

By Senator Geller

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1 A bill to be entitled

2 An act relating to parole for adolescent offenders;
3 amending s. 947.16, F.S.; providing that an adolescent
4 younger than a specified age who is sentenced to life or
5 more than 10 years in prison is eligible for parole if he
6 or she has been incarcerated for a minimum period and has
7 not been previously adjudicated for certain offenses;
8 requiring the adolescent to be incarcerated in a youthful-
9 offender facility; providing for review of the
10 adolescent's eligibility for parole by the Parole
11 Commission; requiring the commission to conduct an initial
12 interview within a minimum time; requiring that, if the
13 adolescent is not granted parole by a specified age, he or
14 she be transferred from the youthful-offender facility to
15 an appropriate adult facility; specifying criteria for the
16 hearing officer to consider in determining whether an
17 adolescent offender has been rehabilitated; providing for
18 retroactive application; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 947.16, Florida Statutes, is amended to
23 read:

24 947.16 Eligibility for parole; initial parole interviews;
25 powers and duties of commission.--

26 (1) Every inmate or adolescent offender ~~person~~ who has been
27 convicted of a felony or who has been convicted of one or more
28 misdemeanors and whose sentence or cumulative sentences total 12
29 months or more, who is confined in execution of the judgment of

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30 | the court, and whose record during confinement or while under
31 | supervision is good, shall, unless otherwise provided by law, be
32 | eligible for interview for parole consideration of her or his
33 | cumulative sentence structure as follows:

34 | (a) An inmate who has been sentenced for an indeterminate
35 | term or a term of 3 years or less shall have an initial interview
36 | conducted by a hearing examiner within 8 months after the initial
37 | date of confinement in execution of the judgment.

38 | (b) An inmate who has been sentenced for a minimum term in
39 | excess of 3 years but of less than 6 years shall have an initial
40 | interview conducted by a hearing examiner within 14 months after
41 | the initial date of confinement in execution of the judgment.

42 | (c) An inmate who has been sentenced for a minimum term of
43 | 6 or more years but other than for a life term shall have an
44 | initial interview conducted by a hearing examiner within 24
45 | months after the initial date of confinement in execution of the
46 | judgment.

47 | (d) An inmate who has been sentenced for a term of life
48 | shall have an initial interview conducted by a hearing examiner
49 | within 5 years after the initial date of confinement in execution
50 | of the judgment.

51 | (e) An inmate who has been convicted and sentenced under
52 | ss. 958.011-958.15, or any other inmate who has been determined
53 | by the department to be a youthful offender, shall be interviewed
54 | by a parole examiner within 8 months after the initial date of
55 | confinement in execution of the judgment.

56 | (f)1. An adolescent offender who was 15 years of age or
57 | younger at the time the criminal act was committed, was sentenced
58 | to life or to a single or cumulative term of imprisonment of 10

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59 years or more, and has served 8 years of the sentence, may be
60 eligible for parole. An adolescent offender is disqualified from
61 eligibility for parole under this section if he or she plead nolo
62 contendere to or was convicted, prior to the current offense, of
63 a violation of:

- 64 a. Section 782.04, relating to murder;
65 b. Section 782.051, relating to attempted felony murder;
66 c. Section 784.011, relating to assault;
67 d. Section 784.021, relating to aggravated assault;
68 e. Section 784.03, relating to battery;
69 f. Section 784.041, relating to felony battery or domestic
70 battery by strangulation;
71 g. Section 784.045, relating to aggravated battery;
72 h. Section 784.048, relating to stalking;
73 i. Section 784.07, relating to assault or battery upon a
74 law enforcement officer, fire fighter, or emergency medical
75 services personnel;
76 j. Section 784.08, relating to assault or battery of an
77 elderly person;
78 k. Section 784.083, relating to assault or battery on code
79 inspectors;
80 l. Section 787.01, relating to kidnapping;
81 m. Section 787.02, relating to false imprisonment;
82 n. Section 790.07, relating to possession of a weapon or
83 firearm during the commission of a felony;
84 o. Section 790.1615, relating to unlawful throwing,
85 projecting, placing, or discharging of a destructive device or
86 bomb;
87 p. Section 794.011, relating to sexual battery;

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88 q. Section 806.01, relating to arson;

89 r. Section 806.111, relating to fire bombs;

90 s. Section 810.02, relating to burglary;

91 t. Section 812.014, relating to theft;

92 u. Section 812.13, relating to robbery;

93 v. Section 812.131, relating to robbery by sudden
94 snatching;

95 w. Section 812.133, relating to carjacking;

96 x. Section 812.135, relating to home-invasion robbery;

97 y. Section 812.12, relating to trespass and larceny with
98 relation to utility fixtures;

99 z. Section 827.03, relating to abuse, aggravated abuse, and
100 neglect of a child; or

101 aa. Section 828.12, relating to cruelty to animals.

102 2. As used in this section, the term "adolescent offender"
103 means a minor who committed his or her current offense when he or
104 she was 18 years of age or younger.

105 (2) Except as otherwise provided in chapter 958, an
106 adolescent offender must serve his or her sentence in a facility
107 designated for youthful offenders. If an adolescent offender has
108 not been granted parole by the time he or she reaches 25 years of
109 age, the adolescent offender must be transferred from the
110 youthful offender facility to an appropriate adult facility.

111 (3)(2)- The following special types of cases shall have
112 their initial parole interview as follows:

113 (a) An initial interview may be postponed for a period not
114 to exceed 90 days. Such postponement shall be for good cause,
115 which shall include, but need not be limited to, the need for the
116 department to obtain a presentence or postsentence investigation

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117 | report or a probation or parole or mandatory conditional release
118 | violation report. The reason for postponement shall be noted in
119 | writing and included in the official record. No postponement for
120 | good cause shall result in an initial interview being conducted
121 | later than 90 days after the inmate's initially scheduled initial
122 | interview.

123 | (b) An initial interview may be deferred for any inmate who
124 | is out to court. Such deferral shall not result in an initial
125 | interview being conducted later than 90 days after the department
126 | provides written notice to the commission that the inmate has
127 | been returned from court.

128 | (c) An initial interview may be deferred for any inmate
129 | confined in any appropriate treatment facility within the state,
130 | public or private, by virtue of transfer from the department
131 | under any applicable law. Such deferral shall not result in an
132 | initial interview being conducted later than 90 days after the
133 | department provides written notice to the commission that the
134 | inmate has been returned to the department.

135 | (d) An inmate designated a mentally disordered sex offender
136 | shall have an initial interview conducted within 90 days of
137 | receiving written notification by the department to the
138 | commission of the need for such interview and that the inmate's
139 | file contains all investigative reports deemed necessary by the
140 | commission to conduct such interview.

141 | (e) Any inmate who has been determined to be an
142 | incapacitated person pursuant to s. 744.331 shall have an initial
143 | interview conducted within 90 days after the date the commission
144 | is provided with written notice that the inmate has been restored
145 | to capacity by the court.

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146 (f) An initial interview may be held at the discretion of
147 the commission after the entry of a commission order to revoke
148 parole or mandatory conditional release.

149 (g) For purposes of determining eligibility for parole
150 interview and release, the mandatory minimum portion of a
151 concurrent sentence will begin on the date the sentence begins to
152 run as provided in s. 921.161. The mandatory minimum portions of
153 consecutive sentences shall be served at the beginning of the
154 maximum sentence as established by the Department of Corrections.
155 Each mandatory minimum portion of consecutive sentences shall be
156 served consecutively; provided, that in no case shall a sentence
157 begin to run before the date of imposition. The commission shall
158 conduct an initial interview for an inmate serving a mandatory
159 minimum sentence according to the following schedule:

160 1. An inmate serving a mandatory term of 7 years or less
161 shall have an initial interview no sooner than 6 months before
162 ~~prior to~~ the expiration of the mandatory minimum portion of the
163 sentence.

164 2. An inmate serving a mandatory term in excess of 7 years
165 but of less than 15 years shall have an initial interview no
166 sooner than 12 months before ~~prior to~~ the expiration of the
167 mandatory minimum portion of the sentence.

168 3. An inmate serving a mandatory term of 15 years or more
169 shall have an initial interview no sooner than 18 months before
170 ~~prior to~~ the expiration of the mandatory minimum portion of the
171 sentence.

172 (h) If an inmate is serving a sentence imposed by a county
173 or circuit court of this state concurrently with a sentence
174 imposed by a court of another state or of the United States, and

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175 if the department has designated the correctional institution of
176 the other jurisdiction as the place for reception and confinement
177 of such person, the inmate so released to another jurisdiction
178 shall be eligible for consideration for parole, except that the
179 commission shall determine the presumptive parole release date
180 and the effective parole release date by requesting such person's
181 record file from the receiving jurisdiction. Upon receiving such
182 records, the commission panel assigned by the chair shall
183 determine such release dates based on the relevant information in
184 that file. The commission may concur with the parole release
185 decision of the jurisdiction granting parole and accepting
186 supervision. The provisions of s. 947.174 do not apply to an
187 inmate serving a concurrent sentence in another jurisdiction
188 pursuant to s. 921.16(2).

189 (4)~~(3)~~ Notwithstanding the provisions of ss. 775.021 and
190 921.16, if an inmate has received a consecutive sentence or
191 sentences imposed by a court or courts of this state, the inmate
192 shall be eligible for consideration for parole, unless otherwise
193 expressly prohibited by law.

194 (5)~~(4)~~ An inmate ~~A person~~ who has become eligible for an
195 initial parole interview and who may, according to the objective
196 parole guidelines of the commission, be granted parole shall be
197 placed on parole in accordance with the provisions of this law;
198 except that, in any case of an inmate ~~A person~~ convicted of
199 murder, robbery, burglary of a dwelling or burglary of a
200 structure or conveyance in which a human being is present,
201 aggravated assault, aggravated battery, kidnapping, sexual
202 battery or attempted sexual battery, incest or attempted incest,
203 an unnatural and lascivious act or an attempted unnatural and

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204 lascivious act, lewd and lascivious behavior, assault or
205 aggravated assault when a sexual act is completed or attempted,
206 battery or aggravated battery when a sexual act is completed or
207 attempted, arson, or any felony involving the use of a firearm or
208 other deadly weapon or the use of intentional violence, at the
209 time of sentencing the judge may enter an order retaining
210 jurisdiction over the offender for review of a commission release
211 order. This jurisdiction of the trial court judge is limited to
212 the first one-third of the maximum sentence imposed. When any
213 person is convicted of two or more felonies and concurrent
214 sentences are imposed, then the jurisdiction of the trial court
215 judge as provided herein applies to the first one-third of the
216 maximum sentence imposed for the highest felony of which the
217 person was convicted. When any person is convicted of two or more
218 felonies and consecutive sentences are imposed, then the
219 jurisdiction of the trial court judge as provided herein applies
220 to one-third of the total consecutive sentences imposed.

221 (a) In retaining jurisdiction for the purposes of this act,
222 the trial court judge shall state the justification with
223 individual particularity, and such justification shall be made a
224 part of the court record. A copy of such justification shall be
225 delivered to the department together with the commitment issued
226 by the court pursuant to s. 944.16.

227 (b) Gain-time as provided for by law shall accrue, except
228 that an offender over whom the trial court has retained
229 jurisdiction as provided herein shall not be released during the
230 first one-third of her or his sentence by reason of gain-time.

231 (c) In such a case of retained jurisdiction, the
232 commission, within 30 days after the entry of its release order,

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233 shall send notice of its release order to the original sentencing
234 judge and to the appropriate state attorney. The release order
235 shall be made contingent upon entry of an order by the
236 appropriate circuit judge relinquishing jurisdiction as provided
237 for in paragraphs (d) and (f). If the original sentencing judge
238 is no longer in service, such notice shall be sent to the chief
239 judge of the circuit in which the offender was sentenced. The
240 chief judge may designate any circuit judge within the circuit to
241 act in the place of the original sentencing judge. Such notice
242 shall stay the time requirements of s. 947.1745.

243 (d) Within 10 days after receipt of the notice provided for
244 in paragraph (c), the original sentencing judge or her or his
245 replacement shall notify the commission as to whether or not the
246 court further desires to retain jurisdiction. If the original
247 sentencing judge or her or his replacement does not so notify the
248 commission within the 10-day period or notifies the commission
249 that the court does not desire to retain jurisdiction, then the
250 commission may dispose of the matter as it sees fit.

251 (e) Upon receipt of notice of intent to retain jurisdiction
252 from the original sentencing judge or her or his replacement, the
253 commission shall, within 10 days, forward to the court its
254 release order, the findings of fact, the parole hearing
255 examiner's report and recommendation, and all supporting
256 information upon which its release order was based.

257 (f) Within 30 days of receipt of the items listed in
258 paragraph (e), the original sentencing judge or her or his
259 replacement shall review the order, findings, and evidence; and,
260 if the judge finds that the order of the commission is not based
261 on competent substantial evidence or that the parole is not in

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262 | the best interest of the community or the inmate, the court may
263 | vacate the release order. The judge or her or his replacement
264 | shall notify the commission of the decision of the court, and, if
265 | the release order is vacated, such notification shall contain the
266 | evidence relied on and the reasons for denial. A copy of such
267 | notice shall be sent to the inmate.

268 | (g) The decision of the original sentencing judge or, in
269 | her or his absence, the chief judge of the circuit to vacate any
270 | parole release order as provided in this section is not
271 | appealable. Each inmate whose parole release order has been
272 | vacated by the court shall be reinterviewed within 2 years after
273 | the date of receipt of the vacated release order and every 2
274 | years thereafter, or earlier by order of the court retaining
275 | jurisdiction. However, each inmate whose parole release order has
276 | been vacated by the court and who has been:

- 277 | 1. Convicted of murder or attempted murder;
278 | 2. Convicted of sexual battery or attempted sexual battery;
279 | or
280 | 3. Sentenced to a 25-year minimum mandatory sentence
281 | previously provided in s. 775.082,

282 |
283 | shall be reinterviewed once within 5 years after the date of
284 | receipt of the vacated release order and once every 5 years
285 | thereafter, if the commission finds that it is not reasonable to
286 | expect that parole would be granted during the following years
287 | and states the bases for the finding in writing. For any inmate
288 | who is within 7 years of his or her tentative release date, the
289 | commission may establish a reinterview date prior to the 5-year
290 | schedule.

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291 (h) An inmate whose parole release order has been vacated
292 by the court may not be given a presumptive parole release date
293 during the period of retention of jurisdiction by the court.
294 During such period, a new effective parole release date may be
295 authorized at the discretion of the commission without further
296 interview unless an interview is requested by no fewer than two
297 commissioners. Any such new effective parole release date must be
298 reviewed in accordance with the provisions of paragraphs (c),
299 (d), (e), (f), and (g).

300 ~~(6)(5)~~ Within 90 days after any interview for parole, the
301 inmate shall be advised of the presumptive parole release date.
302 Subsequent to the establishment of the presumptive parole release
303 date, the commission may, at its discretion, review the official
304 record or conduct additional interviews with the inmate. However,
305 the presumptive parole release date may not be changed except for
306 reasons of institutional conduct or the acquisition of new
307 information not available at the time of the initial interview.

308 ~~(7)(6)~~ This section as amended by chapter 82-171, Laws of
309 Florida, shall apply only to those persons convicted on or after
310 the effective date of chapter 82-171; and this section as in
311 effect before being amended by chapter 82-171 shall apply to any
312 person convicted before the effective date of chapter 82-171.

313 (8) For an adolescent offender, the primary purpose of the
314 initial eligibility interview is to determine whether the
315 adolescent offender has been sufficiently rehabilitated while in
316 the custody of the department to justify granting parole. In
317 order to determine if the adolescent offender has been
318 rehabilitated, the hearing examiner must consider whether:

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319 (a) The adolescent offender was a principal to the criminal
320 act or an accomplice to the offense, a relatively minor
321 participant in the criminal conduct, or acted under extreme
322 duress or domination by another person;

323 (b) The offense was an isolated incident for which the
324 adolescent offender has shown remorse;

325 (c) The adolescent offender's age, maturity, and
326 psychological development at the time of offense affected his or
327 her behavior;

328 (d) The adolescent offender, while in the custody of the
329 department, has aided inmates suffering from catastrophic or
330 terminal medical, mental, or physical conditions or has prevented
331 risk or injury to staff, members of the public, or other inmates;

332 (e) The adolescent offender has successfully completed
333 educational and self-rehabilitation programs;

334 (f) The adolescent offender has received no disciplinary
335 reports for a period of at least 2 years;

336 (g) The adolescent offender was a victim of sexual,
337 physical, or emotional abuse; and

338 (h) The victim, or the victim's next of kin, has expressed
339 his or her opinion and this opinion has been taken into
340 consideration.

341 Section 2. This act shall take effect upon becoming a law
342 and shall apply retroactively to crimes committed before that
343 date.