

**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 Judiciary

**BILL:** CS/SB 540

**INTRODUCER:** Criminal Justice Committee and Senator Dean

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

**DATE:** March 29, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Fav/CS</b>
2.	Brown	Cibula	JU	<b>Pre-meeting</b>
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 on the basis of gain time.<sup>1</sup> 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.

The Legislature created conditional release in 1988 to require post-release supervision of certain inmates who are released from incarceration early because of accrued gain time. Correctional Probation Officers of the Department of Corrections supervise conditional releasees. 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 conditions of supervision, which include mandatory conditions required by s. 947.1405, F.S., and any additional conditions that the commission determines 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 on 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. Crimes that trigger the conditional release requirement for repeat felons are:

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• s. 327.351(2), F.S. – DUI Manslaughter (vessel) (repealed in 1996)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

<sup>1</sup> Section 944.275(4)(b)3., F.S.

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

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.<sup>2</sup> As of January 2012, 2213 conditional releasees were under active supervision by the department.<sup>3</sup>

**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.

<sup>2</sup> “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](http://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 Criminal Justice Committee and the Senate Judiciary Committee.

<sup>3</sup> Data concerning community supervision are from the Department of Corrections, *Monthly Status Report of Florida’s Community Supervision Population* (January 2012) available at <http://www.dc.state.fl.us/pub/spop/2012/01/index.html>.

The bill applies prospectively to offenders who are imprisoned for offenses committed on or after October 1, 2013. As such, the bill will have a gradually increasing effect. The table below indicates the commission's estimate of the number of offenders who will be placed on conditional release as a result of the bill:<sup>4</sup>

<b>Florida Parole Commission Projection: Additional Offenders Admitted to Mandatory Supervision Under Provisions of Senate Bill 540</b>		
<b>Fiscal Year</b>	<b>Year After Effective Date</b>	<b>Number of Offenders Admitted</b>
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.<sup>5</sup> 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).<sup>6</sup>

<sup>4</sup> 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 and the Senate Judiciary Committee.

<sup>5</sup> Florida Department of Corrections, *2011 Florida Prison Recidivism Report: Releases from 2003-2010*, 12 (April 2012).

<sup>6</sup> 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 and the Senate Judiciary Committee.

At a Criminal Justice Impact Conference held on March 21, 2013, the Office of Economic and Demographic Research projected the following fiscal impact over a five-year period:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2013-2014	0	0	\$0	\$1,680,168	\$1,680,168	\$1,680,168
2014-2015	28	28	\$264,152	\$2,481,880	\$2,746,032	\$4,426,200
2015-2016	68	40	\$920,160	\$2,054,976	\$2,975,136	\$7,401,336
2016-2017	100	32	\$1,639,260	\$3,051,502	\$4,690,762	\$12,092,098
2017-2018	146	46	\$2,443,518	\$1,494,460	\$3,937,978	\$16,030,076
<b>Total</b>	<b>146</b>	<b>146</b>	<b>\$5,267,090</b>	<b>\$10,762,986</b>	<b>\$16,030,076</b>	<b>\$ 16,030,076</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, March 21, 2013

The Office of Economic and Demographic Research (EDR) indicates that even with short periods of additional time served for violations of release conditions, prison bed impact will be significant when fully implemented. Further extrapolation shows a prison bed impact of 246 beds and cumulative cost of \$26.3 million by year 10.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Inmates placed on mandatory supervision after release from prison must pay costs of supervision and restitution to victims if they are financially able to do so. Payment of restitution will benefit victims. Payment of cost of supervision will 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.<sup>7</sup>

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 3 years. Over 5 years, the cumulative impact is estimated at \$5,267,311, with \$2,443,635 of that amount in the 5th year. In addition, the department estimates that it will incur one-time expenses of \$171,000 for computer programming changes that will be required by changing “conditional release” to “mandatory supervision” and \$50,000 for programming changes associated with the change in criteria.<sup>8</sup>

**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 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.

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

<sup>8</sup> Department of Corrections, *2013 Bill Analysis of Senate Bill 540* (revised).

B. Amendments:

None.

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

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