

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 329 Parole Interview Dates for Certain Inmates

**SPONSOR(S):** Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Trujillo, Perry, and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee	15 Y, 0 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee			

### SUMMARY ANALYSIS

Currently, the Florida Parole Commission re-interviews parole eligible inmates to review the inmate's presumptive parole release date (PPRD). Generally, inmates are re-interviewed every two years. However, the statute provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder,
- Attempted murder, or
- Sexual battery or attempted sexual battery.

This bill increases the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

This bill will not have a fiscal impact on the Commission in Fiscal Year 2012-2013; however the bill will have a minimal positive fiscal impact in subsequent years. The bill is effective on July 1, 2012.

# 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.<sup>1</sup> There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,360 Florida inmates still eligible for parole consideration with about 489 under supervision in the community.<sup>2</sup>

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, conducts an initial interview with the inmate, and makes an initial recommendation to a panel of commissioners.<sup>3</sup> The PPRD is the tentative parole release date as determined by objective parole guidelines.<sup>4</sup> An inmate may request one review of the initial PPRD within 60 days after notification.<sup>5</sup> Otherwise, the PPRD is not reviewed until a hearing examiner holds subsequent interviews with the inmate.<sup>6</sup>

Subsequent interviews for review of the PPRD may be held every two years or every seven years depending on the offense the inmate was convicted of.<sup>7</sup> Generally, inmates are re-interviewed every two years.<sup>8</sup> However, the statute provides for less frequent reviews if an inmate's PPRD is more than seven years from the date of the initial interview and if the 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.<sup>9</sup> In such cases, the subsequent interviews may be conducted every seven years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.<sup>10,11</sup>

Subsequent interviews are limited to determining whether or not information has been gathered that might affect the PPRD.<sup>12</sup> The department is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as an inmate's current progress reports, psychological reports, and disciplinary reports.<sup>13</sup>

After an interview is conducted the hearing examiner sends his or her report and recommendation to a panel of commissioners.<sup>14</sup> The inmate's case is then added to the docket of the next available parole hearing date where the commission will hear public testimony and make a final decision regarding the

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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> E-mail from Sarah Rumph, Florida Parole Commission, November 4, 2011. (On file with subcommittee staff.)

<sup>3</sup> Section 947.172, F.S.

<sup>4</sup> Section 947.005(8), F.S.

<sup>5</sup> Section 947.173(1), F.S.

<sup>6</sup> Section 947.174, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 947.174(1)(b), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> In addition, s. 947.16(4), F.S., provides that at the time of sentencing, a judge may enter an order to retain jurisdiction over an offender for review of a commission release order to grant parole. If the judge vacates the parole release order and denies the parole, the offender shall be re-interviewed by the commission every two or seven years as determined by the same criteria described in this cited paragraph.

<sup>12</sup> Section 947.174(1)(c), F.S.

<sup>13</sup> Section 947.174(3), F.S.

<sup>14</sup> Rule 23-21.0052, F.A.C.

PPRD recommendation. Inmates are not permitted to attend parole hearings.<sup>15</sup> At parole hearings, victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission.<sup>16</sup> The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings.<sup>17</sup>

The hearing examiner conducts a final interview of the inmate within 90 days of the PPRD in order to set an effective parole release date and to establish a parole release plan.<sup>18</sup> The commission is required to give notice to the sentencing court prior to this final interview.<sup>19</sup> If the court objects to the offender's release, the objection can be an exceptional circumstance under s. 947.173, F.S., for the commission to cancel the final interview and reset the case for future review.<sup>20</sup> If the court does not object and the final interview is held, 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.<sup>21</sup>

### **Proposed Changes**

As noted above, the Florida Parole Commission re-interviews parole eligible inmates to review the inmate's presumptive parole release date (PPRD). Generally, inmates are re-interviewed every two years. However, the statute provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder,
- Attempted murder, or
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This bill increases the intervals between parole interview dates from two to seven years for inmates convicted of:

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- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

#### **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. Reenacts s. 947.165, F.S., relating to objective parole guidelines.

Section 5. Provides an effective date of July 1, 2012.

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<sup>15</sup> Rule 23-21.004, F.A.C.

<sup>16</sup> Section 947.06, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 947.1745(1), F.S.

<sup>19</sup> Section 947.1745(6), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Rule 23-21.015, F.A.C.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

This bill will not have a fiscal impact on the Commission in Fiscal Year 2012-2013; however the bill will have a minimal positive fiscal impact in subsequent years. According to the Commission, inmates would be informed of any changes to the law regarding subsequent interview dates at their next scheduled interview. They would be informed that, upon passage of this bill, the Commission may set a subsequent interview within seven years rather than within two. The bill does not remove the inmate's limited due process rights or the mechanism for the inmate to request the Commission to consider setting an earlier interview date which is currently in place.

This bill will have no affect on the current review dates that are presently set for parole eligible inmates. This bill would only affect those inmates whose review dates occur after the effective date of the bill. Therefore, the inmates' interview dates that fall between July 1, 2012 and June 30, 2014, would not be affected by the bill until after that interview when they are informed their next interview would be in seven years instead of two.

The Commission staff reviewed the 842 initial, extraordinary, and subsequent interviews from Commission dockets from July 1, 2010 through June 30, 2011. Of the total cases docketed, 534 cases have already been given a seven year subsequent interview date; 264 cases would not be affected because their review date is not addressed by the bill and will remain within two years; and 44 cases could be affected by CS/HB 329 and could have their next interview date set for seven years after they are informed of the law change at their next two year review.

Therefore 44 cases may be affected by the bill in Fiscal Year 2014-2015 and could have their next interview date set within seven years instead of within two years. This would equate a total savings to the Commission of 166 hours annually (44 x 3.78 hours per case) or approximately 1/12 of an FTE for the FY 2010-2011 eligible pool of inmates. It is reasonable to assume that in the subsequent years, the savings should compound as other eligible inmates review dates are changed from two to seven years, but the savings associated with the remaining eligible pool is also expected to be minimal.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### 2. Other:

On June 1, 1997, the Legislature changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years.<sup>22</sup> 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.<sup>23</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2011, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment clarifies which crimes the phrase "in which a human being is present and a sexual act is completed or attempted" applies to.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On December 7, 2011, the Justice Appropriations Subcommittee approved one amendment that adds convictions for attempted kidnapping, and breaking and entering if a sexual act is attempted or completed, to the offenses that increase the intervals between parole interview dates from two to seven years.

The analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

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<sup>22</sup> Chapter 97-289, L.O.F.

<sup>23</sup> *Tuff v. State*, 732 So.2d 461 (3<sup>rd</sup> DCA 1999).