

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1086

INTRODUCER: Criminal Justice Committee, Senators Bennett and others

SUBJECT: Illegal or Undocumented Aliens

DATE: April 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Sumner</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The primary intent of the bill appears to be to affect the expedited removal of incarcerated illegal or undocumented aliens to their countries of origin. The bill requires the Department of Corrections (DOC) and the Parole Commission to immediately initiate, coordinate, and establish agreements with multiple state, local, and federal authorities to implement the United States Immigration and Customs Enforcement’s Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) program, and provides goals for this effort.

The bill also creates a control release mechanism for removal and deportation of qualified aliens, including but not limited to:

- Identification of eligible aliens.
- Voluntary waiver by the alien of administrative and judicial appellate rights.
- Establishment of a control release date (which may be a minimum of 50 percent of the alien’s sentence).
- Notice to and written acknowledgement by the alien that illegal re-entry into the United States requires the return of such aliens to state custody to complete the remainder of the alien’s sentence.

- Waiver by the alien of rights of extradition to challenge the alien's return to the DOC and the Control Release Authority (CRA) to complete the remainder of the alien's sentence.

The bill also requires the CRA to implement a system to execute an immediate deportation order from federal immigration authorities. It specifies that control release is an administrative function that, aside from its current use to manage the state prison system within total capacity, is used to expedite the deportation process. It further specifies that control release dates for deportation do not become void when the prison population changes. Finally, it amends present powers and duties of the CRA to provide that the CRA may extend or advance the control release date of any inmate for whom a date has been established, based on the DOC's recommendation regarding arrangements for the transfer of the custody of the inmate pending deportation.

This bill amends section 947.146, Florida Statutes. This bill creates section 947.1461, Florida Statutes, and creates an undesignated section of the Florida Statutes.

II. Present Situation:

DOC Information Regarding "Alien Inmates"

The DOC's annual report¹ provides the following information regarding "alien inmates":²

What is an alien inmate?

An alien inmate is one who does not have U.S. citizenship. Newly admitted inmates are referred to Immigration and Customs Enforcement (ICE, formerly part of INS) agents, working in prison reception centers, who identify and investigate those who may be aliens. On June 30, 2007, Florida prisons held 5,014 confirmed alien inmates.

What happens once alien inmates finish their prison sentences?

As with other inmates, alien inmates are released from prison when their sentences are completed. If the ICE has notified the Department that they want to take an alien inmate into custody, the inmate is released only into ICE custody. Some alien inmates cannot be deported. However, the vast majority of alien inmates who complete their sentences in Florida prisons are released to ICE for further immigration processing, including possible deportation.

Under what circumstances would an alien inmate be deported?

Alien inmates are deported promptly after release from prison, if they have been ordered out of the country, have no further appeals of their final deportation order, and are from a country to which the United States can deport them. Other alien inmates are transferred to ICE for further deportation proceedings when their sentences expire, unless ICE refuses

¹ *Annual Report: FY 2006-2007* (2008), Florida Department of Corrections.

² This information appears under the heading of "Inmate Population on June 30, 2007."

to receive and detain them (for example, in some cases when the alien is from a country to which they can not be deported).

Most confirmed alien inmates (61.2%) in prison³ on June 30, 2007, were serving time for violent crimes.⁴

Nearly one-fourth (22.4%) of confirmed aliens were serving time for murder or manslaughter, and 19.5% were serving time for drug crimes.

Cuba is the single country with the largest number of confirmed aliens in Florida's prison system: 1,742 (34.7%) on June 30, 2007.

Mexico (960 or 19.2%) and Jamaica (411 or 8.2%) together account for almost one of every four aliens in Florida prisons.

Honduras, Nicaragua, the Bahamas, the Dominican Republic, Guatemala, El Salvador, and Canada combined, accounted for 14.3% of confirmed aliens in Florida prisons on June 30, 2007.⁵

The DOC analysis of the bill⁶ states that “[a]s of February 1st, 2008, there are 7,338 foreign born inmates in the department’s custody.” A subsequent e-mail from DOC staff to legislative staff reports:

That 7,338 is not the same as “confirmed aliens.” What we know about that 7,338 is that they were born in a foreign country. However, some of them could be lawful and permanent citizens of the United States.

As of 12/31/07, we had confirmed that 5,274 of our inmates were “confirmed aliens,” which is different than a foreign born inmate. If the numbers hold about the same, you can expect that about 2,000 (give or take) of those 7,338 inmates will turn out to be lawful citizens of the United States. The remainder will be the “confirmed aliens.”⁷

DOC Reporting and Deportation of Criminal Aliens

The DOC analysis of the bill states:

Department procedure 601.502 (Florida Criminal Alien Removal Process/Standard) covers much of what is in this bill. The procedure requires South Florida Reception

³ The DOC breakdown of the primary offense of confirmed alien inmates is: 61.2 percent were for a violent offense (3,070), 19.5 percent were for a drug offense (977), 14.3 percent were for a property offense (715), and 5 percent were for other offenses (252).

⁴ According to the DOC, “one of the following conditions must occur for a crime to be defined as violent under this definition: actual physical harm or threat of physical harm, or a reasonable probability existed that individual criminal acts could have resulted in unintended physical harm or the threat of physical harm.”

⁵ The DOC’s breakdown of birth country of confirmed alien inmates is: 34.7 percent from Cuba (1,742); 26.3 percent from countries other than Cuba, Mexico, Jamaica, Haiti, or Columbia (1,320); 19.2 percent from Mexico (960); 8.2 percent from Jamaica (411); 7.7 percent from Haiti (387); and 3.9 percent from Columbia (194).

⁶ 2008 Bill Analysis (SB 1086) (February 21, 2008), Florida Department of Corrections.

⁷ E-mail from Alex Kelly, DOC, to legislative staff, dated March 5, 2008.

Center and Central Florida Reception Center to provide daily receipt lists to ICE agents on duty at these reception centers. The Reception and Medical Center, Broward Correctional Institution and Lowell Correctional Institution provide weekly receipt lists to ICE. ICE is required to interview suspected aliens within 5 to 7 days of their receipt into the department’s custody. The department provides ICE monthly lists of alien inmates within one year of release and weekly lists of releases within 90 days.⁸ The department transfers illegal or undocumented aliens to ICE officials at expiration of sentence.⁹ The chart below shows the number of alien inmates released to ICE during the last eight years:

YEAR OF RELEASE	EXPIRATION	EOS TO PROB/CC	PROVISIONAL RELEASE SUPERVISION	COND. RELEASE	TOTAL
2000	433	98	3	68	602
2001	730	179	11	136	1,056
2002	793	184	11	128	1,116
2003	798	232	5	146	1,181
2004	752	198	2	148	1,100
2005	746	192	2	132	1,072
2006	754	208	1	145	1,108
2007	799	197	3	121	1,120
TOTAL	5,805	1,488	38	1,024	8,355

Prior Memorandum of Understanding

In its analysis of the bill, the DOC provides the following information regarding a former memorandum of understanding between Florida and the former Immigration and Naturalization Service to affect expedited removal of “incarcerated aliens”:

Florida has engaged in expedited deportation in the past without legislating the process. In 1994, then Governor Lawton Chiles and the Immigration and Naturalization Service (INS) entered into a Memorandum of Understanding (MOU) to accomplish the expedited removal of incarcerated aliens. Apparently, this [MOU] was put into effect to help alleviate prison overcrowding that the state was experiencing at that time. The [MOU] relied on the authority of the Governor and the Florida Cabinet, sitting as the Board of Executive Clemency, to grant alien inmates conditional commutations of sentences. Criteria [were] established to ensure that only certain nonviolent inmates were eligible for the expedited deportation prior to the end of their sentences. INS’s role in this

⁸ The DOC’s annual report states that its Bureau of Research and Data Analysis “established liaison with the Office of Homeland Security’s Immigration and Customs Enforcement (ICE) staff to exchange data and compare alien lists, resulting in a streamlined identification and deportation process for inmate and community supervision offenders who are aliens.”

⁹ The DOC notes that “current practice ... is based on federal law as well as a Memorandum of Agreement between the Department of Corrections, INS and the Executive Office for Immigration Review (EOIR) (MOA #A704, dated November 28, 2001), which sets out the duties and responsibilities of the parties in administering the Florida Criminal Alien Removal Program.” The DOC further notes that, “[c]urrently, inmates transferred to their home countries under an international transfer agreement are accompanied by U.S. Marshals on airliners. Inmates processed through the traditional deportation program are accompanied by ICE officials under tight security that often involves planes used exclusively for the purpose of inmate transfer.”

process was to obtain final orders of deportation and to facilitate the removal of these aliens from the United States. Unlawful re-entry of these inmates upon deportation resulted in revocation of clemency and reinstatement of the original sentence. This MOU was suspended in 2004 during the Bush administration.

Federal Rapid REPAT Program¹⁰

Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT), otherwise known as “Rapid REPAT,” is an ICE program that provides for early conditional release of a state prison inmate to the custody of ICE for deportation only. Under this program, the inmate agrees to waive appeal rights to state conviction(s) and an ICE deportation order. If the inmate re-enters the United States, state statutes provide for revocation of parole and confinement for the remainder of the sentence. The ICE states that the immediate identification and processing of incarcerated criminal aliens prior to release reduces the burden on the taxpayer and ensures the criminal alien is promptly removed from the United States upon being eligible for release on parole or completion of their criminal sentence.

Presently, New York and Arizona participate in Rapid REPAT pursuant to statutes enacted in those states.¹¹ Both states’ statutes provide for: early release, usually one-half of minimum sentence; deportation; and mandatory confinement for the remainder of sentence upon re-entry and arrest within the United States.

New York’s eligibility criteria require: a final deportation order; no conviction for a violent felony offense; service of one-half of the minimum sentence or half of the determinate sentence, minus good time; no conflict with prior parole board decisions; and a parole hearing date set six months in the future. Inmates arrive at a New York Department of Corrections reception center and are processed into the correctional system. Corrections staff members identify foreign-born inmates through criminal history checks, pre-sentence investigations reports, and interviews. Inmates identified or suspected as foreign-born are placed on a call-out list for the ICE to interview. The ICE interviews inmates to determine immigration status and whether the inmates can be removed. If the ICE encounters an alien who is the subject of a final order of removal, it notifies reception center staff of eligibility. The ICE provides the prison and parole offices with a copy of the final order of removal, which triggers the system for the alien to meet a parole board. The ICE is notified when an alien is granted conditional parole for deportation only. The ICE then arranges to take custody of the alien while working to obtain travel documents and finalizing the removal itinerary. Once everything is in order, the ICE removes the alien from the United States and notifies the parole board.

Arizona’s eligibility criteria require: a final deportation order; service of one-half of the imposed sentence; no convictions for dangerous or repetitive offenses, sexual offenses, homicide, manslaughter or murder; and conviction for a class 3, 4, 5, or 6 felony. The Alhambra Intake Center is the single intake center for all prisoners sentenced to the Arizona Department of Corrections (ADC). The ADC and the ICE officers work side by side to interview all foreign-

¹⁰ U.S. Immigration and Customs Enforcement PowerPoint presentation provided by the Florida Department of Law Enforcement. All information regarding REPAT is from this presentation

¹¹ N.Y. LAW § 259-i(d)(i), ARIZ. REV. STAT. ANN. § 41-1604.14.

born inmates to determine if they can be removed. All criminal aliens are identified and processed prior to their transfer to other ADC facilities.

According to the ICE, New York realized \$140,654,380 in combined savings between April 2005 and August 2007 as a result of its program. In this same time period, Arizona realized \$13,360,534 of bed day savings. The ICE notes that additional benefits to partner states may include: greater identification of foreign-born inmates, thereby reducing the possibility of release into the community; reduction in incarceration and parole costs; reduction in costs and litigation associated with overcrowding issues; a potential increase in State Criminal Alien Assistance Program (SCAAP) revenue; and possible capital construction avoidance savings.

States that wish to participate in Rapid REPAT must do the following: enact legislation providing for the early release of the eligible incarcerated aliens to the ICE (if necessary); enter into a Memorandum of Agreement with the ICE regarding the program; provide training at reception centers; and implement the program.

Control Release

Section 947.146, F.S., creates the Control Release Authority (CRA), which is composed of members of the Parole Commission. The CRA is required to implement a system for determining the number and type of inmates who must be released into the community under control release in order to maintain the state prison system between 99 and 100 percent of its total capacity as defined in s. 944.023, F.S. No inmate has a right to control release, which is an administrative function solely used to manage the state prison population within total capacity. An inmate may not receive an advancement of his or her control release date by an award of control release allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of the inmate's advanceable control release date.

Pertinent to the bill, s. 947.146(3)(a)-(m), F.S., provides that inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

- Are serving a sentence that includes a mandatory minimum provision for a capital offense or drug trafficking offense and have not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;
- Are serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2), F.S.,¹² or s. 784.07(3), F.S.;¹³
- Are convicted, or have been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

¹² This provision, which is part of the statute popularly known as "10-20-Life," provides for penalty enhancements based on the possession or discharge of a firearm or destructive device.

¹³ This provision provides for enhanced penalties based on possession of a firearm, etc., during the commission of a battery on a law enforcement officer or other specified person.

- Are convicted, or have been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;
- Are convicted, or have been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;
- Are convicted, or have been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
- Are sentenced, have previously been sentenced, or have been sentenced at any time under s. 775.084, F.S.,¹⁴ or have been sentenced at any time in another jurisdiction as a habitual offender;
- Are convicted, or have been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer, a state attorney or assistant state attorney; or against a justice or judge of a court described in Art. V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction;
- Are convicted, or have been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), F.S.,¹⁵ or have ever been convicted of any degree of murder or attempted murder in another jurisdiction;
- Are convicted, or have been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., F.S., and are sentenced, or have been sentenced at any time, as a habitual offender for such offense, or have been sentenced at any time in another jurisdiction as a habitual offender for such offense;
- Are serving a sentence for an offense committed on or after January 1, 1994, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), (5), or (6), F.S.,¹⁶ and the subtotal of the offender's sentence points is multiplied pursuant to the former sentencing guidelines or the Criminal Punishment Code;
- Are serving a sentence for an offense committed on or after October 1, 1995, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7), (8), or (9), F.S.,¹⁷ and the subtotal of the offender's sentence points is multiplied pursuant to the former sentencing guidelines or the Criminal Punishment Code;
- Are serving a sentence for an offense committed on or after January 1, 1994, for possession of a firearm, semiautomatic firearm, or machine gun in which additional points are added to the subtotal of the offender's sentence points pursuant to the former sentencing guidelines or the Criminal Punishment Code; or

¹⁴ This statute provides for enhanced penalties for certain repeat or habitual offenders.

¹⁵ These provisions relate to various first, second, and third degree murder offenses.

¹⁶ These provisions relate to enhanced penalties for specified crimes committed against law enforcement officers and other specified persons.

¹⁷ *Id.*

Are convicted, or have been previously convicted, of committing or attempting to commit manslaughter, kidnapping, robbery, carjacking, home-invasion robbery, or a burglary under s. 810.02(2), F.S.¹⁸

III. Effect of Proposed Changes:

Provided is a section-by section analysis of the bill:

Section 1 of the bill creates an undesignated section of the Florida Statutes that requires the Department of Corrections (DOC) and the Parole Commission to immediately initiate, coordinate, and establish agreements with multiple state, local, and federal authorities to implement the ICE's REPAT program. The bill provides the following goals for this effort:

- Ensure deportable aliens are not released from prison to the community.
- Reduce the number of criminal aliens incarcerated in the state prison system.
- Provide for the mandatory revocation of control release and confinement of criminal aliens who re-enter the United States and who are re-arrested in Florida.
- Allow eligible inmates to be released for deportation purposes prior to the expiration of the sentence.
- Expedite the deportation process.
- Improve information sharing procedures between the ICE and the DOC.

Section 2 of the bill creates s. 947.1461, F.S., relating to control release for removal and deportation, which sets forth the following requirements:

- The DOC must begin at the inmate reception process a procedure to identify eligible aliens to determine if deportation is feasible and in the best interests of the State of Florida. Aliens who are ineligible for the federal deportation process pursuant to this section are inmates who are ineligible for control release pursuant to s. 947.146(3)(a)-(m), F.S.
- The DOC must coordinate with the federal authorities to determine immigration status and removability and to obtain the final removal order.
- The DOC must only identify aliens for removal who have voluntarily waived all administrative and judicial appellate rights in writing, and if the alien agrees in writing to fully cooperate with federal authorities to obtain valid travel documentation and facilitate removal.
- Upon acceptance into the federal deportation program, the Control Release Authority (CRA) must establish a control release date for the alien to be transferred into federal custody.
- Notwithstanding the provisions of s. 944.275(4)(b)3., F.S., the Control Release Authority may establish a control release date after the alien has served a minimum of 50 percent of his or her court imposed sentence.
- The DOC must maintain exclusive control and responsibility for the custody and transportation of aliens to and from federal facilities.

¹⁸ First degree felony burglary (in the course of committing a burglary, the offender meets any of the specified criteria, such as assault or battery on a person).

- The CRA must provide notice and obtain acknowledgement in writing that notice was given to aliens eligible for deportation that illegal re-entry into the United States requires the return of such aliens to the custody of the State of Florida to complete the remainder of their court imposed sentence. The alien must also waive in writing any and all rights of extradition which would challenge the alien's return to the DOC and CRA to complete the remainder of their sentence.
- An alien cannot receive the benefits of control release awards when the federal authorities determine that the alien's removal is not reasonably foreseeable.
- The DOC must compile statistics on this program including: the number of aliens who are transferred to federal custody; the number of aliens who are actually removed from the United States; the number of aliens who re-enter the United States; and the annualized cost avoidance achieved.

Section 3 of the bill amends s. 947.146, F.S., relating to the CRA. The bill requires the CRA to implement a system to execute an immediate deportation order from federal immigration authorities. The bill specifies that control release is an administrative function that, aside from its current use to manage the state prison system within total capacity, is used to expedite the deportation process. The bill also specifies that control release dates for deportation do not become void when the prison population changes.¹⁹

The bill also amends present powers and duties of the CRA to provide that the CRA may extend or advance the control release date of any inmate for whom a date has been established, based on the DOC's recommendation regarding arrangements for the transfer of the custody of the inmate pending deportation.

Section 4 of the bill provides the bill takes effect on July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ Section 947.146(5), F.S., presently specifies that whenever the inmate population drops below 99 percent of total capacity and remains below 99 percent for 90 consecutive days without requiring the release of inmates under this section, all control release dates become void and no inmate is eligible for release under any previously established control release date.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be an impact on the Department of Corrections in administering the REPAT program and in transportation of eligible inmate aliens to the ICE's custody for deportation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 1, 2008:**

The committee substitute makes the following changes to the bill:

- Requires the Department of Corrections (DOC) and the Parole Commission to immediately initiate, coordinate, and establish agreements with multiple state, local, and federal authorities to implement the United States Immigration and Customs Enforcement's Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) program, and provides goals for this effort.
- Creates a control release mechanism for removal and deportation of qualified aliens, including but not limited to:
 - Identification of eligible aliens.
 - Voluntary waiver by the alien of administrative and judicial appellate rights.
 - Establishment of a control release date (which may be a minimum of 50 percent of the alien's sentence).
 - Notice to and written acknowledgement by the alien that illegal re-entry into the United States requires the return of such aliens to state custody to complete the remainder of the alien's sentence.
 - Waiver by the alien of rights of extradition to challenge the alien's return to the DOC and the Control Release Authority (CRA) to complete the remainder of the alien's sentence.

- Requires the CRA to implement a system to execute an immediate deportation order from federal immigration authorities.
- Specifies that control release is an administrative function which, aside from its current use to manage the state prison system within total capacity, is used to expedite the deportation process.
- Specifies that control release dates for deportation do not become void when the prison population changes.
- Amends present powers and duties of the CRA to provide that the CRA may extend or advance the control release date of any inmate for whom a date has been established, based on the DOC's recommendation regarding arrangements for the transfer of the custody of the inmate pending deportation.

B. Amendments:

None.