

**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: SB 742

INTRODUCER: Senator Evers

SUBJECT: Parole Interview Dates for Certain Inmates

DATE: March 29, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Favorable</b>
2.	Shankle	Cibula	JU	<b>Favorable</b>
3.			ACJ	
4.			AP	
5.				
6.				

**I. Summary:**

SB 742 permits the Florida Parole Commission to increase the interval between parole interviews to 7 years for offenders convicted of kidnapping or attempted kidnapping, or 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, whose interviews are currently every 2 years.

This bill substantially amends the following sections of the Florida Statutes: 947.16, 947.174, and 947.1745.

This bill reenacts section 947.165(1), Florida Statutes.

**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.<sup>1</sup> Approximately 5,200 Florida

<sup>1</sup> See s. 921.002(1)(e), F.S., requiring a person convicted of a crime that occurred on or after October 1, 1988, to serve at least 85 percent of the sentence and excluding such persons from eligibility for parole under chapter 947, F.S. This section is a revision of ch. 83-87, s. 2, Laws of Fla. (1983), which mandated that all criminals convicted of non-capitol offenses occurring after October 1, 1983, are ineligible for parole.

inmates are still eligible for parole consideration because parole applied to their offense at the time it was committed.<sup>2</sup>

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 December 31, 2012, 350 offenders were actively supervised on parole from Florida sentences.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>
- 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.<sup>6</sup>

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.

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<sup>2</sup> Florida Parole Commission, *Annual Report: 2011-2012*, p. 21, available at <https://fpc.state.fl.us/PDFs/FPCAnnualreport201112.pdf>.

<sup>3</sup> Florida Department of Corrections, *Community Supervision Population Monthly Status Report*, p. 2, <http://www.dc.state.fl.us/pub/spop/2012/12/tab01.html> (last visited Mar. 28, 2013).

<sup>4</sup> Section 947.172, F.S.

<sup>5</sup> Section 947.16(g), F.S.

<sup>6</sup> *Id.*

### 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.

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.

The bill has an effective date of July 1, 2013.

### 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 (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 two to five years.<sup>7</sup> Because there is no legal distinction between increasing the interval from two

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<sup>7</sup> See *Tuff v. State*, 732 So. 2d 461 (Fla. 3d DCA 1999) and *Pennoyer v. Briggs*, 206 Fed.Appx. 962 (11th Cir. 2006).

to five years and increasing it from five to seven 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. If the interview interval for an inmate is changed from two years to seven years, there would be five fewer hearings over a fourteen year period. The total 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 in Fiscal Year 2015-2016 the bill could result in 44 inmates having their next interview date set within seven years rather than within two years.<sup>8</sup> However, the bill can have no fiscal impact before Fiscal Year 2015-2016 because it does not alter interview dates that are already scheduled at the time of the effective date.

There would be additional cost to incarcerate an inmate whose interview schedule is extended from two years to seven years if he or she is paroled at the seven year interview interval and would also have been paroled if the interview had been conducted earlier. The cost of incarcerating such an inmate would be approximately \$15,500 for each extra year of incarceration.<sup>9</sup> However, it is anticipated that few inmates would fall into this category because the expanded interview interval applies only to those inmates whom the commission finds are unlikely to be granted parole.

**VI. Technical Deficiencies:**

None.

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<sup>8</sup> Florida Parole Commission Proposal Analysis and Economic Impact of HB 685 and SB 742 (February 18, 2013), on file with the Senate Committee on Criminal Justice.

<sup>9</sup> The average annual cost per inmate for adult male custody DOC facilities, except private facilities, is approximately \$15,500. Department of Corrections Budget Summary (Fiscal Year 2010-2011), available at <http://www.dc.state.fl.us/pub/annual/1011/budget.html> (last viewed on February 22, 2013).

**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.

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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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