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 Criminal and Civil Justice Appropriations Committee

BILL:	CS/CS/SB 184
INTRODUCER:	Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee; Senators Joyner and Dockery
SUBJECT:	Adolescent Offenders/Parole
DATE:	April 13, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Butler	Sadberry	JA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill makes certain inmates who committed their offense at a young age eligible for consideration for release on parole. The threshold eligibility requirements are that the inmate:

- Must be serving a sentence of imprisonment for life or for a term of at least 10 years for a felony that was committed when he or she was 15 years old or younger;
- Must not have been convicted of any of certain designated offenses in addition to the offense for which parole is sought;
- Must not have committed an act of violence or threatened to commit an act of violence during the commission of the current offense;
- Must have successfully completed a General Educational Development (GED) program unless unable to do so because of a disability; and
- Must not have received a disciplinary report for a period of at least 2 years.

If the inmate meets the threshold requirements, the bill requires that he or she be interviewed by a parole examiner from the Florida Parole Commission (commission) during the eighth year of his or her sentence. The bill includes additional criteria that must be considered by the commission in evaluating whether the inmate has been sufficiently rehabilitated to be paroled. It also requires that any adolescent offender who is granted parole must participate in a reentry program for 2 years as a condition of parole.

The bill requires the Parole Commission, within 240 days before the initial eligibility interview and at each reinterview thereafter, to review the adolescent offenders in the Department of Corrections' custody to determine which offenders meet the criteria for parole consideration but have not obtained a General Education Development (GED) certificate. The bill requires the commission to notify the department, and the department to enroll the inmate in a GED program within an reasonable time based on program eligibility. The bill provides that the department may remove the offender from the GED program if the offender becomes a serious management or disciplinary problem, refuses to participate or actively participate in the program, or requires medical or mental services that do not allow him or her to participate in the program.

The bill specifically provides that it applies "notwithstanding any other law to the contrary." Therefore, it allows adolescent offenders to be considered for parole prior to completion of a mandatory minimum sentence or of 85 percent of the term of imprisonment as required by s. 921.002, F.S.

This bill substantially amends section 947.16 of the Florida Statutes.

II. Present Situation:

On November 9, 2009, the United States Supreme Court heard arguments in the cases of Graham v. Florida and Sullivan v. Florida regarding the constitutionality of life sentences without parole for persons who are convicted of crimes committed while they are juveniles. The Court has not yet announced its opinion.

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. Eligibility for parole has been abolished in Florida, but approximately 6,000 inmates are still eligible for parole consideration.[1] These are inmates who:

- Committed an offense other than capital felony murder or capital felony sexual battery prior to October 1, 1983;
- Committed capital felony murder prior to May 25, 1994; or
- Committed capital felony sexual battery prior to October 1, 1995.

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.

[1] Florida Parole Commission Analysis of Senate Bill 184, March 3, 2010, page 2.

Parolees are supervised by Department of Corrections' (department) probation officers. As of December 31, 2009, 453 offenders were actively supervised on parole from Florida sentences.[2]

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. 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. If the PPRD is more than 2 years after the date of the initial interview, in most cases a parole commission hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter.[3] These interviews are limited to determining whether or not information has been gathered which might affect the PPRD.[4] The department assists the commission by providing pertinent information such as current progress reports, psychological reports, and disciplinary reports.[5]

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each re-interview. 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 common for the victim or victim's representative and law enforcement representatives to appear at the hearing.

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.

The commission has discretion in determining the terms and conditions of parole. Additionally, there are specific statutory conditions of parole that require the parolee to:

- Submit to random substance abuse testing, if the conviction was for a controlled substance violation (s. 947.18, F.S.);
- Not knowingly associate with other criminal gang members or associates, if the offense involved criminal gang activity (s. 947.18, F.S.)[6];
- Pay any debt due to the state under s. 960.17, F.S., or attorney's fees and costs due to the state under s. 938.29, F.S. (s. 947.18, F.S.);
- Pay victim restitution (s. 947.181, F.S.); and
- Apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded (s. 948.185, F.S.).

[2] Community Supervision Population Monthly Status Report, December 2009, Florida Department of Corrections, p. 3.
[3] However, s. 947.16(4)(g), F.S., 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.
[4] Section 947.174(1)(c), F.S.
[5] Section 947.174(3), F.S.
[6] This condition applies only to offenses committed on or after October 1, 2008.

Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S.[7] However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, a grand jury indictment is required to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.[8]

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.[9]

Youthful Offenders

Classification as a youthful offender is dependent upon an offender's age and the offense that is committed. A court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 years of age or was prosecuted as an adult pursuant to ch. 985, F.S., but is under 21 years old at the time of sentencing;
- Has been found guilty of or has pled nolo contendere or guilty to a felony that is not punishable by death or imprisonment for life; and
- Has not previously been classified as a youthful offender.[10]

Separate institutions and programs exist for youthful offenders that fall into two age groups: age 14 to 18 years old and age 19 to 24 years old.[11] The department must assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender.[12] The department is also required to screen for and may classify as a youthful offender any inmate who is under 25 years old, who has not previously been classified as a youthful offender, and who has not committed a capital or life felony. The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful facility.[13]

[7] Section 985.03(6), F.S., defines juvenile as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years."
[8] Section 985.58, F.S.
[9] Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than $3 Billion," Florida Tax Watch, March 2010, p.47.
[10] Section 958.04(1), F.S.
[11] Section 958.11(1), F.S.
[12] Section 944.1905(5)(a), F.S.
[13] Section 958.11(6), F.S.

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or part of the punishment for a crime. The power of clemency is vested in the Governor pursuant to Article IV, Section 8(a) of the Florida Constitution. All inmates, including those who are not eligible for parole, can apply for clemency.

The governor and members of the Cabinet are collectively the Clemency Board. The governor has discretion to deny clemency at any time for any reason and, with the approval of at least two members of the Cabinet, may grant clemency at any time and for any reason. There are several types of clemency, including pardon, commutation of sentence, remission of fines and forfeitures, restoration of authority to possess firearms, and restoration of civil rights. The Rules of Executive Clemency provide that a person is not eligible for commutation of sentence unless at least two years have elapsed since conviction and he or she has served at least one-third of any minimum mandatory sentence. However, the governor may waive these requirements in cases of extraordinary merit and compelling need.

The Parole Commission provides investigatory and administrative support to the Clemency Board, but the clemency process is independent of the parole process.

III. Effect of Proposed Changes:

This bill, named the "Second Chance for Children in Prison Act," amends s. 947.16, F.S., to establish parole eligibility for "adolescent offenders." If an adolescent offender is eligible for parole consideration, the initial interview will take place during his or her eighth year of incarceration.[14] The bill defines an adolescent offender as an offender who:

- Committed a crime or crimes when 15 years old or younger; and
- Was sentenced to imprisonment for life or for a cumulative term of 10 years or more.

Under the bill, an adolescent offender will be eligible for consideration for parole unless he or she was convicted of, adjudicated delinquent of, or had adjudication withheld for a disqualifying offense before the current offense.[15] "Current offense" is defined as "…the offense for which the adolescent offender is being considered for parole and any other crimes committed by the adolescent offender within a 1-month period of that offense, or for which sentences run concurrent to that offense." The following offenses will be disqualifying if committed in addition to the current offense:

- Murder (s. 782.04, F.S.)
- Felony battery or domestic battery by strangulation (s. 784.041, F.S.)
- Aggravated battery (s. 784.045, F.S.)
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents or other specified officers (s. 784.07, F.S.)

[14] If parole is not granted, the adolescent offender is eligible for a reinterview every 7 years.

[15] It appears from the context that the phrase "before the current offense" means before commission of the current offense, but it could be interpreted to mean before conviction of the current offense.

- Assault or battery on persons 65 years of age or older (s. 784.08, F.S.)
- Kidnapping (s. 787.01, F.S.)
- Persons engaged in criminal offense, having weapons (s. 790.07, F.S.)
- Sexual battery (s. 794.011, F.S.)
- Carjacking (s. 812.133, F.S.)
- Home-invasion robbery (s. 812.135, F.S.)
- Abuse, aggravated abuse, and neglect of a child (s. 827.03, F.S.)
- Cruelty to animals (s. 828.12, F.S.)

In addition, the bill provides that an adolescent offender is not eligible for parole if, during the commission of the current offense, he or she committed an act of violence or threatened to commit an act of violence.

The department reports that there are currently 432 potentially eligible inmates who committed their primary offense at age 15 or younger and who are serving a sentence of 10 years or more, and that 154 have completed at least 8 years of their sentence. [16]

The bill requires that an adolescent offender must also successfully complete a GED program in order to be eligible for parole, unless the requirement is waived based on disability. "Successful completion" is not defined in the bill, but the department currently defines "completion" to mean obtaining a GED certificate.[17] Seventy-two adolescent offenders have served at least 8 years of their sentence and have obtained a GED certificate.[18] Obtaining a GED certificate or high school diploma is linked with increased employment and lower recidivism rates for offenders after release from prison.[19]

The department reports that the number of adolescent offenders eligible for parole will be further reduced by disqualifying those who have committed an act of violence or threatened to commit an act of violence during the commission of the current offense. Independent case reviews would be required to determine the number eligible.

The bill requires the Parole Commission, within 240 days before the initial eligibility interview and at each reinterview thereafter, to review the adolescent offenders in the Department of Corrections' custody to determine which offenders meet the criteria for parole consideration but have not obtained a General Education Development (GED) certificate. The bill requires the commission to notify the department, and the department to enroll the inmate in a GED program within an reasonable time based on program eligibility. The bill provides that the department may remove the offender from the GED program if the offender becomes a serious management or disciplinary problem, refuses to participate or actively participate in the program, or requires medical or mental services that do not allow him or her to participate in the program.

[16] Department of Corrections' Analysis of Senate Bill 184, p. 2.
[17] Department of Corrections Annual Report, 2006-2007, page 34, footnote "**" to table titled "Participation in Correctional Education Classes in FY 2006-07."
[18] Department of Corrections' Analysis of Senate Bill 184, page 2.
[19] OPPAGA Report No. 07-14, Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population, February 2007. The report analyzed Department of Corrections' data and found that male GED program completers have lower recidivism rates than non-completers.

The final mandatory requirement for an adolescent offender to be eligible for parole consideration is that he or she must not have had an approved disciplinary report for at least 2 years before the current eligibility interview. A disciplinary report is a document that initiates the process of disciplining an inmate for a violation of department rules. Upon receiving a disciplinary report, the inmate must be afforded administrative due process before the report is approved. Being found guilty of an infraction charged in a disciplinary report can result in administrative confinement and loss of gain time. After a disciplinary report is issued, the inmate's due process rights include further investigation, a hearing to determine guilt or innocence and appropriate punishment, and final review by the warden or the regional director of institutions to approve, disapprove, or modify the result of the hearing.[20] The bill provides that the disciplinary report is not disqualifying unless it has been validated through this process. Of the 72 adolescent offenders who have served at least 8 years and obtained a GED, 23 have not had an approved disciplinary report within the last 2 years.[21]

Under the department's disciplinary rules, the severity of punishment resulting from a disciplinary report is dependent upon the nature of the infraction. For example, the maximum punishment for failure to maintain personal hygiene or appearance is 10 days in disciplinary confinement and loss of 15 days of gain time, while the maximum punishment for possession of a weapon is 60 days in disciplinary confinement and loss of all gain time.[22] The bill does not differentiate between the severities of the offense for which an approved disciplinary report is received.

If the adolescent offender meets all of the above criteria to be eligible for parole consideration, the bill specifies a number of areas that must be considered by the parole examiner. These include taking the wishes of the victim or the victim's next of kin into serious consideration and also considering whether the adolescent offender:

- Was a principal to the criminal offense or an accomplice to the offense, a relatively minor participant in the criminal offense, or acted under extreme duress or domination of another person;
- Has shown remorse for the criminal offense;
- Was of an age, maturity, and psychological development at the time of the offense that affected his or her behavior;
- Has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates while in custody;
- Has successfully completed educational and self-rehabilitation programs; or
- Was a victim of sexual, physical, or emotional abuse.

In addition, the hearing examiner must consider the results of any mental health assessment or evaluation that have been performed on the adolescent offender.

[20] The department's rules concerning disciplinary reports and the inmate disciplinary process are found in Chapter 33-601.301 – 33-601.314, Florida Administrative Code.
[21] Department of Corrections' Analysis of Senate Bill 184, page 2.
[22] Rule 33-601.314, Florida Administrative Code.

An adolescent offender who is granted parole must participate in any available reentry program for 2 years. The bill specifies that a reentry program is a program that promotes effective reintegration of adolescent offenders back into communities and that provides vocational training, placement services, transitional housing, mentoring, or drug rehabilitation. There is a preference for reentry programs that are residential, highly structured, self-reliant, and therapeutic communities.

The bill has an effective date of July 1, 2009, and expressly applies retroactively to previously sentenced inmates.

Other Potential Implications:

The bill specifically provides that it applies "notwithstanding any other law to the contrary." Therefore, it allows adolescent offenders to be considered for parole prior to completion of a mandatory minimum sentence or of 85 percent of the term of imprisonment as required by s. 921.002, F.S.

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:

The bill applies retroactively. Article X, section 9 of the Florida Constitution (the "Savings Clause") provides: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. See *State v. Smiley*, 966 So.2d 330 (Fla. 2007). It is not clear that a change in parole eligibility would be precluded by the Savings Clause. There are a number of decisions indicating that the clause prohibits application of a statutory change lessening the punishment for a crime to an offense that was committed before the change. However, the most analogous case may be *State v. Florida Parole Commission*, 624 So.2d 324 (Fla. 1st Dist. 1993). In that case, the court held that the Savings Clause did not prohibit inmates from benefitting due to a statutory change allowing for control release by the Parole Commission even though they were specifically ineligible for control release at the time their offense was committed.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On February 23, 2010, the Criminal Justice Impact Conference determined that the substantively identical Committee Substitute for House Bill 23 has an indeterminate, yet positive, fiscal impact on the state prison system.

The Parole Commission also reports an indeterminate, yet positive, fiscal impact on the state prison system since the targeted population of juvenile offenders is small, and the bill only requires the Commission to consider for parole, a *discretionary* release, only those adolescent offenders meeting the eligibility criteria as set forth in the bill. The commission further anticipates an insignificant workload increase related to reviewing existing and future cases; therefore, no additional staff are needed.

In Fiscal Year 2008-2009, the average annual cost to house a male inmate was approximately $16,000 and the average annual cost to house a male youthful offender exceeded $22,000. Because the average annual cost of supervision is $1,854, there would be approximately $20,000 savings per year for each male youthful offender who is released under parole supervision. [23]

The Department of Corrections does not anticipate the number of adolescent offenders who would be paroled would require additional probation officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The United States Supreme Court heard oral arguments on November 9, 2009, in the cases of *Sullivan v. Florida* and *Graham v. Florida*. The issue before the Court is whether it is unconstitutional to imprison a person who committed a crime as a juvenile for life without the possibility of parole.

[23] Although female youthful offenders are housed separately from adult females in institutions, cost allocation data is not available. Cost data for male youthful offenders is available since male youthful offender institutions are separate from adult male institutions.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal and Civil Justice Appropriations on April 13, 2010:
The bill adds a disqualifying factor to parole for adolescent offenders. The bill provides that an adolescent offender is not eligible for parole if, during the commission of the current offense, he or she committed an act of violence or threatened to commit an act of violence. The bill removes the factor from what must be considered by the Parole Commission in determining whether an adolescent offender may be granted parole.

The bill requires the Parole Commission, within 240 days before the initial eligibility interview and at each reinterview thereafter, to review the adolescent offenders in the Department of Corrections' custody to determine which offenders meet the criteria for parole consideration but have not obtained a General Education Development (GED) certificate. The bill requires the commission to notify the department, and the department to enroll the inmate in a GED program within a reasonable time based on program eligibility. The bill provides that the department may remove the offender from the GED program if the offender becomes a serious management or disciplinary problem, refuses to participate or actively participate in the program, or requires medical or mental services that do not allow him or her to participate in the program.

CS by Criminal Justice on March 9, 2010:

- Extends the interval between parole eligibility interviews from 2 years to 7 years.
- In addition to other criteria set forth in the bill, requires a hearing examiner to consider: (1) whether the adolescent offender committed an act of violence or threatened to commit an act of violence during the commission of the criminal offense; and (2) the results of any mental health assessment or evaluation that has been performed on the adolescent offender.

B. Amendments:

None.