

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:

This bill amends ss. 947.16, 947.174, and 947.1745, F.S., to give the commission authority to increase the interval between parole consideration re-interviews to 7 years for parole-eligible offenders who have been convicted of kidnapping, robbery, and burglary of a dwelling or burglary of a structure or conveyance in which 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.

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. The commission indicates that the bill would apply to 44 cases that are subject to the two year subsequent interview schedule. It estimates that each deferral of a subsequent interview would save 3.78 hours of work. However, there is not possibility of any lessening of workload for two years after enactment because the bill does not change the date of interviews that have already been scheduled.

There would be additional cost to incarcerate an inmate whose interview interval is changed from two years to seven years if the inmate is ultimately paroled. This would amount to approximately \$40,000 for the additional two years of incarceration.² The number of inmates in these circumstances who would be paroled is not predictable. However, it is not likely to be a large number because by definition the expanded interval applies only to those inmates whom the commission finds are unlikely to be granted parole.

VI. Technical Deficiencies:

The extended reinterview schedule clearly applies to burglary of a structure or conveyance in which a human being is present only if a sexual act was completed or attempted during commission of the offense. However, there is ambiguity as to whether the extended reinterview schedule applies to burglary of a dwelling only when a sexual act was completed or attempted during commission of the offense.

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.)

None.

B. Amendments:

None.

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

² The average annual cost per inmate for all DOC facilities, except private facilities, is approximately \$19,500. Department of Corrections Budget Summary (Fiscal Year 2009-2010), available at <http://www.dc.state.fl.us/pub/annual/0910/budget.html> (last viewed on November 15, 2011).