

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 23 Parole for Adolescent Offenders

**SPONSOR(S):** Weinstein and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 184

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N, As CS	Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

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**SUMMARY ANALYSIS**

This bill creates the possibility of parole release for adolescent offenders. The bill creates a new inmate designation, "adolescent offender," which is defined as an offender, 15 years old or younger at the time the criminal act was committed, who was sentenced to life or to a single or cumulative term of imprisonment of 10 years or more. The bill excludes an adolescent offender from parole eligibility if he or she had a prior conviction or was adjudicated delinquent for a number of specified offenses or if he or she committed an act of violence or threatened to commit an act of violence during the commission of the offense for which they are currently incarcerated.

The bill requires the Florida Parole Commission to conduct an initial eligibility interview with the adolescent offender during the 8<sup>th</sup> year of incarceration, and every 7 years thereafter. To be eligible for parole, the offender must have completed a General Educational Development (GED) program and received no disciplinary reports during the two years prior to the interview and subsequent interviews. The bill provides additional criteria for the consideration of the offender's rehabilitation status.

The bill specifies that an eligible offender must be placed in a facility that has a GED program, unless they have already completed a GED program.

The bill provides that if the offender is granted parole, he or she must participate in any available reentry program for 2 years.

This bill will take effect upon becoming a law and applies with respect to offenses committed before, on, or after that date.

The Criminal Justice Impact Conference determined that this bill would have a positive yet indeterminate prison bed impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Parole**

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. 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. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). 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. Parole is not available for most crimes that were committed on or after October 1, 1983.<sup>1</sup> There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reported that on June 30, 2009, there were 5,826 inmates currently eligible for parole consideration with about 450 under supervision. This includes a small percentage who committed their parole-eligible crime when they were less than 18 years of age.<sup>2</sup>

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. The date of the initial interview depends upon the length and type of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of 7 to 15 years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. An inmate may request one review of the initial PPRD within 60 days after notification.

If the PPRD is more than 2 years after the date of the initial interview a hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter.<sup>3</sup> These interviews are limited to determining whether or not information has been gathered

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<sup>1</sup> The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

<sup>2</sup> Parole Commission 2010 Analysis of HB 23.

<sup>3</sup> However, s. 947.174(1)(b), 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, subsequent interviews to review the PPRD 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.

which might affect the PPRD.<sup>4</sup> The department is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as current progress reports, psychological reports, and disciplinary reports.<sup>5</sup> In consultation with the department, the commission has developed guidelines defining unsatisfactory institutional record.<sup>6</sup> The commission has defined what constitutes a satisfactory release plan and verification of the plan prior to release.<sup>7</sup>

The commission determines the terms and conditions of parole. Statutorily, conditions of parole are not specific, except for provisions that require the offender to:

- Submit to random substance abuse testing, if the offender's conviction was for a controlled substance violation.
- Not knowingly associate with other criminal gang members or associates, if the offender's conviction was for a crime that involved criminal gang activity.
- Pay debt due and owing to the state under s. 960.17, F.S., or attorney's fees and costs due and owing to the state under s. 938.29, F.S.<sup>8</sup>
- Pay victim restitution.<sup>9</sup>
- Apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded.<sup>10</sup>

Most crimes committed by juveniles<sup>11</sup> are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A person who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned.<sup>12</sup> A juvenile who is fourteen or older at the time of committing certain felony offenses may be tried as an adult 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. Section 985.56, F.S., provides that a juvenile charged with an offense punishable by death or life imprisonment may not be tried as an adult unless a grand jury indictment is returned.

### **Sentencing and Classification of Offenders**

A court may sentence as a "youthful offender" any person:

- Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to ch. 985, F.S.;
- Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and

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<sup>4</sup> Section 947.174(1)(c), F.S.

<sup>5</sup> Section 947.174(3), F.S.

<sup>6</sup> Section 947.174(5)(a), F.S.

<sup>7</sup> Section 947.174(5)(b), F.S.

<sup>8</sup> Section 947.18, F.S.

<sup>9</sup> Section 947.181, F.S.

<sup>10</sup> Section 947.185, F.S.

<sup>11</sup> 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."

<sup>12</sup> See *Tate v. State*, 864 So.2d 44 (Fla. 4th Dist. 2003).

- Who has not previously been classified as a youthful offender under the provisions of the Florida Youthful Offender Act;<sup>13</sup> however, any person found guilty of a capital or life felony may not be sentenced as a youthful offender under the act.<sup>14</sup>

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.<sup>15</sup> The department may initially assign inmates who are less than 18 years of age and who have not been assigned by the sentencing judge to a facility for youthful offenders under the provisions of chapter 958 to a facility designated for youthful offenders.<sup>16</sup> The department is required to screen all institutions, facilities, and programs for inmates who meet the requirements specified in s. 958.04(1)(a) and (c) whose age does not exceed 24 years and whose total length of sentence does not exceed 10 years and the department may classify those inmates as a youthful offender.<sup>17</sup> The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if the department determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful facility.<sup>18</sup>

Parole for juveniles who received more than a 10 year adult prison sentence was one of the recommendations made by the Blueprint Commission through the Department of Juvenile Justice.<sup>19</sup>

### **Proposed Changes**

CS/HB 23 creates the offender designation of adolescent offender, which is defined as an offender who was 15 years old or younger at the time of the criminal act and is sentenced to life or to a single or cumulative term of imprisonment of 10 years or more. An adolescent offender may be eligible for parole release.

The bill defines the term "current offense" as one or more crimes committed by the adolescent offender within a 1-month period of time or for which sentences run concurrently.

The bill excludes an adolescent offender from parole eligibility if he or she, before the current offense, had a prior conviction or was adjudicated delinquent for a number of specified offenses:

- Murder,
- Felony battery,
- Aggravated battery,
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents or other specified officers,
- Assault or battery on persons 65 years of age or older,
- Kidnapping,
- Persons engaged in criminal offense, having weapons,
- Sexual battery,
- Carjacking,
- Home-invasion robbery,

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<sup>13</sup> Sections 958.011-958.15, F.S.

<sup>14</sup> Section 958.04(1)(c), F.S.

<sup>15</sup> Section 958.11(1), F.S.

<sup>16</sup> Section 944.1905(5)(a), F.S.

<sup>17</sup> Section 958.11(4), F.S.

<sup>18</sup> Section 958.11(6), F.S.

<sup>19</sup> "Getting Smart about Juvenile Justice in Florida," January 2008.

- Abuse, aggravated abuse, and neglect of a child, or
- Cruelty to animals.

If the adolescent offender committed an act of violence or threatened to commit an act of violence during the commission of the current offense, they are ineligible for parole.

The bill requires the commission to conduct an initial eligibility interview during the 8<sup>th</sup> year of incarceration, and every 7 years thereafter. To be eligible for parole, the offender must have completed a General Educational Development (GED) program unless waived due to a disability, and received no disciplinary reports for a period of at least two years. The bill provides additional criteria for the consideration of the offender's rehabilitation status. The commission's hearing examiner must take into serious consideration the wishes of the victim or the opinions of the victim's next of kin, and consider:

- Whether the offender was principal to the criminal offense or an accomplice, a relatively minor participant, or acted under extreme duress or domination of another person,
- Whether the offender has shown remorse for the criminal offense,
- Whether the offender's age, maturity, and psychological development at the time of the offense affected her or his behavior,
- Whether the offender, while in the custody of the department, aided inmates suffering from catastrophic or terminal medical, mental or physical conditions or has prevented risk or injury to staff, citizens, or other inmates,
- Whether the offender has successfully completed technical, vocational, educational, and self-rehabilitation programs,
- Whether the offender was a victim of sexual, physical, or emotional abuse, and
- The results of any mental health assessments or evaluation that has been performed on the offender.

The bill specifies that an adolescent offender must be placed in a facility that has a GED program,<sup>20</sup> unless the offender has already completed a GED program.

The department reports that 432 inmates currently incarcerated committed their primary offense at age 15 or younger, are serving a sentence of 10 years or more, and do not have a prior conviction or was not adjudicated delinquent for any the offenses listed that would exclude them from eligibility.<sup>21</sup> Of these inmates, 154 have served 8 years of their sentence and would be eligible for an initial interview. Of these 154 inmates, 72 have attained GEDs. Of those 72 inmates, only 23 have had no disciplinary reports in the preceding 2 years.<sup>22</sup> It is unknown how many of the 23 committed an act of violence or threatened to commit an act of violence during the current offense, which may significantly reduce the number of inmates eligible.

The bill provides that if the offender is granted parole, he or she must participate in any available reentry program for 2 years. The bill defines "re-entry program" as a program that promotes effective reintegration of adolescent offenders back into communities upon release and provides one or more of the following: vocational training, placement services, transitional housing, mentoring, or drug rehabilitation. Priority shall be given to re-entry programs that are residential, highly structured, self-reliant, and therapeutic communities.

This bill will take effect upon becoming a law and will apply with respect to offenses committed before, on, or after that date.

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<sup>20</sup> According to the Department of Corrections 2009 Analysis of HB 757, only one third of the adult facilities have GED programs.

<sup>21</sup> The department reports that of the 432 inmates some may have an out of state conviction or a juvenile conviction of one of the disqualifying offenses, which would reduce the base number of inmates thought to be eligible.

<sup>22</sup> Department of Corrections 2010 Analysis of HB 23.

B. SECTION DIRECTORY: Section 1. Provides a title for this act as the "Second Chance for Children in Prison Act."

Section 2. Amends s. 947.16, F.S.; relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 3. Provides that if an adolescent offender is eligible, he or she must receive an initial interview in their 8th or subsequent year of incarceration on the effective date of this act.

Section 4. This bill takes effect upon becoming a law and applies with respect to offenses committed before, on, or after that date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Department of Corrections (department) reports for Fiscal Year 2007-2008, the annual cost to house a male youthful offender exceeded \$23,000. Although the department does not anticipate a significant number of inmates would be paroled to justify additional probation officers, the cost avoidance would be offset slightly as the average annual cost of supervision is \$1,856.

The Parole Commission reports that the work increase from reviewing existing and future cases would be slight and does not anticipate a need for increase staff.

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have a positive yet indeterminate prison bed impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides very specific language for the hearing examiner to consider regarding whether the inmate 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.” This language may be tailored to a situation applicable to an inmate who may be affected by this bill if passed. The language provided in this section applies only to the consideration of the hearing examiner but does not specify if the commission should also consider this criterion when deciding whether the offender is rehabilitated.

The bill would allow adolescent offenders to circumvent the mandatory 85% minimum sentenced served requirement as provided in s. 944.275(4)(b)3., F.S.

The bill does not provide the department an alternative if a suitable re-entry program is not available for a paroled offender.

The bill does not specify which agency will waive the GED requirement.

On November 9, 2009, the Supreme Court of the United States heard oral arguments in the cases of Sullivan v. Florida and Graham v. Florida. Both petitioners were juveniles at the time of their offenses and were sentenced to life in prison without the possibility of parole. The issue in these cases is whether sentencing juveniles who committed non-homicide offenses to life in prison without the possibility of parole is cruel and unusual punishment under the Eighth Amendment.

The bill does not define “act of violence.” While this phrase is used in Florida Statutes, no definition currently exists.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 1, 2010, the Public Safety and Domestic Security Policy Committee adopted an amendment that:

- Added that if the offender committed an act of violence or threatened to commit an act of violence during the commission of the current offense, they are ineligible for parole;
- Added technical and vocational to the types of programs the offender can complete to the commission’s considerations criteria;
- Added mental health assessments or evaluations performed on the offender to the commission’s considerations criteria; and
- Changed the length of time between subsequent interviews from every 2 years to every 7 years.