

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Parole Interview Dates for Certain Inmates

SPONSOR(S): Evers and others

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Public Safety & Domestic Security Policy Committee</u>	<u>12 Y, 0 N</u>	<u>Krol</u>	<u>Cunningham</u>
2)	<u>Criminal & Civil Justice Appropriations Committee</u>	<u>11 Y, 0 N</u>	<u>McAuliffe</u>	<u>Davis</u>
3)	<u>Criminal & Civil Justice Policy Council</u>	<u>15 Y, 0 N</u>	<u>Krol</u>	<u>Havlicak</u>
4)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

SUMMARY ANALYSIS

This bill extends the period between parole interview dates from five to seven years for inmates convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or for inmates serving a 25-year minimum mandatory sentence. This would result in the Parole Commission being required to meet less frequently to consider whether to grant parole to such inmates.

This bill provides a workload reduction for the Parole Commission which could result in savings of approximately \$26,968 or 0.5 FTE. The bill will also have an indeterminate cost savings to local governments.

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:

Background

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). Parole is not available for most crimes that were committed on or after October 1, 1983.¹ There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,826 Florida inmates still eligible for parole consideration with about 450 under supervision in the community.²

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a hearing examiner reviews the inmate's file and makes an initial recommendation. The PPRD is the tentative date set for the offender to come before the commission to determine if they will be released on parole or continue to serve their prison sentence. An inmate may request one review of the initial PPRD within 60 days after notification. Otherwise, the PPRD is not reviewed until a hearing examiner interviews the inmate. 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 seven to fifteen years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. Therefore, under this example the inmate's initial interview would be after six years of the sentence has been served.

Under certain circumstances, the PPRD may be more than two years after the date of the initial interview. In such cases a hearing examiner must interview the inmate to review the PPRD within two years after the initial interview and every two years thereafter. The statute also provides for less frequent reviews for inmates whose PPRD is more than five years from the date of the initial interview or if an inmate 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.³ In such cases, the interview and subsequent interview may be conducted every five years if the commission makes a written finding that it is not reasonable to expect that parole will be granted. For any inmate within

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

² Parole Commission 2010 Analysis of HB 261.

³ Section 947.16(4)(g), F.S.

seven years of their tentative release date, the commission may establish an interview date prior to the five year schedule.

These interviews are limited to determining whether or not information has been gathered that might affect the PPRD.⁴ 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.⁵ In consultation with the department, the commission has developed guidelines defining unsatisfactory institutional record and has defined what constitutes a satisfactory release plan and verification of the plan prior to release.⁶

After the interview is conducted the hearing examiner sends their report and recommendation to the commission. The inmate's case is then added to the docket of the next available parole hearing date where the commission will hear testimony and make a final decision regarding the possibility of parole. Inmates are not permitted to attend parole hearings. At parole hearings victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission. The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings. If a victim or the victim's family is unable to attend a hearing Victim Services can address the commission on their behalf.

If parole is granted, 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.
- The offender to not knowingly associate with other criminal gang members or associates, if the offender's conviction was for a crime that involved criminal gang activity.
- The offender to 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.⁷
- The offender to pay victim restitution.⁸
- The offender to apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded.⁹

Proposed Changes

HB 261 would extend the period between parole interview dates from five to seven years for inmates convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or for inmates serving a 25-year minimum mandatory sentence. This would result in the commission being required to meet less frequently to consider whether to grant parole to such inmates.

B. SECTION DIRECTORY:

Section 1. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 2. Amends s. 947.174, F.S., relating to subsequent interviews.

Section 3. Amends s. 947.1745, F.S., relating to establishment of effective parole release date.

Section 4. Provides an effective date of July 1, 2010.

⁴ Section 947.174(1)(c), F.S.

⁵ Section 947.174(3), F.S.

⁶ Section 947.174(5), F.S.

⁷ Section 947.18, F.S.

⁸ Section 947.181, F.S.

⁹ Section 947.185, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Moving the interview dates from five to seven years, equates to a workload reduction of 29% for this activity. According to the Parole Commission, in 2009 there were 272 five-year interviews conducted by 45 parole examiners, and on average, 1.23 percent of a parole examiner's total workload is dedicated annually to the five-year interviews. The Parole Commission stated that this workload is the equivalent of 0.5 FTE. Based on the average salaries and benefits of a parole examiner, this could result in savings of \$26,968.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Judges, prosecutors, and law enforcement officers will not have to expend resources to attend or provide input for the parole hearings as often.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Victims and their families or other interested parties would not be required to travel as frequently to testify at parole hearings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On June 1, 1997, the Legislature enacted ch. 97-289, Laws of Florida, that changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years. According

to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.¹⁰

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹⁰ *Tuff v. State*, 732 So.2d 461 (3rd DCA 1999).