

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 829 Mandatory Supervision for Violent Offenders

SPONSOR(S): Criminal Justice Subcommittee; Passidomo

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 2 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In 1988, the Florida Legislature created the Conditional Release Program and placed it under the administration of the Florida Parole Commission (commission). Conditional release requires mandatory postrelease supervision for an inmate who:

- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.;
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.; or
- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and an inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in categories 1 thru 4 of Rules 3.701 and 3.988 of the Florida Rules of Criminal Procedure (1993), and who have served at least one prior felony commitment at a state or federal correctional institution.

The commission establishes the length of supervision, which cannot extend beyond the original sentence imposed by the sentencing court. The commission also sets the conditions of supervision, which include the conditions required by s. 947.1405, F.S., and any additional appropriate conditions. Conditional release supervision can be revoked and the releasee returned to prison if the commission determines that a violation of supervision has occurred.

The bill amends s. 947.1405, F.S., to rename the “conditional release program” the “mandatory supervision program” and adds an additional category of offenders required to be released under mandatory supervision. The additional category includes inmates who are convicted of a crime that was committed on or after October 1, 2013, that is in categories 1 thru 4 of Rules 3.701 and 3.988 of the Florida Rules of Criminal Procedures (1993). This new category does not require that the inmate have served a prior state or federal prison sentence.

The Department of Corrections reports that the bill will have a \$19.2 million dollar fiscal impact on the department over the next 7 years. See Fiscal Section.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Corrections

The Department of Corrections (DOC) is responsible for maintaining custody, control, or supervision of approximately 100,000 inmates in Florida prisons and over 145,000 offenders on community supervision.¹ DOC estimates that approximately 65 percent of the offenders released from prison have no supervision following their release whereas 35 percent of offenders are released on some sort of supervision.² According to DOC, of the 18,913 offenders on supervision after their release from prison, 5,299 offenders are on some form of postrelease supervision³ and 13,614 are on supervision because of a split sentence.⁴

Gain Time

DOC is authorized to grant deductions from sentences in the form of gain time in order to encourage satisfactory inmate behavior, to provide incentive for inmates to participate in productive activities, and to reward inmates who perform outstanding deeds or services.⁵ An inmate sentenced for an offense committed on or after October 1, 1995, is eligible to have his or her sentence reduced by as much as 15 percent by earning gain time.⁶

Conditional Release

In 1988, the Florida Legislature created the Conditional Release Program and placed it under the administration of the Florida Parole Commission (commission).⁷ Conditional release requires mandatory postrelease supervision for an inmate who:

- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.;
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.; or
- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and an inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in categories 1 thru 4 of Rules 3.701 and 3.988 of the Florida Rules of Criminal Procedure (1993), and who have served at least one prior felony commitment at a state or federal correctional institution.⁸

The crimes listed in Rules 3.701 and 3.988 of the Florida Rules of Criminal Procedure (1993) are:

- Category 1: Murder, Manslaughter
 - Chapter 782, F.S., Homicide (except s. 782.04(1)(a), F.S., Capital Murder);
 - Section 316.193(3)(c)3., F.S., DUI Manslaughter (automobile); or
 - Section 327.351(2), F.S., DUI Manslaughter (vessel) (repealed in 1996).
- Category 2: Sexual Offenses
 - Chapter 794, F.S., Sexual Battery;
 - Chapter 800, F.S., Lewdness, Indecent Exposure;
 - Section 826.04, F.S., Incest; or
 - Section 491.0112, F.S., Sexual Misconduct by a Psychotherapist.
- Category 3: Robbery
 - Section 812.13, F.S., Robbery;

¹ *SB 540 Relating to Mandatory Supervision of Specified Offenders*, DOC Bill Analysis (original analysis) (on file with Criminal Justice Subcommittee).

² *Id.*

³ Postrelease supervision includes: parole, conditional release, conditional medical release, and addiction recovery supervision.

⁴ A split sentence is when the sentencing court imposes a sentence that includes prison time followed by probation or community control.

⁵ Section 944.275(1), F.S.

⁶ Section 944.275(4)(b)3., F.S.

⁷ <https://fpc.state.fl.us/Postrelease.htm> (last visited on March 8, 2013).

⁸ Section 947.1405(2), F.S.

- Section 812.133, F.S., Carjacking; or
- Section 812.135, F.S., Home Invasion Robbery.
- Category 4: Violent Personal Crimes
 - Chapter 784, F.S., Assault, Battery, Culpable Negligence;
 - Section 836.05, F.S., Threats, Extortion;
 - Section 836.10, F.S., Written Threats to Kill or Do Bodily Injury;
 - Section 843.01, F.S., Resisting Officer with Violence; or
 - Section 381.411(4), F.S., Battery on HRS Employee (repealed effective April 27, 2012).

The commission establishes the length of supervision, which cannot extend beyond the original sentence imposed by the sentencing court.⁹ The commission also sets the conditions of supervision, which include the conditions required by s. 947.1405, F.S., and any additional appropriate conditions.¹⁰ Conditional releasees are supervised by DOC probation officers.¹¹ Conditional release supervision can be revoked and the releasee returned to prison if the commission determines that a violation of supervision has occurred.¹²

The commission is responsible for conducting hearings regarding alleged violations of the conditions of supervision.¹³ There are several options if the commission finds that a violation occurred, including modifying supervision or revoking supervision and returning the offender to prison to serve the remaining portion of his or her sentence.¹⁴ Conditional releasees who are returned to prison forfeit any gain time that was earned prior to their release.¹⁵

Section 944.291, F.S., requires DOC to provide the commission the name and inmate identification number for each inmate who meets the conditional release criteria in s. 947.1405, F.S., 90 days prior to the inmate's release.

Effect of the Bill

The bill creates a new section of statute that provides the following legislative findings:

It is the intent of the Legislature to require intensive postrelease supervision of offenders who have been convicted of violent offenses, thereby assisting offenders in successfully transitioning from prison back to the community and reducing their rate of reoffending. It is also the intent of the Legislature that the renaming of conditional release supervision to mandatory supervision does not create a new program, but is merely a name change to accurately reflect the nature of this nondiscretionary release.

The bill amends s. 947.1405, F.S., to rename the “conditional release program” the “mandatory supervision program” and adds an additional category of offenders that are required to be released under mandatory supervision.

The additional category includes inmates who are convicted of a crime that was committed on or after October 1, 2013, that is in categories 1 thru 4 of Rules 3.701 and 3.988 of the 1993 Florida Rules of Criminal Procedures (described above). This new category does not require that the inmate have served a prior state or federal prison sentence.

The bill also changes the term “releasee” to “supervisee” and amends s. 944.291, F.S., to require DOC to provide the commission the name and inmate identification number for each inmate who meets the criteria of the new category.

The bill requires the commission and DOC to track offenders on mandatory supervision to determine their rate of return to prison, indicating if the return was for a new crime or a technical violation.

⁹ Section 947.1405(6), F.S.

¹⁰ *Id.*

¹¹ Section 947.1405, F.S.

¹² Section 947.1405(2), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

The bill makes conforming changes to ss. 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.291, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.11, 948.32, and 957.06, F.S., to incorporate the terminology changes.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute relating to legislative findings.

Section 2. Amends s. 944.291, F.S., relating to prisoner released by reason of gain-time allowances or attainment of provisional release date.

Section 3. Amends s. 947.1405, F.S., relating to conditional release program.

Section 4. Amends s. 216.136, F.S., relating to consensus estimating conferences; duties and principals.

Section 5. Amends s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent; notice to Department of Corrections and Parole Commission.

Section 6. Amends s. 394.927, F.S., relating to escape while in lawful custody; notice to victim; notice to the Department of Corrections and Parole Commission.

Section 7. Amends s. 775.084, F.S., relating to violent career criminals; felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedures; enhanced penalties or mandatory minimum prison terms.

Section 8. Amends s. 775.16, F.S., relating to drug offenses; additional penalties.

Section 9. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 10. Amends s. 775.261, F.S., relating to the Florida Career Offender Registration Act.

Section 11. Amends s. 893.11, F.S., relating to suspension, revocation, and reinstatement of business and professional licenses.

Section 12. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 13. Amends s. 943.325, F.S., relating to DNA database.

Section 14. Amends s. 944.171, F.S., relating to housing of inmates.

Section 15. Amends s. 944.28, F.S., relating to forfeiture of gain-time and the right to earn gain-time in the future.

Section 16. Amends s. 944.291, F.S., relating to prisoner released by reason of gain-time allowances or attainment of provisional release date.

Section 17. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 18. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 19. Amends s. 944.608, F.S., relating to notification to Department of Law Enforcement of information on career offenders.

Section 20. Amends s. 944.70, F.S., relating to conditions for release from incarceration.

Section 21. Amends s. 945.36, F.S., relating to exemption from health testing regulation form law enforcement personnel conducting drug tests on inmates and releasees.

Section 22. Amends s. 947.071, F.S., relating to rulemaking procedures; indexing of orders.

Section 23. Amends s. 947.13, F.S., relating to powers and duties of commission.

Section 24. Amends s. 947.141, F.S., relating to violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.

Section 25. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 26. Amends s. 947.22, F.S., relating to authority to arrest parole violators with or without warrant.

Section 27. Amends s. 947.24, F.S., relating to discharge from parole supervision or release supervision.

Section 28. Amends s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 29. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 30. Amends s. 948.32, F.S., relating to requirements of law enforcement agency upon arrest of persons for certain sex offenses.

Section 31. Amends s. 957.06, F.S., relating to powers and duties not delegable to contractor.

Section 32. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The commission reports that they will need \$47,429 in FY 14-15 to hire one FTE (Parole Tech II).¹⁶

DOC reports that the bill will have a \$19.2 million dollar impact on the department over the next seven years.¹⁷ The impact is delayed because the bill requires mandatory supervision for offenses committed on or after October 1, 2013. An offender who meets the bill's criteria for mandatory supervision would have to commit an offense, be sentenced to DOC, and serve at least 85 percent of their prison sentence before the bill's provisions took effect. DOC estimates that approximately half of the offenders released during the first 7 years of mandatory supervision will spend less than 90 days on mandatory supervision.¹⁸

¹⁶ *Proposal Analysis and Economic Impact, 2013 Legislative Session*, Florida Parole Commission, February 18, 2013 (on file with Criminal Justice Subcommittee).

¹⁷ *Surpa* note 1.

¹⁸ *Id.*

As reflected in the chart below, the number of offenders on mandatory supervision would increase over time. Additionally, requirements of mandatory supervision will likely lead to more technical and new law violations.¹⁹ According to DOC, the current recidivism rate for offenders released with no supervision is 25 percent.²⁰ In contrast, the recidivism rate for offenders on probation or community control (resulting from a split sentence) is 41 percent and for offenders on conditional release is 53 percent.

If an offender on mandatory supervision does violate that supervision and is sent back to prison, they would have to go through a DOC reception center, which have higher per diem rates than other facilities. The chart below uses the per diem rate that applies to the average adult male inmate (\$49.24) however, DOC reports that the average per diem rate for its reception centers is \$89.03.²¹ DOC's Bureau of Research and Data Analysis provided the following using the current recidivism rate for inmates released to conditional release from 2003-2010 (53 percent):²²

Year	Additional Supervision Caseload (Average Population for Year)	Additional Inmates (Average Population for Year)
1	2	0
2	81	14
3	270	48
4	476	84
5	698	123
6	887	157
7	1037	183

TOTAL FISCAL IMPACT

Prison (Inmates)		Net ADP	Cumulative ADP	Per Diem*	Recurring	Total
Year One	2013-14	-	-	\$ 51.58	\$ -	\$ -
Year Two	2014-15	14	14	\$ 52.71	\$ 269,348	\$ 269,348
Year Three	2015-16	34	48	\$ 53.66	\$ 940,123	\$ 940,123
Year Four	2016-17	36	84	\$ 54.57	\$ 1,673,116	\$ 1,673,116
Year Five	2017-18	39	123	\$ 55.66	\$ 2,498,856	\$ 2,498,856
Year Six	2018-19	34	157	\$ 56.72	\$ 3,250,340	\$ 3,250,340
Year Seven	2019-20	26	183	\$ 57.80	\$ 3,860,751	\$ 3,860,751
Total					\$ 12,492,534	\$ 12,492,534

Supervision (Offenders)		Net ADP	Cumulative ADP	Per Diem*	Recurring	Total
Year One	2013-14	2	2	\$ 4.77	\$ 3,482	\$ 3,482
Year Two	2014-15	79	81	\$ 4.87	\$ 143,982	\$ 143,982
Year Three	2015-16	189	270	\$ 4.96	\$ 488,808	\$ 488,808
Year Four	2016-17	206	476	\$ 5.04	\$ 875,650	\$ 875,650
Year Five	2017-18	222	698	\$ 5.14	\$ 1,309,518	\$ 1,309,518
Year Six	2018-19	189	887	\$ 5.24	\$ 1,696,476	\$ 1,696,476
Year Seven	2019-20	150	1,037	\$ 5.34	\$ 2,021,217	\$ 2,021,217
Total					\$ 6,539,132	\$ 6,539,132

Total Inmate & Offenders		Recurring	Total
Year One	2013-14	\$ 3,482	\$ 3,482
Year Two	2014-15	\$ 413,330	\$ 413,330

¹⁹ *Id.*

²⁰ *Id.*

²¹ DOC response email for data, March 13, 2013 (on file with the Criminal Justice Subcommittee).

²² *Surpa* note 1.

Year Three	2015-16	\$ 1,428,931	\$ 1,428,931
Year Four	2016-17	\$ 2,548,766	\$ 2,548,766
Year Five	2017-18	\$ 3,808,374	\$ 3,808,374
Year Six	2018-19	\$ 4,946,816	\$ 4,946,816
Year Seven	2019-20	\$ 5,881,968	\$ 5,881,968
Total		\$ 19,031,666	\$ 19,031,666
OIT Costs	2013-14	\$ 221,000	\$ 221,000
Grand Total		\$ 19,252,666	\$ 19,252,666

The department currently has sufficient bed capacity. If bill impact is large enough to trigger construction, the department currently has a three-year schedule for new prison construction from funding date.

**Per Diem excludes indirect costs; all costs are indexed to Consumer Price Index.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues

2. Expenditures:

The bill may have a negative jail bed impact due to the increased violations of offenders on mandatory supervision.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 947.1405(9), F.S., provides the commission with rulemaking authority to implement the provisions of the conditional release program. The bill makes a conforming change to s. 947.1405(9), F.S., to refer to the conditional release program as the mandatory supervision program. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. There is a typographical error on page 2, line 43, that can be corrected by removing the term "supervision."

2. The bill renames the “conditional release program” the “mandatory supervision program.” This may result in inmates who are currently, or who have formerly, been on conditional release, arguing that the multitude of statutes referring to mandatory supervision, no longer apply to them.

For example, Section 7 of the bill makes the name conforming change to s. 775.084, F.S., relating to habitual felony offenders, violent career criminals, etc. This change could affect a state attorney’s ability to classify current and former conditional releasees under s. 775.084, F.S., because one of the criteria for such classification hinges on whether the person committed a crime within five years of the end of their conditional release supervision. If conditional release no longer exists in statute, only mandatory supervision, which the offender was never on, then state attorney’s may not be able to classify them under s. 775.084, F.S.

3. Section 12 of the bill makes a conforming change to s. 943.0435, F.S., however the bill leaves out subsection (1)(b) of the statute, which also needs the conforming change.
4. Section 20 of the bill makes a conforming change to s. 944.70, F.S., however the bill leaves out subsection (1)(b) of the statute, which also needs the conforming change.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment changed the language of the legislative findings in Section 1. The second amendment requires the commission and DOC to develop a report to track the rate of return of offenders placed on mandatory supervision to prison.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.