

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 Committee on Criminal Justice

BILL: CS/SB 540

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: Mandatory Supervision of Specified Offenders by the Department of Corrections

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 540 expands the scope of the conditional release program that requires post-release supervision of certain offenders who are released from prison after serving 85 percent of their sentence. Currently, conditional release supervision is required for an inmate who is serving a sentence for a designated violent offense and who has served at least one prior felony commitment in a state or federal prison. The bill removes the condition that the inmate have served a prior felony commitment.

The bill also renames conditional release supervision as “mandatory supervision.”

This bill substantially amends sections 944.291 and 947.1405 of the Florida Statutes. The bill also amends sections 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.32, and 957.06 of the Florida Statutes for the purpose of changing the program name.

II. Present Situation:

Most inmates who are serving sentences in Florida prisons are eligible to have the length of their sentence reduced by application of gain time. Gain time is awarded by the Department of Corrections based upon an inmate’s institutional adjustment and participation in positive activities. An inmate’s sentence may be reduced by as much as 15 percent by reason of gain time.¹ In most cases, an inmate who is released early when his or her sentence expires due to application of gain time has completed the sentence and is no longer under the jurisdiction of the court or the department. The exceptions are when the sentencing court has ordered probation or community control following incarceration and when the inmate is required to be placed on conditional release.

Conditional release was created by the Legislature in 1988 to require post-release supervision of certain inmates who are released from incarceration early because of accrued gain time. Conditional releasees are supervised by Correctional Probation Officers of the Department of Corrections. The Parole Commission (commission) establishes the length of supervision, which cannot be any longer than the original sentence that was imposed by the court. The commission also sets the conditions of supervision, which include the mandatory conditions required by s. 947.1405, F.S., and any additional conditions that the commission determines to be appropriate. When appropriate, the commission can require conditional releasees to attend training or treatment such as drug rehabilitation programs.

The commission is responsible for conducting hearings regarding alleged violations of the conditions of supervision. The commission has several options if it finds that a violation occurred, including revoking supervision and returning the offender to prison to serve the remaining portion of his or her sentence. Conditional releasees who are returned to prison forfeit any gain time that was earned prior to their release.

Section 947.1405, F.S., requires conditional release for inmates who have been sentenced as a habitual or violent habitual offender, a violent career criminal, or a sexual predator. It also requires conditional release for inmates convicted of a crime which “is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993)” if the inmate had served at least one prior felony commitment in a state or federal correctional institution. The crimes that trigger the conditional release requirement for repeat felons are:

Violent Offenses Requiring Placement on Conditional Release	
Category 1: Murder, Manslaughter	<ul style="list-style-type: none"> • ch. 782, F.S. – Homicide (except s. 782.04(1)(a), F.S. – capital murder) • s. 316.193(3)(c)3., F.S. – DUI Manslaughter (automobile) • s. 327.351(2), F.S. – DUI Manslaughter (vessel) (repealed in 1996)

¹ Section 944.275(4)(b)3., F.S., provides that an offender cannot receive an amount of gain time that would result in serving less than 85 percent of the imposed sentence.

Violent Offenses Requiring Placement on Conditional Release	
Category 2: Sexual Offenses	<ul style="list-style-type: none"> • ch. 794, F.S. – Sexual Battery • ch. 800, F.S. – Lewdness; Indecent Exposure • s. 826.04, F.S. – Incest • s. 491.0112, F.S. – Sexual Misconduct by a Psychotherapist
Category 3: Robbery	<ul style="list-style-type: none"> • s. 812.13, F.S. – Robbery • s. 812.133, F.S. – Carjacking • s. 812.135, F.S. – Home Invasion Robbery
Category 4: Violent Personal Crimes	<ul style="list-style-type: none"> • ch. 784, F.S. – Assault, Battery • s. 836.05, F.S. – Threats, Extortion • s. 836.10, F.S. – Written Threats to Kill or Do Bodily Injury • s. 843.01, F.S. – Resisting Officer with Violence • s. 381.411(4), F.S. – Battery on HRS Employee (repealed effective April 27, 2012)

In fiscal year 2011-2012, 4799 offenders were placed on conditional release. Of this number, 2448 were violent offenders. The average conditional release sentence was approximately 17 months for all conditional releasees and approximately 6 months for those who were violent offenders sentenced under the 85 percent law. The median conditional release sentence for violent offenders was 3.7 months.² As of December 31, 2012, 2254 conditional releasees were being actively supervised by the department.³

III. Effect of Proposed Changes:

The bill amends a number of statutes to change the name “conditional release” to “mandatory supervision.” It also amends ss. 944.291 and 947.1405, F.S., to require mandatory supervision for all offenders who were released early by reason of gain time after serving a sentence for murder, sexual offenses, robbery, or other specified violent personal crimes. This removes the current stipulation that conditional release (now mandatory supervision) only applies to such offenders if they have also previously served at least one felony commitment in a state or federal correctional institution.

The bill applies prospectively to offenders who are imprisoned for offenses committed on or after October 1, 2013, so it would have a gradually increasing effect. The table below indicates

² “Conditional release sentence” is used to indicate the length of time between the actual time served by the offender and 100% of his or her sentence. Data for all conditional releasees is from Department of Corrections 2011-2012 Agency Statistics, Community Supervision Admissions, available at www.dc.state.fl.us/pub/annual/1112/stats/csa_month.html ; Specific data for violent offenders released on conditional release is included in an email dated January 18, 2013 from the Department of Corrections to the Office of Economic & Demographic Research and is on file with the Senate Committee on Criminal Justice.

³ Data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida’s Community Supervision Population, January 2007.

the commission’s estimate of the number of offenders who would be placed on conditional release as a result of the bill:⁴

Florida Parole Commission Projection: Additional Offenders Admitted to Mandatory Supervision Under Provisions of Senate Bill 540		
Fiscal Year	Year After Effective Date	Number of Offenders Admitted
2013-2014	1	3
2014-2015	2	41
2015-2016	3	270
2016-2017	4	555
2017-2018	5	893
2022-2023	10	2542
2027-2028	15	2519
2032-2033	20	3265

The department calculates recidivism rates based upon return of an inmate to prison within three years of release. Using this definition, the overall recidivism rate for inmates released from 2003-2010 without supervision was 25 percent.⁵ All of these returned as the result of a new felony commitment. During that same period, 19.5 percent of inmates released on conditional release returned to prison as a result of a new felony commitment and another 31.1 percent returned to prison for a technical violation of conditional release (including non-criminal violations and commission of a misdemeanor).⁶ While these statistics are informative, these numbers do not lend themselves to definitive conclusions about the effectiveness of the program on different populations.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ The estimates are included in an email from commission staff dated December 7, 2012 and forwarded to Senate Criminal Justice Committee staff on December 10, 2012, which is on file with the Senate Criminal Justice Committee.

⁵ “2011 Florida Prison Recidivism Report: Releases from 2003-2010”, Florida Department of Corrections, April 2012, p. 12.

⁶ The data is included in an email from department staff dated January 30, 2013 and forwarded to Senate Criminal Justice Committee staff on February 6, 2013, which is on file with the Senate Criminal Justice Committee.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Inmates who are placed on mandatory supervision after release from prison would be required to pay costs of supervision and restitution to victims if they are financially able to do so. Payment of restitution would be beneficial to victims. Payment of cost of supervision would negatively impact the released inmate.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the impact of this bill on prison bed space. Based upon current recidivism rates, it is possible that fewer released offenders would return to prison for a new offense, but more would return for a technical violation of conditional release.

The commission indicates that the impact of the bill in the first three years will require it to employ an additional Parole Tech II at \$47,429. The commission also asserts that the bill will result in the commission of fewer crimes, which will reduce costs for the court system, law enforcement, and jails.⁷

The department indicates that the bill will have a fiscal impact for increased costs both for supervising inmates in the community and for housing them in prisons. The department estimates that this will have a cumulative impact of \$1,428,931 over three years. Over five years, the cumulative impact is estimated at \$5,267,311, with \$2,443,635 of that amount in the fifth year. In addition, the department estimates that it will incur one-time expenses of \$171,000 for computer programming changes that would be required by changing “conditional release” to “mandatory supervision” and \$50,000 for programming changes associated with the change in criteria.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ Florida Parole Commission, Proposal Analysis and Economic Impact of House Bill 829 and Senate Bill 540 (February 13, 2013).

⁸ Department of Corrections, 2013 Bill Analysis of Senate Bill 540 (revised).

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 March 11, 2013:

- Converts findings of fact to statement of legislative intent.
- Creates annual requirement to report the rate of mandatory supervision offenders returning to prison.
- Deletes bill section that inadvertently renamed DJJ conditional release program.
- Reinserts “conditional release” into the habitual felony offender and gain time forfeiture statutes to apply to those offenders who are on conditional release prior to the effective date of the bill.

- B. **Amendments:**

None.