

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 69 Parole Eligibility

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee, Hart and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Parole is a form of discretionary release that allows certain offenders to serve the remainder of their court-imposed sentences in the community under strict supervision. The Florida Commission on Offender Review (FCOR) is a three-member body that administers parole in Florida. FCOR's powers and duties, as it relates to parole, include:

- Determining which persons shall be placed on parole;
- Fixing the time and conditions of parole;
- Determining whether a person has violated parole and taking action with respect to such violation; and
- Making such investigations as may be necessary.

CS/HB 69 adds legislative intent to the parole statute, s. 947.002, F.S., to require FCOR to consider an inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in its decision to parole an inmate from the incarcerative portion of the inmate's sentence. This is consistent with existing intent language which requires FCOR to use objective parole criteria and to consider an inmate's risk of recidivism when making a parole determination.

The bill creates s. 947.136, F.S., to require FCOR to partner with the Department of Corrections (DOC) to jointly develop a voluntary long-term inmate program for parole-eligible male and female inmates to prepare such inmates for reintegration into the community. The long-term inmate program must provide evidence-based programming to inmates who are within three years of their presumptive parole release date, as established by FCOR.

Prior to enrollment in the long-term inmate program, the bill requires FCOR to refer inmates for participation in the program. FCOR may consider inmates who:

- Do not have factors, as identified in rule, which would preclude placement at an institution operating a long-term inmate program; and
- Are serving a parole-eligible sentence.

Inmates who have subsequently received a parole-ineligible sentence may be considered for participation in the long-term inmate program on a case-by-case basis.

To successfully complete the program, the bill requires a participant to, at a minimum:

- Complete at least 250 hours of community service projects, approved by DOC;
- Participate in at least 100 hours of enrichment programs, as defined by rule; and
- Complete specified evidence-based curriculum.

Under the bill, an inmate who fails to perform the duties and assignments as instructed may be removed from the program. Successful completion of the program does not guarantee that an inmate will be paroled.

According to DOC, the estimated cost to implement the bill will be \$818,452.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Parole

Parole is a form of discretionary release that allows certain offenders to serve the remainder of their court-imposed sentences in the community under strict supervision. The Florida Commission on Offender Release (FCOR) is a three-member body that administers parole in Florida.<sup>1</sup> FCOR's powers and duties, as it relates to parole, include:

- Determining what persons shall be placed on parole;
- Fixing the time and conditions of parole;
- Determining whether a person has violated parole and taking action with respect to such violation; and
- Making such investigations as may be necessary.<sup>2</sup>

In Florida, parole is limited and the only inmates who are eligible for parole consideration are those who committed:

- Any felony prior to October 1, 1983, or those who elected to be sentenced outside the sentencing guidelines for felonies committed prior to July 1, 1984;
- A capital felony prior to October 1, 1995, except:
  - Murder or felony murder committed after May 25, 1994;
  - Making, possessing, throwing, placing, or discharging a destructive device or attempting to do so which results in the death of another after May 25, 1994;
  - First degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
  - First degree murder of a justice or judge committed after October 1, 1990;
- Any continuing criminal enterprise before June 7, 1993; and
- Any attempted murder of a law enforcement officer between October 1, 1988 and October 1, 1995.<sup>3</sup>

As of March 19, 2021, there were approximately 3,722 inmates who were serving a parole-eligible sentence; however, roughly 596 of these inmates also have a parole-ineligible life sentence which renders them disqualified for release on parole.<sup>4</sup> Of the remaining 3,126 parole-eligible inmates, 79 are female.<sup>5</sup> In Fiscal Year 2019-20, FCOR made 1,419 parole determinations and granted parole to 41 inmates.<sup>6</sup> As of February 10, 2021, there were 403 releasees on parole supervision.<sup>7</sup>

The decision to grant parole is an act of grace of the state and is not considered a right.<sup>8</sup> FCOR has established objective parole guidelines to guide its parole decisions, including setting a presumptive parole date for eligible offenders.<sup>9</sup> The presumptive parole date, which is the tentative date an eligible offender may be released, can change, with FCOR deciding to modify or suspend it.<sup>10</sup>

In making a determination whether to grant parole, FCOR must find that the inmate, if released on parole, will live and conduct himself or herself as a respectable law-abiding person and that the

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<sup>1</sup> S. 947.01, F.S.

<sup>2</sup> S. 947.13, F.S.

<sup>3</sup> Florida Department of Corrections, Agency Analysis of 2021 Senate Bill 620, p.4 (Mar. 26, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Florida Commission on Offender Review, Agency Analysis of 2021 House Bill 69, p. 2 (Feb. 10, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> S. 947.002(5), F.S.

<sup>9</sup> S. 947.165, F.S. See also Rr. 23-21.007-21.011, F.A.C.

<sup>10</sup> *Id.*

inmate's release will be compatible with his or her own welfare and the welfare of society.<sup>11</sup> FCOR must also be satisfied that the parolee will be suitably employed in self-sustaining employment or that he or she will not become a public charge.<sup>12</sup>

If FCOR grants an inmate parole, it must determine the inmate's conditions of release.<sup>13</sup> FCOR has adopted standard conditions of parole in rule; however, FCOR has authority to impose special conditions of parole.<sup>14</sup> Payment of any debt due and owing to the state, as well as any payment of attorney fees and costs due and owed to the state must also be a condition of parole, as well as the payment of any other fines, fees, restitution, or other court-ordered costs.<sup>15</sup>

FCOR must provide the inmate with a certified copy of the terms and conditions of his or her parole once it authorizes the actual parole release date.<sup>16</sup> If a parolee violates the terms of parole, he or she is subject to arrest and returned to prison to serve out the term for which the parolee was sentenced.<sup>17</sup> Within 30 days of an arrest of a person charged with a violation of the terms and conditions of his or her parole, the parolee is entitled to a preliminary hearing to determine if probable cause exists to believe that the parolee has committed such violation.<sup>18</sup> If probable cause is found, a final revocation hearing is convened to determine if the parole violation charge is sustained. If FCOR finds the parolee in violation, it may:

- Revoke parole and return the parolee to prison to serve the remainder of the sentence imposed;
- Reinstate the original order of parole;
- Order the placement of the parolee into a community control program; or
- Enter such other order as is proper.<sup>19</sup>

## Department of Corrections

### *Office of Programs and Re-Entry*

The Office of Programs and Re-Entry (Office), within DOC, provides programming for productive learning, positively transforming behaviors, and teaching pro-social skills that assist with re-integration into communities.<sup>20</sup> The Office operates four sections:

- The Bureau of Program Development develops and implements technology used by institutions, community corrections, and community stakeholders to provide information about offenders.<sup>21</sup>
- The Bureau of Substance Abuse Treatment offers services and develops and fosters resources to facilitate successful reintegration from prison into the community.<sup>22</sup>
- The Bureau of Education provides opportunities to inmates, such as academic education, career and technical education, library services, transition programs, and services specific to the special needs of youthful offenders.<sup>23</sup>
- Chaplaincy and Volunteer Services provides for the spiritual needs of inmates and coordinates religious education.<sup>24</sup>

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<sup>11</sup> S. 947.18, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> R. 23-21.0165, F.A.C.

<sup>15</sup> *Id.* and s. 947.18, F.S.

<sup>16</sup> S. 947.19, F.S.

<sup>17</sup> S. 947.21, F.S.

<sup>18</sup> S. 947.23(1), F.S.

<sup>19</sup> S. 947.23(2)–(5), F.S.

<sup>20</sup> Florida Department of Corrections, *Office of Programs and Re-Entry*, <http://www.dc.state.fl.us/development/index.html> (last visited Apr. 1, 2021).

<sup>21</sup> Florida Department of Corrections, *Bureau of Program Development*, <http://www.dc.state.fl.us/development/applied.html> (last visited Apr. 1, 2021).

<sup>22</sup> Florida Department of Corrections, *Bureau of Substance Use Treatment*, <http://www.dc.state.fl.us/development/readiness.html> (last visited Apr. 1, 2021).

<sup>23</sup> Florida Department of Corrections, *Bureau of Education*, <http://www.dc.state.fl.us/development/programs.html> (last visited Apr. 1, 2021).

<sup>24</sup> Florida Department of Corrections, *Chaplaincy and Volunteer Services*, <http://www.dc.state.fl.us/development/chaplaincy.html> (last visited Apr. 1, 2021).

## Programs for Parole-Eligible Inmates

Inmates incarcerated in DOC institutions generally have access to educational opportunities at faith- and character-based programs.<sup>25</sup> The goals of the programs are criminal rehabilitation, the successful reintegration of offenders into the community, and the reduction of recidivism.<sup>26</sup> These programs must emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.<sup>27</sup>

A lifer's program is a reentry/transition program for long-term offenders that offers life skills and other social and educational courses to prepare them for successful reintegration into the community, and includes such courses as:

- Critical thinking;
- Problem solving;
- Substance abuse;
- Mental health;
- Stress/Anger management;
- Conflict resolution; and
- Life planning and goal setting.<sup>28</sup>

According to DOC, the New River Correctional Institution, which houses adult male inmates, is the only prison that offers a lifer's program, called the "Pathways Program." The Bureau of Education developed the program and the academic staff at the facility administers the program.<sup>29</sup> Program participants must:

- Complete at least 250 hours of community service activities, such as leading enrichment or wellness activities or tutoring other participants in academics;
- Participate for 100 hours in an enrichment program which may include activities such as art expression or creative writing; and
- Complete the available courses within each of the following paths:
  - Academic Path, which offers adult basic education and GED preparation;
  - Cognitive Path, which offers a cognitive-behavioral curriculum and includes courses that address anger management, communication skills, and critical thinking;
  - Employment Path, which offers financial literacy, computer literacy, employability, and a 100-hour course that covers job readiness and life management skills; and
  - Wellness Path, which offers courses on parenting, lifestyle and wellness, and transition elements, and a men-only workshop that addresses sensitive topics of relationships, sexuality, and intimacy.<sup>30</sup>

The program is available to parole-eligible male inmates recommend by FCOR, which typically refers an inmate as he approaches his presumptive parole release date.<sup>31</sup> Completion of the program does not guarantee that a participant will be granted parole nor does it lengthen the participant's remaining sentence time.<sup>32</sup>

Although parole-eligible female inmates do not have access to the lifer's program, all female inmates have access to the faith-and character-based programs.<sup>33</sup>

### Effect of Proposed Changes

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<sup>25</sup> *Id.*

<sup>26</sup> S. 944.803(7), F.S.

<sup>27</sup> S. 944.803(4)(b), F.S.

<sup>28</sup> Florida Commission on Offender Review, Agency Analysis of 2021 House Bill 69, p. 2 (Feb. 10, 2021).

<sup>29</sup> Florida Department of Corrections, Agency Analysis of 2021 Senate Bill 620, p.4 (Mar. 26, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

CS/HB 69 adds legislative intent to the parole statute, s. 947.002, F.S., to require FCOR to consider an inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in its decision to parole an inmate from the incarceration portion of the inmate's sentence. This is consistent with existing intent language which requires FCOR to use objective parole criteria and to consider an inmate's risk of recidivism when making a parole determination.

The bill creates s. 947.136, F.S., to require FCOR to partner with DOC to jointly develop a voluntary long-term inmate program for parole-eligible male and female inmates to prepare the inmates for reintegration into the community. The long-term inmate program must provide evidence-based programming to inmates who are within three years of their presumptive parole release date, as established by FCOR.

Prior to enrollment in the long-term inmate program, the bill requires FCOR to refer inmates for participation in the program. FCOR may consider inmates who:

- Do not have factors, as identified in rule, which would preclude placement at an institution operating a long-term inmate program; and
- Are serving a parole-eligible sentence.

Inmates who have subsequently received a parole-ineligible sentence may be considered for participation in the long-term inmate program on a case-by-case basis.

To successfully complete the program, the bill requires a participant to, at a minimum:

- Complete at least 250 hours of community service projects, approved by DOC;
- Participate in at least 100 hours of enrichment programs, as defined by rule; and
- Complete an evidence-based curriculum, as provided in rule, that, at a minimum, addresses:
  - Anger management;
  - Criminal thinking;
  - Educational and vocational needs;
  - Family relationships;
  - Lifestyle and wellness;
  - Substance use disorder treatment; and
  - Victim impact.

The bill provides that an inmate who fails to perform the duties and assignments as instructed may be removed from the program. Upon successful completion of the long-term inmate program, the bill requires an inmate to be awarded a certificate of completion. Successful completion of the program does not guarantee that an inmate will be paroled and program participation may not extend the length of an inmate's sentence.

The bill provides an effective date of July 1, 2021.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 947.002, F.S., relating to intent.

**Section 2:** Creates s. 947.136, F.S., relating to long-term inmate program.

**Section 3:** Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

According to DOC, implementing the bill will require 11 FTE positions.<sup>34</sup> DOC estimates the total cost to implement the bill is \$818,452.<sup>35</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants FCOR and DOC rule-making authority necessary to implement the long-term inmate program created by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 1, 2021, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Revised legislative intent to require FCOR to consider an inmate's institutional achievements, lack of disciplinary reports, and lack of risk to the public when making a parole determination.
- Expanded provisions in the original bill requiring DOC and FCOR to jointly create a lifer's program, by requiring FCOR and DOC to create a long-term inmate program and providing eligibility and program requirements for the long-term inmate program.
- Deleted a provision requiring FCOR to expedite specified inmates through a lifer's program.

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

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<sup>34</sup> Florida Department of Corrections, Agency Analysis of 2021 Senate Bill 620, p.4 (Mar. 26, 2021).

<sup>35</sup> *Id.*