

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 1796

INTRODUCER: Criminal Justice Committee

SUBJECT: Parole Commission

DATE: March 23, 2007 REVISED: 03/27/07 _____

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

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill makes changes to statutes that concern the Florida Parole Commission's authority and procedures that:

- Amend s. 947.13, F.S., to plainly give the commission authority to determine which prisoners are subject to conditional release supervision under the statutory terms, and which are eligible for addiction-recovery supervision.
- Make a significant structural change by specifically listing the crimes that make a prisoner subject to conditional release supervision rather than referring to provisions in the 1993 Florida Rules of Criminal Procedure.
- Provide that conditional release supervision takes priority over a period of probation or community control that follows a prison term. This reverses the current priority.
- Provide that the status of being eligible for conditional release follows an offender in subsequent prison terms, even though the offense for which the offender is imprisoned does not otherwise subject him or her to conditional release supervision.

- Permit the commission to modify the terms of an offender's conditional release supervision at any time in order to ensure community safety.
- Expand the limitation against where a conditional releasee who committed a sexual crime with a victim under 18 may live and work, and includes loitering within the exclusion zone as an activity that could result in a violation charge.
- Clarify and specify procedures to address violations of probation, including the process for arrest and detention, issuance of process for hearings, and admissibility of evidence.
- Provide that inability of a conditional releasee whose offense was a sexual crime involving a child to locate a residence that does not violate the residency restrictions of s. 947.1405, F.S., is not a defense to a violation charge.

This bill substantially amends ss. 947.13, 947.1405, 947.141, 947.22, 947.23, and 775.21 of the Florida Statutes.

II. Present Situation:

The Parole Commission is the agency with authority for several types of post-prison release. The most well-known is parole, even though only persons who have been convicted of a crime committed prior to 1983 are eligible for such release. The commission also establishes the conditions of other types of post-release supervision, including conditional release and addiction-recovery supervision.

The Legislature created the Conditional Release Program in 1988. 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. 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. There were 5,562 offenders placed on conditional release in fiscal year 2005-2006. As of January 31, 2007, 2772 conditional releasees were being supervised in either an active or an active-suspense status.¹

The addiction recovery supervision program was created in 2001 and its provisions are set forth in s. 944.4731, F.S. Mandatory post prison supervision is required for offenders who: (1) are released from a prison term for a crime committed on or after July 1, 2001; (2) have a history of substance abuse or addiction or have participated in any drug treatment, and (3) have not been convicted of a disqualifying offense. The commission sets the terms and conditions of supervision, and determines whether to revoke supervision if the offender fails to abide by the program's conditions. As of January 31, 2007, 314 addiction-recovery releasees were being actively supervised, and another 81 were in active-suspense supervision status.

¹ Data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida's Community Supervision Population, January 2007.

The commission reports that commissioners issued 3,349 warrants for violations of supervision in fiscal year 2005-2006, and that there were 2,713 revocation determinations during that same period. These include all types of supervision overseen by the commission.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 947.13, F.S., to make several changes to the powers and duties of the commission. It restates that the commission has authority to determine which prisoners are eligible for conditional release under s. 947.105, F.S., or for addiction-recovery supervision under s. 944.4731, F.S. Eligibility is not a matter of discretion – it is based upon clearly defined statutory criteria. Currently, the respective statutes provide for the Department of Corrections to identify inmates who meet the statutory criteria, perform additional investigation, and give the information to the commission for a final determination of eligibility. It does not appear that the bill will change that process.

This section also restates the commission's authority to set the terms and conditions of addiction-recovery supervision and to determine when supervision has been violated. This existing authority is less clearly stated in s. 944.4731, F.S.

Section 2 amends s. 947.1405, F.S., to specifically set forth the offenses included in eligibility for conditional release. Currently, the offenses are established by reference to offense categories in the Florida Rules of Criminal Procedure. The commission has requested listing of the qualifying offenses in the statute in order to make it easier for offenders and their family members to know what offenses are included. The Rules of Criminal Procedure are not as readily accessible or as familiar to laymen as are the Florida Statutes.

Although the statute specifically refers to the 1993 Rules, the language of the statute leaves room for interpretation that it is updated as the rules are updated. This raises concerns of delegation of legislative authority and *ex post facto* application of the law. Fortunately, there has not been a great deal of change in the offense categories in the rules. However, the current and former rules contain some obvious typographical errors that are corrected in the bill. Also, the bill lists several offenses that are not included in the rules. Consideration should be given to including those offenses in the category of offenses which will be eligible for conditional release if committed after the effective date.

It should be noted that the bill's reference to "eligibility" for conditional release is not a positive thing from the prisoner's perspective – it means that the prisoner remains under supervision following release from prison until the full term of the sentence is completed.

This section of the bill also addresses supervision of offenders who are subject to both conditional release and to a period of community supervision following their prison term. The amendment reverses the priority to make conditional release supervision by the commission have precedence over community supervision. The term of community supervision would follow the conditional release supervision. This is consistent with the arrangement established in s. 944.4731, F.S., with regard to addiction-release supervision having priority over other forms of community supervision. The purpose of addiction-release supervision is to ensure that the

offenders get substance-abuse treatment, so there is an obvious reason for giving it precedence over regular probation.

The question of whether conditional release should precede probation is not so easily answered. On the one hand, the Florida Supreme Court has noted that the conditional release is designed to “bridge the gap between prison and the outside world.” *Duncan v. Moore*, 754 So.2d 708, 710 (Fla.2000). If this is the only purpose, conditional release would be unnecessary when the offender will be supervised under court-ordered probation or community control. On the other hand, the commission asserts that the conditions of conditional release are often more stringent than those of probation. Because the class of offenders is deemed by the Legislature to be of particular concern, that perspective must be weighed in determining which program should have precedence.

A new subsection (3) is created to provide that the status of being eligible for conditional release follows an offender throughout his life. Currently, an offender can be placed on conditional release supervision after completing a prison sentence for one offense, and subsequently be committed to prison for an offense that does not qualify for conditional release. The amendment assures that the offender will be subject to conditional release supervision following any subsequent prison terms.

Subsection (6) is amended to permit the commission to modify the conditions of a releasee’s community supervision at any time in order to ensure community safety.

Subsection (7) relates to supervision of releasees who have committed a sexual offense. It expands the prohibition against offenders whose victim was under age 18 from living within 1000 feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate. It consolidates an existing stand-alone prohibition against working for pay or as a volunteer at any of the listed places, and adds designated school bus stops to that prohibition. The expanded provisions include restaurants having an attached playground, amusement parks, and businesses whose primary clients are children in the buffer zone areas. Loitering within 1000 feet is added as an activity that is prohibited within the buffer zones. It is important to note that “loitering” is a vague term that has presented difficulties of proof in the context of a criminal trial. It may be useful to craft a more descriptive definition of the behavior that is being addressed. However, there does not appear to be a constitutional issue with use of the term.

Section 3 of the bill amends s. 947.141, F.S., concerning procedures for addressing violations of supervision. It includes:

- Authorization for any parole and probation officer, any officer authorized to serve process, or any peace officer of the state to execute an arrest warrant for an offender who is alleged to have violated supervision by the commission.
- Authorization for the commission, an individual commissioner, or a parole examiner with supervisor approval to decide to release the offender on his or her own recognizance or to hold the offender pending hearing.

- Authorization for any parole or probation officer who has knowledge of a violation to arrest an offender without a warrant. The offender may be held for up to 72 hours while the commission decides whether to issue a warrant. If a warrant is issued, the offender will be held until the violation hearing.
- Provision for tolling that running of the supervision period is tolled upon issuance of a warrant or upon warrantless arrest until the commission rules on the alleged violation, but providing for continued supervision during the tolled period.
- Authorization for commissioners or the commission's representatives to administer oaths and compel the attendance of witnesses at hearings through the issuance of summonses, subpoenas, and subpoenas duces tecum. Requests for subpoenas must be provided to the commission no less than 10 days before the hearing date. The commission or its representative is authorized to decline to issue process if it finds that the evidence or testimony would not be useful in making its determination. This provision also provides that willful failure to comply with a court order enforcing a subpoena or subpoena duces tecum is contempt of court.
- Provision that evidence considered by the commission in determining whether supervision was violated does not have to conform to the Florida Rules of Evidence used in trials. Its standard for considering evidence is that it must be "evidence of a type commonly relied upon by reasonably prudent persons in conduct of their affairs."
- Authorizes the commission to adopt rules to administer the section's provisions.

Section 3 also creates a new subsection (11) in s. 947.141, F.S., that limits certain control releasees from using the defense of inability to locate a residence to contest a charge of violating the residency conditions of s. 947.1405, F.S. This condition applies to conditional releasees who have been convicted of sexual battery upon a minor, lewd or lascivious offense committed on or in the presence of a child under 16, promoting a sexual performance by a child under 18, or selling or buying of a minor for sexual purposes.

Normally, a court cannot find that an offender has violated community supervision for committing an act when the offender does not have the ability to comply with the condition alleged to have been violated. This principle is codified in s. 948.06, F.S., with regard to failure of a probationer or community controllee to pay costs or a fine. That statute recognizes the defense of inability to pay, but places the burden of proving such inability upon the offender. It is possible that the courts will find that the proposed amendment violates the offender's constitutional rights, especially if the location of the offender's residence does not violate criminal laws.

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:

As previously noted, it is possible that an issue could be raised concerning the prohibition against raising a defense of inability to find a residence that meets the conditions of conditional release for a sexual offender.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It does not appear that the bill would have a fiscal impact upon the operation of the Parole Commission or any other governmental entity. The commission's analysis did not project a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows pre-hearing release of offenders who are alleged to have violated conditions of control release supervision. Probationers and community controllees with the same record might not be eligible for pre-violation hearing release under the proposed Anti-Murder Act (SB 146).

VIII. Summary of Amendments:

Barcode 080840 by Criminal Justice:

Changes the date for including new offenses in conditional release eligibility from October 1, 2006, to October 1, 2007.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
