action~~
2 ~~it considers appropriate. If the term of conditional release~~
3 ~~supervision exceeds that of the probation or community~~
4 ~~control, then, upon expiration of the probation or community~~
5 ~~control, authority for the supervision shall revert to the~~
6 ~~commission and the supervision shall be subject to the~~
7 ~~conditions imposed by the commission.~~ A panel of no fewer than
8 two commissioners shall establish the terms and conditions of
9 any such release. If the offense was a controlled substance
10 violation, the conditions shall include a requirement that the
11 offender submit to random substance abuse testing
12 intermittently throughout the term of conditional release
13 supervision, upon the direction of the correctional probation
14 officer as defined in s. 943.10(3). The commission shall also
15 determine whether the terms and conditions of such release
16 have been violated and whether such violation warrants
17 revocation of the conditional release.

18 (3) As part of the conditional release process, the
19 commission, through review and consideration of information
20 provided by the department, shall determine:

21 (a) The amount of reparation or restitution.

22 (b) The consequences of the offense as reported by the
23 aggrieved party.

24 (c) The aggrieved party's fear of the inmate or
25 concerns about the release of the inmate.

26 (4) The commission shall provide to the aggrieved
27 party information regarding the manner in which notice of any
28 developments concerning the status of the inmate during the
29 term of conditional release may be requested.

30 (5) Within 180 days prior to the tentative release
31 date or provisional release date, whichever is earlier, a

1 representative of the department shall review the inmate's
2 program participation, disciplinary record, psychological and
3 medical records, criminal records, and any other information
4 pertinent to the impending release. The department shall
5 gather and compile information necessary for the commission to
6 make the determinations set forth in subsection (3). A
7 department representative shall conduct a personal interview
8 with the inmate for the purpose of determining the details of
9 the inmate's release plan, including the inmate's planned
10 residence and employment. The department representative shall
11 forward the inmate's release plan to the commission and
12 recommend to the commission the terms and conditions of the
13 conditional release.

14 (6) The commission shall review the recommendations of
15 the department, and such other information as it deems
16 relevant, and may conduct a review of the inmate's record for
17 the purpose of establishing the terms and conditions of the
18 conditional release. The commission may impose any special
19 conditions it considers warranted ~~from its review of the~~
20 ~~release plan and recommendation~~. If the commission determines
21 that the inmate is eligible for release under this section,
22 the commission shall enter an order establishing the length of
23 supervision and the conditions attendant thereto. However, an
24 inmate who has been convicted of a violation of chapter 794 or
25 found by the court to be a sexual predator is subject to the
26 maximum level of supervision provided, with the mandatory
27 conditions as required in subsection (7), and that supervision
28 shall continue through the end of the releasee's original
29 court-imposed sentence. The length of supervision must not
30 exceed the maximum penalty imposed by the court. The
31

1 commission may, at any time, modify the conditions of
2 supervision.

3 (7)(a) Any inmate who is convicted of a crime
4 committed on or after October 1, 1995, or who has been
5 previously convicted of a crime committed on or after October
6 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071,
7 or s. 847.0145, and is subject to conditional release
8 supervision, shall have, in addition to any other conditions
9 imposed, the following special conditions imposed by the
10 commission:

11 1. A mandatory curfew from 10 p.m. to 6 a.m. The
12 commission may designate another 8-hour period if the
13 offender's employment precludes the above specified time, and
14 such alternative is recommended by the Department of
15 Corrections. If the commission determines that imposing a
16 curfew would endanger the victim, the commission may consider
17 alternative sanctions.

18 2. If the victim was under the age of 18, a
19 prohibition on living or loitering within 1,000 feet of, or
20 working for pay or as a volunteer at, a school, day care
21 center, park, playground, designated public school bus stop,
22 restaurant having an attached playground, amusement park,
23 business establishment whose primary clients are children, or
24 other place where children regularly congregate. A releasee
25 who is subject to this subparagraph may not relocate to a
26 residence that is within 1,000 feet of a public school bus
27 stop. Beginning October 1, 2004, the commission or the
28 department may not approve a residence that is located within
29 1,000 feet of a school, day care center, park, playground,
30 designated school bus stop, or other place where children
31 regularly congregate for any releasee who is subject to this

1 subparagraph. On October 1, 2004, the department shall notify
2 each affected school district of the location of the residence
3 of a releasee 30 days prior to release and thereafter, if the
4 releasee relocates to a new residence, shall notify any
5 affected school district of the residence of the releasee
6 within 30 days after relocation. If, on October 1, 2004, any
7 public school bus stop is located within 1,000 feet of the
8 existing residence of such releasee, the district school board
9 shall relocate that school bus stop. Beginning October 1,
10 2004, a district school board may not establish or relocate a
11 public school bus stop within 1,000 feet of the residence of a
12 releasee who is subject to this subparagraph. The failure of
13 the district school board to comply with this subparagraph
14 shall not result in a violation of conditional release
15 supervision.

16 3. Active participation in and successful completion
17 of a sex offender treatment program with therapists
18 specifically trained to treat sex offenders, at the releasee's
19 own expense. If a specially trained therapist is not available
20 within a 50-mile radius of the releasee's residence, the
21 offender shall participate in other appropriate therapy.

22 4. A prohibition on any contact with the victim,
23 directly or indirectly, including through a third person,
24 unless approved by the victim, the offender's therapist, and
25 the sentencing court.

26 5. If the victim was under the age of 18, a
27 prohibition against direct contact or association with
28 children under the age of 18 until all of the following
29 conditions are met:

30 a. Successful completion of a sex offender treatment
31 program.

1 b. The adult person who is legally responsible for the
2 welfare of the child has been advised of the nature of the
3 crime.

4 c. Such adult person is present during all contact or
5 association with the child.

6 d. Such adult person has been approved by the
7 commission.

8 ~~6. If the victim was under age 18, a prohibition on~~
9 ~~working for pay or as a volunteer at any school, day care~~
10 ~~center, park, playground, or other place where children~~
11 ~~regularly congregate, as prescribed by the commission.~~

12 6.7. Unless otherwise indicated in the treatment plan
13 provided by the sexual offender treatment program, a
14 prohibition on viewing, owning, or possessing any obscene,
15 pornographic, or sexually stimulating visual or auditory
16 material, including telephone, electronic media, computer
17 programs, or computer services that are relevant to the
18 offender's deviant behavior pattern.

19 ~~7.8.~~ A requirement that the releasee must submit two
20 specimens of blood to the Florida Department of Law
21 Enforcement to be registered with the DNA database.

22 ~~8.9.~~ A requirement that the releasee make restitution
23 to the victim, as determined by the sentencing court or the
24 commission, for all necessary medical and related professional
25 services relating to physical, psychiatric, and psychological
26 care.

27 ~~9.10.~~ Submission to a warrantless search by the
28 community control or probation officer of the probationer's or
29 community controllee's person, residence, or vehicle.

30 (b) For a releasee whose crime was committed on or
31 after October 1, 1997, in violation of chapter 794, s. 800.04,

1 s. 827.071, or s. 847.0145, and who is subject to conditional
2 release supervision, in addition to any other provision of
3 this subsection, the commission shall impose the following
4 additional conditions of conditional release supervision:

5 1. As part of a treatment program, participation in a
6 minimum of one annual polygraph examination to obtain
7 information necessary for risk management and treatment and to
8 reduce the sex offender's denial mechanisms. The polygraph
9 examination must be conducted by a polygrapher trained
10 specifically in the use of the polygraph for the monitoring of
11 sex offenders, where available, and at the expense of the sex
12 offender. The results of the polygraph examination shall not
13 be used as evidence in a hearing to prove that a violation of
14 supervision has occurred.

15 2. Maintenance of a driving log and a prohibition
16 against driving a motor vehicle alone without the prior
17 approval of the supervising officer.

18 3. A prohibition against obtaining or using a post
19 office box without the prior approval of the supervising
20 officer.

21 4. If there was sexual contact, a submission to, at
22 the probationer's or community controllee's expense, an HIV
23 test with the results to be released to the victim or the
24 victim's parent or guardian.

25 5. Electronic monitoring of any form when ordered by
26 the commission.

27 (8) It is the finding of the Legislature that the
28 population of offenders released from state prison into the
29 community who meet the conditional release criteria poses the
30 greatest threat to the public safety of the groups of
31 offenders under community supervision. Therefore, the

1 Department of Corrections is to provide intensive supervision
2 by experienced correctional probation officers to conditional
3 release offenders. Subject to specific appropriation by the
4 Legislature, caseloads may be restricted to a maximum of 40
5 conditional release offenders per officer to provide for
6 enhanced public safety and to effectively monitor conditions
7 of electronic monitoring or curfews, if so ordered by the
8 commission.

9 (9) The commission shall adopt rules pursuant to ss.
10 120.536(1) and 120.54 necessary to implement the provisions of
11 the Conditional Release Program Act.

12 Section 5. Section 947.141, Florida Statutes, is
13 amended to read:

14 947.141 Violations of conditional release, control
15 release, or conditional medical release or addiction-recovery
16 supervision.--

17 (1) If a member of the commission or a duly authorized
18 representative of the commission has reasonable grounds to
19 believe that an offender who is on release supervision under
20 s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has
21 violated the ~~terms and~~ conditions of the release in a material
22 respect, such member or representative may cause a warrant to
23 be issued for the arrest of the releasee; if the offender was
24 found to be a sexual predator, the warrant must be issued. Any
25 parole and probation officer, any officer authorized to serve
26 criminal process, or any peace officer of this state is
27 authorized to execute the warrant. The commission, a
28 commissioner, or a parole examiner with approval of the parole
29 examiner supervisor may release the releasee on his or her own
30 recognizance, conditioned upon the releasee's appearance at
31 any hearings noticed by the commission. If not released on his

1 or her own recognizance, the releasee shall be committed to
2 jail pending hearings pursuant to this section.

3 (2) Any parole and probation officer, when she or he
4 has reasonable ground to believe that a control releasee,
5 conditional releasee, conditional medical releasee, or
6 offender under addiction-recovery supervision has violated the
7 conditions of his or her control release, conditional release,
8 conditional medical release, or addiction-recovery release in
9 a material respect, has the right to arrest and cause the
10 offender to be taken into custody without a warrant for a
11 period not to exceed 72 hours excluding weekends and holidays
12 pending a decision by the commission whether to issue a
13 warrant charging the offender with violation of the conditions
14 of release. If the commission issues a warrant, the offender
15 must continue to be held in custody pending a revocation
16 hearing held in accordance with this section.

17 (3) If a law enforcement officer has probable cause to
18 believe that an offender who is on release supervision under
19 s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has
20 violated the terms and conditions of his or her release by
21 committing a felony offense, the officer shall arrest the
22 offender without a warrant, and a warrant need not be issued
23 in the case.

24 (4)(2) Upon the arrest on a felony charge of an
25 offender who is on release supervision under s. 947.1405, s.
26 947.146, s. 947.149, or s. 944.4731, the offender must be
27 detained without bond until the initial appearance of the
28 offender at which a judicial determination of probable cause
29 is made. If the trial court judge determines that there was no
30 probable cause for the arrest, the offender may be released.
31 If the trial court judge determines that there was probable

1 | cause for the arrest, such determination also constitutes
2 | reasonable grounds to believe that the offender violated the
3 | conditions of the release. Within 24 hours after the trial
4 | court judge's finding of probable cause, the detention
5 | facility administrator or designee shall notify the commission
6 | and the department of the finding and transmit to each a
7 | facsimile copy of the probable cause affidavit or the sworn
8 | offense report upon which the trial court judge's probable
9 | cause determination is based. The offender must continue to be
10 | detained without bond for a period not exceeding 72 hours
11 | excluding weekends and holidays after the date of the probable
12 | cause determination, pending a decision by the commission
13 | whether to issue a warrant charging the offender with
14 | violation of the conditions of release. Upon the issuance of
15 | the commission's warrant, the offender must continue to be
16 | held in custody pending a revocation hearing held in
17 | accordance with this section.

18 | (5) Following issuance of a warrant or upon a
19 | warrantless arrest, the supervision period is tolled until the
20 | commission enters a ruling on the violation. Notwithstanding
21 | the tolling of supervision provided in this subsection, the
22 | commission shall retain jurisdiction over the offender for any
23 | violation of the conditions of supervision which is alleged to
24 | have occurred during the supervision period. The probation
25 | officer is permitted to continue to supervise the offender who
26 | remains available to the officer for supervision until the
27 | supervision term expires or is revoked or terminated by the
28 | commission.

29 | ~~(6)(3)~~ Within 45 days after notice to the Parole
30 | Commission of the arrest of a releasee charged with a
31 | violation of the terms and conditions of conditional release,

1 control release, conditional medical release, or
2 addiction-recovery supervision, the releasee must be afforded
3 a hearing conducted by a commissioner or a duly authorized
4 representative thereof. If the releasee elects to proceed with
5 a hearing, the releasee must be informed orally and in writing
6 of the following:

7 (a) The alleged violation with which the releasee is
8 charged.

9 (b) The releasee's right to be represented by counsel.

10 (c) The releasee's right to be heard in person.

11 (d) The releasee's right to secure, present, and
12 compel the attendance of witnesses relevant to the proceeding.

13 (e) The releasee's right to produce documents on the
14 releasee's own behalf.

15 (f) The releasee's right of access to all evidence
16 used against the releasee and to confront and cross-examine
17 adverse witnesses.

18 (g) The releasee's right to waive the hearing.

19
20 Any one or more commissioners or a duly authorized
21 representative of the commission may administer oaths and
22 compel the attendance of witnesses at the hearing by the
23 issuance of summons, subpoenas, and subpoena duces tecum.
24 Subpoenas and subpoenas duces tecum shall be enforceable by
25 appropriate proceedings in circuit court, and the willful
26 failure to comply with a court order enforcing a subpoena or
27 subpoena duces tecum constitutes contempt of court. Any one or
28 more commissioners or a duly authorized representative of the
29 commission may issue subpoenas on behalf of the state or the
30 releasee. The commissioners or a duly authorized
31 representative of the commission may decline to issue a

1 subpoena if he or she finds the evidence or testimony to be
2 cumulative, irrelevant, or nonprobative. Evidence of a type
3 commonly relied upon by reasonably prudent persons in the
4 conduct of their affairs shall be admissible, whether or not
5 such evidence would be admissible in a trial in the courts of
6 this state. The party requesting the subpoenas shall furnish
7 to the commission the names and addresses of his or her
8 proposed witnesses at least 10 days prior to the hearing date.

9 ~~(7)(4)~~ Within a reasonable time following the hearing,
10 the commissioner or the commissioner's duly authorized
11 representative who conducted the hearing shall make findings
12 of fact in regard to the alleged violation. A panel of no
13 fewer than two commissioners shall enter an order determining
14 whether the charge of violation of conditional release,
15 control release, conditional medical release, or
16 addiction-recovery supervision has been sustained based upon
17 the findings of fact presented by the hearing commissioner or
18 authorized representative. By such order, the panel may revoke
19 conditional release, control release, conditional medical
20 release, or addiction-recovery supervision and thereby return
21 the releasee to prison to serve the sentence imposed,
22 reinstate the original order granting the release, or enter
23 such other order as it considers proper, including imposing a
24 period of community residential treatment. Effective for
25 inmates whose offenses were committed on or after July 1,
26 1995, the panel may order the placement of a releasee, upon a
27 finding of violation pursuant to this subsection, into a local
28 detention facility as a condition of supervision.

29 ~~(8)(5)~~ Effective for inmates whose offenses were
30 committed on or after July 1, 1995, notwithstanding the
31 provisions of ss. 775.08, former 921.001, 921.002, 921.187,

1 921.188, 944.02, and 951.23, or any other law to the contrary,
2 by such order as provided in subsection ~~(7)(4)~~, the panel,
3 upon a finding of guilt, may, as a condition of continued
4 supervision, place the releasee in a local detention facility
5 for a period of incarceration not to exceed 22 months. Prior
6 to the expiration of the term of incarceration, or upon
7 recommendation of the chief correctional officer of that
8 county, the commission shall cause inquiry into the inmate's
9 release plan and custody status in the detention facility and
10 consider whether to restore the inmate to supervision, modify
11 the conditions of supervision, or enter an order of
12 revocation, thereby causing the return of the inmate to prison
13 to serve the sentence imposed. The provisions of this section
14 do not prohibit the panel from entering such other order or
15 conducting any investigation that it deems proper. The
16 commission may only place a person in a local detention
17 facility pursuant to this section if there is a contractual
18 agreement between the chief correctional officer of that
19 county and the Department of Corrections. The agreement must
20 provide for a per diem reimbursement for each person placed
21 under this section, which is payable by the Department of
22 Corrections for the duration of the offender's placement in
23 the facility. This section does not limit the commission's
24 ability to place a person in a local detention facility for
25 less than 1 year.

26 ~~(9)(6)~~ Whenever a conditional release, control
27 release, conditional medical release, or addiction-recovery
28 supervision is revoked by a panel of no fewer than two
29 commissioners and the releasee is ordered to be returned to
30 prison, the releasee, by reason of the misconduct, shall be
31 deemed to have forfeited all gain-time or commutation of time

1 for good conduct, as provided for by law, earned up to the
2 date of release. However, if a conditional medical release is
3 revoked due to the improved medical or physical condition of
4 the releasee, the releasee shall not forfeit gain-time accrued
5 before the date of conditional medical release. This
6 subsection does not deprive the prisoner of the right to
7 gain-time or commutation of time for good conduct, as provided
8 by law, from the date of return to prison.

9 ~~(7) If a law enforcement officer has probable cause to~~
10 ~~believe that an offender who is on release supervision under~~
11 ~~s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has~~
12 ~~violated the terms and conditions of his or her release by~~
13 ~~committing a felony offense, the officer shall arrest the~~
14 ~~offender without a warrant, and a warrant need not be issued~~
15 ~~in the case.~~

16 (10) The commission shall adopt rules pursuant to ss.
17 120.536(1) and 120.54 necessary to administer this section.

18 Section 6. Paragraph (g) of subsection (4) of section
19 947.16, Florida Statutes, is amended to read:

20 947.16 Eligibility for parole; initial parole
21 interviews; powers and duties of commission.--

22 (4) A person who has become eligible for an initial
23 parole interview and who may, according to the objective
24 parole guidelines of the commission, be granted parole shall
25 be placed on parole in accordance with the provisions of this
26 law; except that, in any case of a person convicted of murder,
27 robbery, burglary of a dwelling or burglary of a structure or
28 conveyance in which a human being is present, aggravated
29 assault, aggravated battery, kidnapping, sexual battery or
30 attempted sexual battery, incest or attempted incest, an
31 unnatural and lascivious act or an attempted unnatural and

1 lascivious act, lewd and lascivious behavior, assault or
2 aggravated assault when a sexual act is completed or
3 attempted, battery or aggravated battery when a sexual act is
4 completed or attempted, arson, or any felony involving the use
5 of a firearm or other deadly weapon or the use of intentional
6 violence, at the time of sentencing the judge may enter an
7 order retaining jurisdiction over the offender for review of a
8 commission release order. This jurisdiction of the trial
9 court judge is limited to the first one-third of the maximum
10 sentence imposed. When any person is convicted of two or more
11 felonies and concurrent sentences are imposed, then the
12 jurisdiction of the trial court judge as provided herein
13 applies to the first one-third of the maximum sentence imposed
14 for the highest felony of which the person was convicted. When
15 any person is convicted of two or more felonies and
16 consecutive sentences are imposed, then the jurisdiction of
17 the trial court judge as provided herein applies to one-third
18 of the total consecutive sentences imposed.

19 (g) The decision of the original sentencing judge or,
20 in her or his absence, the chief judge of the circuit to
21 vacate any parole release order as provided in this section is
22 not appealable. Each inmate whose parole release order has
23 been vacated by the court shall be reinterviewed within 2
24 years after the date of receipt of the vacated release order
25 and every 2 years thereafter, or earlier by order of the court
26 retaining jurisdiction. However, each inmate whose parole
27 release order has been vacated by the court and who has been:

- 28 1. Convicted of murder or attempted murder;
- 29 2. Convicted of sexual battery or attempted sexual
30 battery; ~~or~~

31

1 3. Sentenced to a 25-year minimum mandatory sentence
2 previously provided in s. 775.082; ~~or~~

3 4. Convicted of kidnapping,

4
5 shall be reinterviewed once within 5 years after the date of
6 receipt of the vacated release order and once every 5 years
7 thereafter, if the commission finds that it is not reasonable
8 to expect that parole would be granted during the following
9 years and states the bases for the finding in writing. For
10 any inmate who is within 7 years of his or her tentative
11 release date, the commission may establish a reinterview date
12 prior to the 5-year schedule.

13 Section 7. Paragraph (b) of subsection (1) of section
14 947.174, Florida Statutes, is amended to read:

15 947.174 Subsequent interviews.--

16 (1)

17 (b) For any inmate convicted of murder, attempted
18 murder, sexual battery, attempted sexual battery, or
19 kidnapping, or who has been sentenced to a 25-year minimum
20 mandatory sentence previously provided in s. 775.082, and
21 whose presumptive parole release date is more than 5 years
22 after the date of the initial interview, a hearing examiner
23 shall schedule an interview for review of the presumptive
24 parole release date. Such interview shall take place once
25 within 5 years after the initial interview and once every 5
26 years thereafter if the commission finds that it is not
27 reasonable to expect that parole will be granted at a hearing
28 during the following years and states the bases for the
29 finding in writing. For any inmate who is within 7 years of
30 his or her tentative release date, the commission may
31 establish an interview date prior to the 5-year schedule.

1 Section 8. Subsection (6) of section 947.1745, Florida
2 Statutes, is amended to read:

3 947.1745 Establishment of effective parole release
4 date.--If the inmate's institutional conduct has been
5 satisfactory, the presumptive parole release date shall become
6 the effective parole release date as follows:

7 (6) Within 90 days before the effective parole release
8 date interview, the commission shall send written notice to
9 the sentencing judge of any inmate who has been scheduled for
10 an effective parole release date interview. If the sentencing
11 judge is no longer serving, the notice must be sent to the
12 chief judge of the circuit in which the offender was
13 sentenced. The chief judge may designate any circuit judge
14 within the circuit to act in the place of the sentencing
15 judge. Within 30 days after receipt of the commission's
16 notice, the sentencing judge, or the designee, shall send to
17 the commission notice of objection to parole release, if the
18 judge objects to such release. If there is objection by the
19 judge, such objection may constitute good cause in exceptional
20 circumstances as described in s. 947.173, and the commission
21 may schedule a subsequent review within 2 years, extending the
22 presumptive parole release date beyond that time. However, for
23 an inmate who has been:

24 (a) Convicted of murder or attempted murder;

25 (b) Convicted of sexual battery or attempted sexual
26 battery; ~~or~~

27 (c) Sentenced to a 25-year minimum mandatory sentence
28 previously provided in s. 775.082; or

29 (d) Convicted of kidnapping,
30
31

1 | the commission may schedule a subsequent review under this
2 | subsection once every 5 years, extending the presumptive
3 | parole release date beyond that time if the commission finds
4 | that it is not reasonable to expect that parole would be
5 | granted at a review during the following years and states the
6 | bases for the finding in writing. For any inmate who is within
7 | 7 years of his or her release date, the commission may
8 | schedule a subsequent review prior to the 5 year schedule.
9 | With any subsequent review the same procedure outlined above
10 | will be followed. If the judge remains silent with respect to
11 | parole release, the commission may authorize an effective
12 | parole release date. This subsection applies if the
13 | commission desires to consider the establishment of an
14 | effective release date without delivery of the effective
15 | parole release date interview. Notice of the effective
16 | release date must be sent to the sentencing judge, and either
17 | the judge's response to the notice must be received or the
18 | time period allowed for such response must elapse before the
19 | commission may authorize an effective release date.

20 | Section 9. Section 947.22, Florida Statutes, is
21 | amended to read:

22 | 947.22 Authority to arrest parole violators with or
23 | without warrant.--

24 | (1) If a member of the commission or a duly authorized
25 | representative of the commission has reasonable grounds to
26 | believe that a parolee has violated the terms and conditions
27 | of her or his parole in a material respect, such member or
28 | representative may issue a warrant for the arrest of such
29 | parolee. The warrant shall be returnable before a member of
30 | the commission or a duly authorized representative of the
31 | commission. The commission, a commissioner, or a parole

1 | examiner with approval of the parole examiner supervisor, may
2 | release the parolee on bail or her or his own recognizance,
3 | conditioned upon her or his appearance at any hearings noticed
4 | by the commission. If not released on bail or her or his own
5 | recognizance, the parolee shall be committed to jail pending
6 | hearings pursuant to s. 947.23. The commission, at its
7 | election, may have the hearing conducted by one or more
8 | commissioners or by a duly authorized representative of the
9 | commission. Any parole and probation officer, any officer
10 | authorized to serve criminal process, or any peace officer of
11 | this state is authorized to execute the warrant.

12 | (2) Any parole and probation officer, when she or he
13 | has reasonable ground to believe that a parolee,~~control~~
14 | ~~releasee, or conditional releasee~~ has violated the ~~terms and~~
15 | ~~conditions of her or his parole, control release, or~~
16 | ~~conditional release~~ in a material respect, has the right to
17 | arrest and cause to be taken into custody the releasee or
18 | parolee without warrant for a period not to exceed 72 hours
19 | excluding weekends and holidays pending a decision by the
20 | commission whether to issue a warrant charging the offender
21 | with violation of his or her parole. If the commission issues
22 | a warrant, the parolee must continue to be held in custody
23 | pending a revocation hearing held in accordance with this
24 | section. and bring her or him forthwith before one or more
25 | ~~commissioners or a duly authorized representative of the~~
26 | ~~Parole Commission or Control Release Authority; and~~
27 | ~~proceedings shall thereupon be had as provided herein when a~~
28 | ~~warrant has been issued by a member of the commission or~~
29 | ~~authority or a duly authorized representative of the~~
30 | ~~commission or authority.~~

31 |

1 (3) If a law enforcement officer has probable cause to
2 believe that a parolee has violated the terms and conditions
3 of his or her parole, the officer shall arrest and take into
4 custody the parolee without a warrant, and a warrant need not
5 be issued in the case.

6 (4) Following issuance of a warrant or upon a
7 warrantless arrest, the supervision period is tolled until the
8 commission enters a ruling on the violation. Notwithstanding
9 the tolling of supervision provided in this subsection, the
10 commission shall retain jurisdiction over the parolee for any
11 violation of the conditions of supervision which is alleged to
12 have occurred during the supervision period. The probation
13 officer is permitted to continue to supervise the parolee who
14 remains available to the officer for supervision until the
15 supervision term expires or is revoked or terminated by the
16 commission.

17 Section 10. Subsection (3) of section 947.23, Florida
18 Statutes, is amended to read:

19 947.23 Action of commission upon arrest of parolee.--

20 (3) Any one or more commissioners or a duly authorized
21 representative of the commission may administer oaths and
22 compel the attendance of witnesses at such hearing by the
23 issuance of summons, subpoenas, and subpoenas duces tecum.
24 Subpoenas and subpoenas duces tecum shall be enforceable by
25 appropriate proceedings in circuit court, and the failure to
26 comply with a court order enforcing a subpoena or subpoena
27 duces tecum shall constitute contempt of court. Any one or
28 more commissioners or a duly authorized representative of the
29 commission may issue subpoenas on behalf of the state or the
30 parolee. The commission may decline ~~a request~~ to issue a
31 subpoena ~~if a witness whose testimony~~ it finds the evidence or

1 testimony would be cumulative, irrelevant, or nonprobative and
2 such evidence or testimony shall be excluded. All other
3 evidence of a type commonly relied upon by reasonably prudent
4 persons in the conduct of their affairs shall be admissible,
5 whether or not such evidence would be admissible in a trial in
6 the courts of this state. The party requesting the subpoenas
7 shall furnish to the ~~commissioner, commissioners, or duly~~
8 ~~authorized representative of the~~ commission the names and
9 addresses of her or his proposed witnesses at least 10 days
10 prior to the hearing date.

11 Section 11. This act shall take effect July 1, 2005.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 540
4 - Amends ss. 947.16(4)(g), F.S., 947.174, F.S., and
5 947.1745, F.S., respectively, to add kidnapping to the
6 category of offenses for which an inmate's parole
7 reinterview schedule may be reduced from every 2 years to
8 every 5 years if the commission makes a written finding
9 that parole release is unlikely in the intervening
10 period.
11 - Amends s. 947.06, F.S., to require that the victim or the
12 victim's next of kin be given a copy of the parole
13 examiner's recommendation upon request.
14 - Amends s. 947.1405(2), F.S., to provide for conditional
15 release supervision to be served prior to any term of
16 court-ordered supervision if the offender has a split
17 sentence of incarceration followed by community
18 supervision. This reverses the current order of serving
19 court-ordered community supervision before conditional
20 release.
21 - Amends s. 947.1405(7), F.S., to expand the enumeration of
22 places where a sexual offender on conditional release
23 cannot work, or live within 1000 feet of, to include
24 restaurants with attached playgrounds, amusement parks,
25 and business establishments whose primary clients are
26 children. Clarifies that the term working includes
27 volunteer work. It also adds a new restriction against
28 loitering within 1000 feet of the enumerated locations or
29 any other location where children regularly congregate.
30 - Codifies that evidence is admissible if it is of a type
31 commonly relied upon by reasonably prudent persons in the
 conduct of their affairs, even if not admissible in a
 judicial proceeding.