

By Senator Joyner

18-00086C-10

2010184

1 A bill to be entitled
2 An act relating to parole for adolescent offenders;
3 providing a short title; amending s. 947.16, F.S.;
4 providing definitions; providing that an adolescent
5 offender who was 15 years of age or younger when the
6 offense was committed and who is sentenced to life or
7 more than 10 years in prison is eligible for parole if
8 the offender has been incarcerated for a minimum
9 period and has not previously been convicted or
10 adjudicated delinquent of or had adjudication withheld
11 for certain offenses; requiring an initial eligibility
12 interview to determine whether the adolescent offender
13 has been sufficiently rehabilitated for parole;
14 providing criteria for determining sufficient
15 rehabilitation; providing eligibility for a re-
16 interview after a specified period for adolescent
17 offenders denied parole; requiring that the adolescent
18 offender be incarcerated in a facility that has a GED
19 program; providing that if the adolescent offender is
20 granted parole, the adolescent offender must
21 participate in any available reentry program for 2
22 years; defining the term "reentry program"; providing
23 priority for certain programs; providing for
24 eligibility for an initial eligibility interview for
25 offenders in their 8th or subsequent year of
26 incarceration on the effective date of the act;
27 providing for retroactive application; providing an
28 effective date.
29

18-00086C-10

2010184

30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. This act may be cited as the "Second Chance for
33 Children in Prison Act."

34 Section 2. Section 947.16, Florida Statutes, is amended to
35 read:

36 947.16 Eligibility for parole; initial parole interviews;
37 powers and duties of commission; adolescent offender
38 eligibility.-

39 (1) Every person who has been convicted of a felony or who
40 has been convicted of one or more misdemeanors and whose
41 sentence or cumulative sentences total 12 months or more, who is
42 confined in execution of the judgment of the court, and whose
43 record during confinement or while under supervision is good,
44 shall, unless otherwise provided by law, be eligible for
45 interview for parole consideration of her or his cumulative
46 sentence structure as follows:

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

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

55 (c) An inmate who has been sentenced for a minimum term of
56 6 or more years but other than for a life term shall have an
57 initial interview conducted by a hearing examiner within 24
58 months after the initial date of confinement in execution of the

18-00086C-10

2010184

59 judgment.

60 (d) An inmate who has been sentenced for a term of life
61 shall have an initial interview conducted by a hearing examiner
62 within 5 years after the initial date of confinement in
63 execution of the judgment.

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

69 (2) (a) As used in this subsection, the term:

70 1. "Adolescent offender" means an offender who was 15 years
71 of age or younger at the time the criminal act was committed and
72 who was sentenced to life or to a single or cumulative term of
73 imprisonment of 10 years or more.

74 2. "Current offense" means the offense for which the
75 adolescent offender is being considered for parole and any other
76 crimes committed by the adolescent offender within 1 month
77 before or after that offense, or for which sentences run
78 concurrent to that offense.

79 (b) Notwithstanding subsection (1) or any law to the
80 contrary, an adolescent offender may be eligible for parole as
81 provided in this subsection. An adolescent offender is
82 ineligible under this subsection if she or he, before conviction
83 of the current offense, was convicted or adjudicated delinquent
84 of or had adjudication withheld for any violation of:

85 1. Section 782.04, entitled "Murder";

86 2. Section 784.041, entitled "Felony battery; domestic
87 battery by strangulation";

18-00086C-10

2010184

88 3. Section 784.045, entitled "Aggravated battery";

89 4. Section 784.07, entitled "Assault or battery of law
90 enforcement officers, firefighters, emergency medical care
91 providers, public transit employees or agents, or other
92 specified officers; reclassification of offenses; minimum
93 sentences";

94 5. Section 784.08, entitled "Assault or battery on persons
95 65 years of age or older; reclassification of offenses; minimum
96 sentence";

97 6. Section 787.01, entitled "Kidnapping; kidnapping of
98 child under age 13, aggravating circumstances";

99 7. Section 790.07, entitled "Persons engaged in criminal
100 offense, having weapons";

101 8. Section 794.011, entitled "Sexual battery";

102 9. Section 812.133, entitled "Carjacking";

103 10. Section 812.135, entitled "Home-invasion robbery";

104 11. Section 827.03, entitled "Abuse, aggravated abuse, and
105 neglect of a child; penalties"; or

106 12. Section 828.12, entitled "Cruelty to animals."

107 (c) Before an adolescent offender may be granted parole
108 under this subsection, she or he must have an initial
109 eligibility interview to determine whether she or he has been
110 sufficiently rehabilitated while in the custody of the
111 department to justify granting parole. The initial eligibility
112 interview shall occur in the 8th year of incarceration. In order
113 to determine if the adolescent offender has been sufficiently
114 rehabilitated, she or he must have successfully completed the
115 General Educational Development (GED) program, unless waived
116 based on disability, and must have not received any approved

18-00086C-10

2010184

117 disciplinary reports for a period of at least 2 years
118 immediately prior to the current eligibility interview. The
119 hearing examiner must also take into serious consideration the
120 wishes of the victim, or the opinions of the victim's next of
121 kin, and must also consider whether:

122 1. The adolescent offender was a principal to the criminal
123 offense or an accomplice to the offense, was a relatively minor
124 participant in the criminal offense, or acted under extreme
125 duress or domination of another person.

126 2. The adolescent offender has shown remorse for the
127 criminal offense.

128 3. The adolescent offender's age, maturity, and
129 psychological development at the time of the offense affected
130 her or his behavior.

131 4. The adolescent offender, while in the custody of the
132 department, has aided inmates suffering from catastrophic or
133 terminal medical, mental, or physical conditions or has
134 prevented risk or injury to staff, citizens, or other inmates.

135 5. The adolescent offender has successfully completed
136 educational and self-rehabilitation programs.

137 6. The adolescent offender was a victim of sexual,
138 physical, or emotional abuse.

139 (d) An adolescent offender who is not granted parole under
140 this subsection after an initial eligibility interview is
141 eligible for a reinterview 2 years after the date of the denial
142 of the grant of parole and every 2 years thereafter.

143 (e) An adolescent offender must serve her or his sentence
144 in a facility that has a General Educational Development (GED)
145 program unless the adolescent offender has already successfully

18-00086C-10

2010184

146 completed a GED program.

147 (f) If the adolescent offender is granted parole, the
148 adolescent offender must participate in any available reentry
149 program for 2 years. As used in this paragraph, the term
150 "reentry program" means a program that promotes effective
151 reintegration of offenders back into communities upon release
152 and provides one or more of the following: vocational training,
153 placement services, transitional housing, mentoring, or drug
154 rehabilitation. Priority shall be given to those reentry
155 programs that are residential, highly structured, self-reliant,
156 and therapeutic communities.

157 (3)~~(2)~~ The following special types of cases shall have
158 their initial parole interview as follows:

159 (a) An initial interview may be postponed for a period not
160 to exceed 90 days. The ~~Such~~ postponement shall be for good
161 cause, which shall include, but is ~~need~~ not ~~be~~ limited to, the
162 need for the department to obtain a presentence or postsentence
163 investigation report or a probation or parole or mandatory
164 conditional release violation report. The reason for
165 postponement shall be noted in writing and included in the
166 official record. A ~~No~~ postponement for good cause may not ~~shall~~
167 result in an initial interview being conducted later than 90
168 days after the inmate's initially scheduled initial interview.

169 (b) An initial interview may be deferred for any inmate who
170 is out to court. Such deferral may ~~shall~~ not result in an
171 initial interview being conducted later than 90 days after the
172 department provides written notice to the commission that the
173 inmate has been returned from court.

174 (c) An initial interview may be deferred for any inmate

18-00086C-10

2010184

175 confined in any appropriate treatment facility within the state,
176 public or private, by virtue of transfer from the department
177 under any applicable law. The ~~Such~~ deferral may ~~shall~~ not result
178 in an initial interview being conducted later than 90 days after
179 the department provides written notice to the commission that
180 the inmate has been returned to the department.

181 (d) An inmate designated a mentally disordered sex offender
182 shall have an initial interview conducted within 90 days after
183 ~~of~~ receiving written notification by the department to the
184 commission of the need for such interview and that the inmate's
185 file contains all investigative reports deemed necessary by the
186 commission to conduct such interview.

187 (e) Any inmate who has been determined to be an
188 incapacitated person pursuant to s. 744.331 shall have an
189 initial interview conducted within 90 days after the date the
190 commission is provided with written notice that the inmate has
191 been restored to capacity by the court.

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

195 (g) For purposes of determining eligibility for parole
196 interview and release, the mandatory minimum portion of a
197 concurrent sentence will begin on the date the sentence begins
198 to run as provided in s. 921.161. The mandatory minimum portions
199 of consecutive sentences must ~~shall~~ be served at the beginning
200 of the maximum sentence as established by the Department of
201 Corrections. Each mandatory minimum portion of consecutive
202 sentences must ~~shall~~ be served consecutively; except provided,
203 ~~that in no case shall~~ a sentence may not begin to run before the

18-00086C-10

2010184

204 date of imposition. The commission shall conduct an initial
205 interview for an inmate serving a mandatory minimum sentence
206 according to the following schedule:

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

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

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

219 (h) If an inmate is serving a sentence imposed by a county
220 or circuit court of this state concurrently with a sentence
221 imposed by a court of another state or of the United States, and
222 if the department has designated the correctional institution of
223 the other jurisdiction as the place for reception and
224 confinement of such person, the inmate so released to another
225 jurisdiction is ~~shall be~~ eligible for consideration for parole,
226 except that the commission shall determine the presumptive
227 parole release date and the effective parole release date by
228 requesting such person's record file from the receiving
229 jurisdiction. Upon receiving the ~~such~~ records, the commission
230 panel assigned by the chair shall determine such release dates
231 based on the relevant information in that file. The commission
232 may concur with the parole release decision of the jurisdiction

18-00086C-10

2010184

233 granting parole and accepting supervision. Section ~~The~~
234 ~~provisions of s.~~ 947.174 does ~~de~~ not apply to an inmate serving
235 a concurrent sentence in another jurisdiction pursuant to s.
236 921.16(2).

237 (4) ~~(3)~~ Notwithstanding ~~the provisions of~~ ss. 775.021 and
238 921.16, if an inmate has received a consecutive sentence or
239 sentences imposed by a court or courts of this state, the inmate
240 is ~~shall be~~ eligible for consideration for parole, unless
241 otherwise expressly prohibited by law.

242 (5) ~~(4)~~ A person who has become eligible for an initial
243 parole interview and who may, according to the objective parole
244 guidelines of the commission, be granted parole shall be placed
245 on parole in accordance with the provisions of this law; except
246 that, in any case of a person convicted of murder, robbery,
247 burglary of a dwelling or burglary of a structure or conveyance
248 in which a human being is present, aggravated assault,
249 aggravated battery, kidnapping, sexual battery or attempted
250 sexual battery, incest or attempted incest, an unnatural and
251 lascivious act or an attempted unnatural and lascivious act,
252 lewd and lascivious behavior, assault or aggravated assault when
253 a sexual act is completed or attempted, battery or aggravated
254 battery when a sexual act is completed or attempted, arson, or
255 any felony involving the use of a firearm or other deadly weapon
256 or the use of intentional violence, at the time of sentencing
257 the judge may enter an order retaining jurisdiction over the
258 offender for review of a commission release order. This
259 jurisdiction of the trial court judge is limited to the first
260 one-third of the maximum sentence imposed. When any person is
261 convicted of two or more felonies and concurrent sentences are

18-00086C-10

2010184

262 imposed, ~~then~~ the jurisdiction of the trial court judge as
263 provided herein applies to the first one-third of the maximum
264 sentence imposed for the highest felony of which the person was
265 convicted. When any person is convicted of two or more felonies
266 and consecutive sentences are imposed, ~~then~~ the jurisdiction of
267 the trial court judge as provided herein applies to one-third of
268 the total consecutive sentences imposed.

269 (a) In retaining jurisdiction for the purposes of this act,
270 the trial court judge shall state the justification with
271 individual particularity, and such justification shall be made a
272 part of the court record. A copy of such justification shall be
273 delivered to the department together with the commitment issued
274 by the court pursuant to s. 944.16.

275 (b) Gain-time as provided for by law shall accrue, except
276 that an offender over whom the trial court has retained
277 jurisdiction as provided herein may ~~shall~~ not be released during
278 the first one-third of her or his sentence by reason of gain-
279 time.

280 (c) In such a case of retained jurisdiction, the
281 commission, within 30 days after the entry of its release order,
282 shall send notice of its release order to the original
283 sentencing judge and to the appropriate state attorney. The
284 release order shall be made contingent upon entry of an order by
285 the appropriate circuit judge relinquishing jurisdiction as
286 provided for in paragraphs (d) and (f). If the original
287 sentencing judge is no longer in service, such notice shall be
288 sent to the chief judge of the circuit in which the offender was
289 sentenced. The chief judge may designate any circuit judge
290 within the circuit to act in the place of the original

18-00086C-10

2010184

291 sentencing judge. Such notice shall stay the time requirements
292 of s. 947.1745.

293 (d) Within 10 days after receipt of the notice provided for
294 in paragraph (c), the original sentencing judge or her or his
295 replacement shall notify the commission as to whether or not the
296 court further desires to retain jurisdiction. If the original
297 sentencing judge or her or his replacement does not so notify
298 the commission within the 10-day period or notifies the
299 commission that the court does not desire to retain
300 jurisdiction, ~~then~~ the commission may dispose of the matter as
301 it sees fit.

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

308 (f) Within 30 days after ~~of~~ receipt of the items listed in
309 paragraph (e), the original sentencing judge or her or his
310 replacement shall review the order, findings, and evidence; and,
311 if the judge finds that the order of the commission is not based
312 on competent substantial evidence or that the parole is not in
313 the best interest of the community or the inmate, the court may
314 vacate the release order. The judge or her or his replacement
315 shall notify the commission of the decision of the court, and,
316 if the release order is vacated, such notification shall contain
317 the evidence relied on and the reasons for denial. A copy of
318 such notice shall be sent to the inmate.

319 (g) The decision of the original sentencing judge or, in

18-00086C-10

2010184

320 her or his absence, the chief judge of the circuit to vacate any
321 parole release order as provided in this section is not
322 appealable. Each inmate whose parole release order has been
323 vacated by the court shall be reinterviewed within 2 years after
324 the date of receipt of the vacated release order and every 2
325 years thereafter, or earlier by order of the court retaining
326 jurisdiction. However, each inmate whose parole release order
327 has been vacated by the court and who has been:

328 1. Convicted of murder or attempted murder;
329 2. Convicted of sexual battery or attempted sexual battery;

330 or

331 3. Sentenced to a 25-year minimum mandatory sentence
332 previously provided in s. 775.082,

333
334 shall be reinterviewed once within 5 years after the date of
335 receipt of the vacated release order and once every 5 years
336 thereafter, if the commission finds that it is not reasonable to
337 expect that parole would be granted during the following years
338 and states the bases for the finding in writing. For any inmate
339 who is within 7 years of his or her tentative release date, the
340 commission may establish a reinterview date prior to the 5-year
341 schedule.

342 (h) An inmate whose parole release order has been vacated
343 by the court may not be given a presumptive parole release date
344 during the period of retention of jurisdiction by the court.
345 During such period, a new effective parole release date may be
346 authorized at the discretion of the commission without further
347 interview unless an interview is requested by no fewer than two
348 commissioners. Any such new effective parole release date must

18-00086C-10

2010184

349 be reviewed in accordance with ~~the provisions of~~ paragraphs (c),
350 (d), (e), (f), and (g).

351 (6)~~(5)~~ Within 90 days after any interview for parole, the
352 inmate shall be advised of the presumptive parole release date.
353 Subsequent to the establishment of the presumptive parole
354 release date, the commission may~~, at its discretion,~~ review the
355 official record or conduct additional interviews with the
356 inmate. However, the presumptive parole release date may not be
357 changed except for reasons of institutional conduct or the
358 acquisition of new information not available at the time of the
359 initial interview.

360 (7)~~(6)~~ This section as amended by chapter 82-171, Laws of
361 Florida, applies ~~shall apply~~ only to those persons convicted on
362 or after the effective date of chapter 82-171; and this section
363 as in effect before being amended by chapter 82-171 applies
364 ~~shall apply~~ to any person convicted before the effective date of
365 chapter 82-171.

366 Section 3. An adolescent offender, as defined in s.
367 947.16(2)(a), Florida Statutes, as created by this act, who is
368 in his or her 8th or subsequent year of incarceration on the
369 effective date of this act must receive an initial eligibility
370 interview as provided in s. 947.16(2)(c), Florida Statutes, as
371 created by this act, if he or she is otherwise eligible.

372 Section 4. This act shall take effect upon becoming a law,
373 and applies with respect to offenses committed before, on, or
374 after that date.