

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 689 Parole for Juveniles  
**SPONSOR(S):** Barreiro; Flores  
**TIED BILLS:** none **IDEN./SIM. BILLS:** SB 446

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Bond	Kramer
2) Juvenile Justice Committee			
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

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### SUMMARY ANALYSIS

Parole is a form of early release from prison for offenders. The Parole Commission individually examines each inmate eligible for parole, and selects those worthy of parole for conditional release. A parolee is supervised like a probationer, and may be sent back to prison like a probationer for violation of the terms of release. Parole is not available for any offense committed after October 1, 1995.

This bill provides that certain juvenile offenders who were adjudicated as adults and have served 8 years or more of their sentence are eligible for parole consideration.

This bill has a minimal recurring fiscal cost on state government. This bill does not have a fiscal impact on local governments.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Provide limited government -- This bill increases the responsibilities of the Parole Commission.

Promote personal responsibility -- This bill may have the effect of providing early release on parole for certain offenders.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Parole**

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. 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. Correctional Probation Officers of the Department of Corrections supervise parolees.

Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. 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. Approximately 5,200 Florida inmates are still eligible for parole consideration, including a small percentage who committed their parole-eligible crime when they were less than 18 years of age.

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.

An inmate whose parole release order has been vacated must be reinterviewed within 2 years after receipt of the vacated release order and 2 years thereafter. However, the reinterviews 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.

### **Effect of Bill**

This bill amends s. 985.225, F.S., to provide that if an offender is 15 years of age or younger and is sentenced to life imprisonment or to a minimum term of imprisonment in excess of 10 years, the offender is eligible for parole when he or she has served 8 years of that sentence.

However, an offender is not eligible for this parole provision if he or she has previously been adjudicated for a violation of any of these offenses:

- Any offense specified in s. 775.084(1)(b)1., F.S. (numerous violent felonies)<sup>1</sup>
- Section 784.03, F.S. (battery)
- Section 827.03, F.S. (child abuse)
- Section 828.12, F.S. (cruelty to animals)

This bill restates current law by providing that such offender must be incarcerated in a facility for youthful offenders, except as otherwise provided in s. 958.11(3), F.S.<sup>2</sup>

This bill requires the Parole Commission to review the offender's eligibility for release. The initial interview with the offender must be within 2 months after the initial date of confinement in execution of the judgment.

The age and maturity of the offender at the time of the offense and the wishes of the victim or the victim's next of kin must be considered in establishing the presumptive parole release date.

If the offender has not been granted parole by the time he or she reaches 25 years of age, or is not granted parole after a second eligibility review conducted by the commission before the offender reaches 25 years of age, the offender must be transferred from the facility for youthful offenders to an appropriate facility for adults.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 985.225, F.S., to create a system for parole for certain juvenile offenders.

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<sup>1</sup> The cited section is a list of crimes that are part of qualifying a person as a "habitual violent felony offender". Attempt qualifies the same as a completed crime. The list is: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

<sup>2</sup> Section 958.11, F.S., requires the Department of Corrections to designate facilities for youthful offenders, requires that there be facilities for very young offenders (14 to 18 years of age), and requires that youthful offenders be placed in those special facilities apart from the general adult prison population. Subsection (3) of that section, however, provides 8 circumstances in which the department may place a youthful offender out of the designated facilities.

Section 2 provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

In reviewing this bill in last year's legislative session, the Florida Parole Commission anticipated that it will need an additional FTE position in order to implement the interviewing provisions of the bill, at a recurring annual cost of \$43,876. There is also the potential for the state to incur litigation costs relating to inmate's efforts to seek retroactive application of the bill's provisions.

If the bill applies prospectively, there is no potential for any fiscal impact upon other aspects of the state correctional system until FY 2012-2013. However, if the bill is applied retroactively and the 8-year imprisonment requirement is interpreted to include incarceration in adult prison as well as in a youthful offender facility, the Office of Economic and Demographic Research anticipates that 145 inmates would be eligible for parole under this bill in Fiscal Year 2004-2005. This includes 126 inmates who would be parole eligible as of the bill's effective date, and 19 additional inmates who would become eligible during the fiscal year. If no eligible inmates are paroled, the number would increase gradually to 273 parole eligible inmates at the end of Fiscal Year 2008-2009. Because the granting of parole would reduce the inmate population, the Criminal Justice Impact Conference found that any fiscal impact upon the state prison system would be positive.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable.

#### **2. Other:**

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is created by this bill, although it is likely that the Parole Commission would have to create or amend existing commission rules to accommodate this provision. The commission should be able to create or amend existing rules under existing authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Drafting Issues**

It is unclear why a section on parole for juvenile offenders is being placed in a section of law regarding indictments.

This bill provides that the offenders who qualify are those "15 years of age or younger." It is unclear whether this relates to age at the time of offense, time of sentencing, or at time of parole eligibility.

**Retroactive vs. Prospective Application**

The bill has an effective date of July 1, 2005, but does not expressly state whether it is to be applied retroactively to previously sentenced inmates. In the absence of an express legislative declaration of intent to apply a new statute retroactively, it is presumed that the law is to be applied prospectively. See *Metropolitan Dade County v. Chase Federal Housing Corp*, 737 So.2d 494 (Fla.1999). This presumption against retroactive application generally does not apply to remedial legislation. However, "if a statute accomplishes a remedial purpose by creating new substantive rights or imposing new legal burdens, the presumption against retroactivity would still apply." *Metro* at 499.

It can be anticipated that current inmates who are serving sentences for crimes committed when they were 15 years old or younger will seek a judicial finding that the legislation is remedial and that the bill's provisions are to be applied retroactively. Under current decisions regarding statutory interpretation, it appears that such an effort would be unsuccessful. However, it is possible that the courts may be less strict in applying the presumption against retroactivity in the case of a law that is clearly advantageous to persons who committed crimes at a young age. An intermediate ground is that the law would apply prospectively, with current inmates who otherwise meet eligibility criteria eligible for parole consideration after serving 8 additional years beyond the bill's effective date.

If the bill only applies prospectively to offenders who commit crimes on or after July 1, 2005, no one could be eligible for parole release until the latter half of 2013.

Although it is likely that the courts will construe the bill to apply prospectively, the current inmate population provides a snapshot of the numbers of children who are incarcerated for committing serious crimes. As of February 29, 2004, there were 441 inmates in the custody of the Department of Corrections for an offense that is punishable by life imprisonment and that was committed when the inmate was 15 years of age or younger.

In analyzing this bill last year, the Office of Economic and Demographic Research estimated that approximately 126 inmates will not have a disqualifying prior conviction and will have served at least 8 years in prison as of that bill's July 1, 2004, effective date. It is likely that there are currently a similar number of inmates who would be eligible for immediate parole consideration if the bill were given retroactive effect.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

n/a