

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 506

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Interview Dates for Certain Inmates

DATE: December 13, 2011 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|--------------------|
| 1. | Clodfelter | Cannon | CJ | Fav/CS |
| 2. | Sneed | Sadberry | BJA | Pre-meeting |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill amends ss. 947.16, 947.174, and 947.1745, .F.S, to permit the Florida Parole Commission to increase the interval between parole interviews to 7 years for those inmates whose interviews are currently every 2 years.

II. Present Situation:

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (“the commission”). The only inmates who are eligible for parole consideration are those who committed capital sexual battery prior to October 1, 1995, capital sexual murder prior to October 1, 1994, or another crime prior to October 1, 1983. Approximately 5,500 Florida inmates are still eligible for parole consideration because parole applied to their offense at the time it was committed.

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. As of June 30, 2011, 347 offenders were actively supervised on parole from Florida sentences.¹

The parole process begins with an initial interview that is the first step in setting the inmate's presumptive parole release date (PPRD). The date of the initial interview depends upon the length and character of the parole-eligible sentence. The PPRD is set by the commission after a parole examiner reviews the inmate's file, interviews the inmate, and makes an initial recommendation.

In many cases, the commission will establish a PPRD that does not result in release of the inmate within a short period of time. A release order by the commission may also be altered in two other ways before it is implemented: (1) it may be vacated pursuant to s. 947.16(4), F.S., by a sentencing court that has retained jurisdiction over the offender; or (2) it may be modified by the commission after considering the objections of a sentencing court that has not retained jurisdiction pursuant to s. 947.1745(6), F.S. In all three situations, the inmate is entitled to a subsequent reinterview. The time frame for holding a reinterview (and any further reinterviews) is determined by the inmate's criminal history:

- An inmate who was not convicted of murder or attempted murder, sexual battery or attempted sexual battery, or serving a 25-year minimum mandatory sentence under s. 775.082, F.S., must be reinterviewed within 2 years after the initial interview and every 2 years thereafter. Approximately 20% of inmates who are eligible for parole consideration fall into this category.
- An inmate who was convicted of one of the above offenses may have a reinterview scheduled within 7 years after the initial interview and every 7 years thereafter if the commission makes a written finding that it is not reasonable to expect that parole will be granted during the following years. Approximately 80% of inmates who are eligible for parole consideration fall into this category.

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

III. Effect of Proposed Changes:

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to extend the commission's authority to increase the interval between parole consideration re-interviews to include cases in which the offender was convicted of: (1) kidnapping or attempted kidnapping; or (2) a completed or attempted offense of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, when a human being is present and a sexual act is completed or attempted. The interval may be increased from the standard 2 years to 7 years if the commission makes a written finding that it is unlikely to grant parole to the offender.

¹ Community Supervision Population Monthly Status Report, July 2011, Florida Department of Corrections, p. 2.

The groups that would be most affected by this bill are victims and their families, parole-eligible inmates and their families, and the commission itself. For victims, reduction of the frequency of an opportunity for parole can be expected to lessen the stress associated with potential release of the offender. Because victims and families often attend the parole hearings, there is also a potential financial savings. For offenders, the normally-scheduled interviews would be reduced if their record indicates that granting of parole is not likely. For the commission, there would be some reduction in workload and the opportunity to focus on the cases that are more frequently reviewed.

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:

Although parole is a matter of grace and is not a right, alteration of parole-consideration procedures must be considered in light of the constitutional prohibition against ex post facto punishment. In *California Department of Corrections v. Morales*, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995), the United States Supreme Court held that a California statute increasing the interval between parole interviews did not violate the ex post facto clause. Subsequent cases have relied on *Morales* to uphold the constitutionality of current s. 947.174(1)(b), F.S., which permitted an increase of the interview interval from 2 to 5 years. See *Tuff v. State*, 732 So.2d 461 (Fla. 3d Dist. 1999); *Pennoyer v. Briggs*, 206 Fed.Appx. 962 (11th Cir. 2006). Because there is no legal distinction between increasing the interval from 2 to 5 years and increasing it from 5 to 7 years, the bill's provisions do not violate the ex post facto clauses of the United States and Florida constitutions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Holding parole hearings less frequently would reduce the costs incurred by persons who would attend the hearings. This could include victims and their families and

representatives, victims advocacy groups, law enforcement agencies, and the families and representatives of inmates. The amount of reduction cannot be quantified because a reduction of frequency would depend upon the individual merits of the inmate's case and the cost to attend hearings is variable depending upon individual circumstances.

C. Government Sector Impact:

Authorization to reduce the frequency of parole hearings has the potential to reduce the number of hearings conducted by the commission, which may result in cost savings or reallocation of resources to other cases. However, the amount of any savings cannot be determined until the commission considers individual cases and makes a decision on whether to apply its new authority to the case. This bill will have no effect 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 the bill 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 FY 2014-2015 and could have their next interview date set within seven years instead of within two years. This would equal a total savings to the Commission of 166 hours annually (44 x 3.78 hours per case) or approximately 1/12 of an FTE. 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 expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on December 7, 2011:

Clarifies the offenses to which the extended interview schedule applies when a human being is present and a sexual act was completed or attempted during commission of the offense.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
