

By the Committee on Criminal Justice; and Senators Bennett and Atwater

591-06410-08

20081086c1

1 A bill to be entitled

2 An act relating to illegal or undocumented aliens;
3 requiring the Department of Corrections and the Parole
4 Commission to establish agreements to implement a federal
5 deportation program for state inmates; specifying the
6 goals of the program; creating s. 947.1461, F.S., relating
7 to the control release for removal and deportation;
8 requiring the department to identify eligible inmates at
9 the reception process; specifying eligibility criteria;
10 requiring the department to coordinate with federal
11 authorities to determine immigration status and
12 eligibility for removal; specifying that eligible inmates
13 waive administrative and appellate rights; requiring the
14 Control Release Authority to establish control release
15 dates; authorizing the control release dates to be set
16 after the alien has served a minimum 50 percent of his or
17 her court imposed sentence; requiring the Control Release
18 Authority to give notice to aliens concerning reentering
19 the United States; prohibiting aliens from benefiting from
20 control release awards when removal is not reasonably
21 foreseeable; requiring the department to compile and
22 report certain statistics; amending s. 947.146, F.S.,
23 relating to the Control Release Authority; requiring the
24 authority to implement a program to execute an immediate
25 deportation order; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. The Department of Corrections and the Parole

591-06410-08

20081086c1

30 Commission shall immediately initiate, coordinate, and establish
31 agreements among multiple state, local, and federal authorities
32 to implement the United States Immigration and Customs
33 Enforcement Rapid Removal of Eligible Parolees Accepted for
34 Transfer (REPAT) program. The goals of this effort shall be to:

35 (1) Ensure deportable aliens are not released from prison
36 to the community;

37 (2) Reduce the number of criminal aliens incarcerated in
38 the state prison system;

39 (3) Provide for the mandatory revocation of control release
40 and confinement of criminal aliens who reenter the United States
41 and who are rearrested in Florida;

42 (4) Allow eligible inmates to be released for deportation
43 purposes prior to the expiration of the sentence;

44 (5) Expedite the deportation process; and

45 (6) Improve information-sharing procedures between the
46 Immigration and Customs Enforcement Section of the United States
47 Department of Homeland Security and the department.

48 Section 2. Section 947.1461, Florida Statutes, is created
49 to read:

50 947.1461 Control release for removal and deportation
51 only.--

52 (1) The Department of Corrections shall begin at the inmate
53 reception process a procedure to identify eligible aliens to
54 determine if deportation is feasible and in the best interests of
55 the state. Aliens who are ineligible for the federal deportation
56 process pursuant to this section are inmates who are ineligible
57 for control release pursuant to s. 947.146(3)(a)-(m).

58 (2) The Department of Corrections shall coordinate with the

591-06410-08

20081086c1

59 federal authorities to determine immigration status and
60 eligibility for removal and to obtain the final removal order.

61 (3) The Department of Corrections shall identify aliens for
62 removal who have voluntarily waived all administrative and
63 judicial appellate rights in writing, and if the alien agrees in
64 writing to fully cooperate with federal authorities to obtain
65 valid travel documentation and facilitate removal.

66 (4) Upon acceptance into the federal deportation program,
67 the Control Release Authority shall establish a control release
68 date for the alien to be transferred into federal custody.
69 Notwithstanding the provisions of s. 944.275(4)(b)3., the Control
70 Release Authority may establish a control release date after the
71 alien has served a minimum of 50 percent of his or her court-
72 imposed sentence.

73 (5) The Department of Corrections shall maintain exclusive
74 control and responsibility for the custody and transportation of
75 aliens to and from federal facilities.

76 (6) The Control Release Authority shall provide notice and
77 obtain acknowledgement in writing that notice was given to aliens
78 eligible for deportation that illegal reentry into the United
79 States requires the return of such aliens to the custody of the
80 Department of Corrections to complete the remainder of their
81 court-imposed sentence. The alien must also waive in writing any
82 and all rights of extradition which would challenge the alien's
83 return to the Department of Corrections and Control Release
84 Authority to complete the remainder of his or her sentence.

85 (7) Under no circumstances shall an alien receive the
86 benefits of control release awards when the federal authorities
87 determine that the alien's removal is not reasonably foreseeable.

591-06410-08

20081086c1

88 (8) The Department of Corrections shall compile statistics
89 on this program, including the number of aliens who are
90 transferred to federal custody, the number of aliens who are
91 actually removed from the United States, the number of aliens who
92 reenter the United States, and the annualized cost-avoidance
93 achieved.

94 Section 3. Subsections (2), (5), and (7) of section
95 947.146, Florida Statutes, are amended to read:

96 947.146 Control Release Authority.--

97 (2) The authority shall implement a system for determining
98 the number and type of inmates who must be released into the
99 community under control release in order to maintain the state
100 prison system between 99 and 100 percent of its total capacity as
101 defined in s. 944.023 or to execute an immediate deportation
102 order from federal immigration authorities. No inmate has a right
103 to control release. Control release is an administrative function
104 solely used to manage the state prison population within total
105 capacity and to expedite the deportation process. An inmate may
106 not receive an advancement of his or her control release date by
107 an award of control release allotments for any period of time
108 before the date the inmate becomes statutorily eligible for
109 control release or before the subsequent date of establishment of
110 the inmate's advanceable control release date.

111 (5) Whenever the inmate population drops below 99 percent
112 of total capacity and remains below 99 percent for 90 consecutive
113 days without requiring the release of inmates under this section,
114 all control release dates shall become void and no inmate shall
115 be eligible for release under any previously established control
116 release date. However, control release dates for deportation

591-06410-08

20081086c1

117 purposes shall not become void when the inmate population
118 changes. An inmate shall not have a right to a control release
119 date, nor shall the authority be required to establish or
120 reestablish any additional control release dates except under the
121 provisions of subsection (2).

122 (7) The authority has the power and duty to:

123 (a) Extend or advance the control release date of any
124 inmate for whom a date has been established pursuant to
125 subsection (2), based upon one or more of the following:

126 1. Recently discovered information of:

127 a. Past criminal conduct;

128 b. Verified threats by inmates provided by victims, law
129 enforcement, or the department;

130 c. Potential risk to or vulnerability of a victim;

131 d. Psychological or physical trauma to the victim due to
132 the criminal offense;

133 e. Court-ordered restitution;

134 f. History of abuse or addiction to a chemical substance
135 verified by a presentence or postsentence investigation report;

136 g. The inmate's ties to organized crime;

137 h. A change in the inmate's sentence structure;

138 i. Cooperation with law enforcement;

139 j. Strong community support; and

140 k. A documented mental condition as a factor for future
141 criminal behavior.

142 2. The recommendation of the department regarding:

143 a. A medical or mental health-related condition; or

144 b. Institutional adjustment of the inmate, which may
145 include refusal by the inmate to sign the agreement to the

591-06410-08

20081086c1

146 conditions of the release plan.

147 3. Total capacity of the state prison system.

148 4. Arrangements for the transfer of custody pending
149 deportation.

150 (b) Authorize an individual commissioner to postpone a
151 control release date for not more than 60 days without a hearing
152 for any inmate who has become the subject of a disciplinary
153 proceeding, a criminal arrest, an information, or an indictment;
154 who has been terminated from work release; or about whom there is
155 any recently discovered information as specified in paragraph
156 (a).

157 (c) Determine the terms, conditions, and period of time of
158 control release for persons released pursuant to this section.

159 (d) Determine violations of control release and what
160 actions shall be taken with reference thereto.

161 (e) Provide for victim input into the decisionmaking
162 process which may be used by the authority as aggravation or
163 mitigation in determining which persons shall be released on
164 control release.

165 (f) Make such investigations as may be necessary for the
166 purposes of establishing, modifying, or revoking a control
167 release date.

168 (g) Contract with a public defender or private counsel for
169 representation of indigent persons charged with violating the
170 terms of control release.

171 (h) Adopt such rules as the authority deems necessary for
172 implementation of the provisions of this section.

173 Section 4. This act shall take effect July 1, 2008.