

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 454

INTRODUCER: Senator Perry

SUBJECT: Florida Commission on Offender Review

DATE: January 11, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 454 increases the rate of payment for retired or former commissioners of the Florida Commission on Offender Review (FCOR) from \$100 to \$200 per day or portion of day, when they are assigned to temporary duty due to a workload need.

The bill will have an insignificant, negative fiscal impact on the General Revenue Fund. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

### Florida Commission on Offender Review

The FCOR is comprised of three members, who are appointed by the Governor and Cabinet and confirmed by the Florida Senate.<sup>1</sup> Members are appointed for six years and may not serve more than two consecutive 6-year terms.<sup>2</sup>

The FCOR functions as a quasi-judicial body that makes a variety of decisions involving parole, conditional release, and medical conditional release,<sup>3</sup> and also operates as the administrative arm and investigative arm of the Clemency Board.<sup>4</sup>

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<sup>1</sup> Sections 947.01 and 947.02(2), F.S.

<sup>2</sup> Section 947.03, F.S.

<sup>3</sup> Florida Commission on Offender Review, *Organization Overview*, available at <https://www.fcor.state.fl.us/overview.shtml> (last visited October 26, 2021).

<sup>4</sup> Florida Commission on Offender Review, *2020 Annual Report*, p. 5, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202020.pdf> (last visited October 26, 2021). The Clemency Board is comprised of the Governor and members of the Cabinet, which includes the Attorney General, the Commissioner of Agriculture, and the Chief Financial Officer. The Clemency Board is constitutionally authorized to provide full or partial

### *Parole*

Parole is a discretionary release that allows certain offenders to serve the remainder of their court-imposed sentences in the community under strict supervision. The 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 a violation; and
- Making such investigations as may be necessary.<sup>5</sup>

In 1983, sentencing guidelines were enacted and effectively abolished parole for those offenders who were sentenced for crimes committed on or after October 1, 1983;<sup>6</sup> thus, 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 capitol 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 resulted in the death of another person 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 committed before June 17, 1993; or
- Any attempted murder of a law enforcement officer committed between October 1, 1988, and October 1, 1995.<sup>7</sup>

On June 30, 2020, there were 3,959 inmates who were eligible for parole and 424 releasees on parole supervision.<sup>8</sup> In Fiscal Year 2019–2020, the FCOR made 1,419 parole determinations and granted parole to 41 inmates. In Fiscal Year 2019-2020, the FCOR also made 1,443 revocation determinations.<sup>9</sup>

For each parole-eligible inmate, the FCOR must hold an initial parole interview within a certain timeframe,<sup>10</sup> and establish a presumptive parole release date.<sup>11</sup> The FCOR must also hold subsequent interviews with each parole-eligible inmate at certain time intervals to re-evaluate the

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pardons, sentence commutations, remissions of fines and forfeitures, restorations of civil rights, restorations of alien status under Florida law, specific authority to own, possess, or use firearms, and capital case (death penalty) reviews.

<sup>5</sup> Section 947.13, F.S.

<sup>6</sup> Florida Commission on Offender Review, *Release Types: Parole*, available at <https://www.fcor.state.fl.us/release-types.shtml> (last visited November 4, 2021).

<sup>7</sup> *Supra* note 4 at p. 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Supra* note 4 at p. 8.

<sup>10</sup> Section 947.16, F.S.

<sup>11</sup> Section 947.172, F.S. “Presumptive parole release date” is the tentative parole release date as determined by the objective parole guidelines. *See* s. 947.005(8), F.S.

presumptive parole release date.<sup>12</sup> Within 90 days of the presumptive parole release date, the FCOR must meet with the inmate to establish the *effective* parole release date and a release plan.<sup>13</sup>

Once an inmate is paroled, he or she is subject to the conditions imposed by the FCOR.<sup>14</sup> At least two commissioners must review the progress of a parolee after two years of supervision in the community and at least biennially thereafter.<sup>15</sup> If a parolee violates the conditions of parole or is subsequently arrested, the FCOR may hold hearings to determine if parole may be restored or if it is to be revoked.<sup>16</sup>

### ***Conditional Release***

Conditional release is a non-discretionary release program that requires mandatory post-prison supervision of inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, who are sentenced as habitual offenders, violent habitual offenders, violent career criminals, or designated sexual predators.<sup>17</sup> The FCOR must determine the terms and conditions of the conditional release and examine and dispose any alleged violations of such terms and conditions.<sup>18</sup>

In Fiscal Year 2019-2020, 5,317 inmates were placed on conditional release supervision and 2,945 inmates were under conditional release supervision on June 30, 2020.<sup>19</sup>

### ***Conditional Medical Release***

Conditional medical release (CMR) is a discretionary release program, in which the FCOR may authorize the release of inmates on supervision who are terminally ill or permanently incapacitated and who are not a danger to themselves or others.<sup>20</sup> The Department of Corrections (DOC) identifies and refers inmates who may be eligible for CMR to the FCOR for consideration. In considering whether to grant CMR, the FCOR may require medical evidence and other investigations to be made.

If CMR is granted, the FCOR must establish the terms and conditions of the release, including periodic medical evaluations at intervals determined by the FCOR.<sup>21</sup> The FCOR must also

<sup>12</sup> Section 947.174, F.S.

<sup>13</sup> Section 947.1745, F.S. The “effective parole release date” is the actual parole release date as determined by the presumptive parole release date, satisfactory institutional conduct, and an acceptable parole plan. *See* s. 947.005(5), F.S.

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

<sup>15</sup> *Id.*

<sup>16</sup> Rule 23-21.022, F.A.C. There is a preliminary hearing to determine probable cause and then there is a separate hearing on the final revocation of parole.

<sup>17</sup> *Supra* note 4 at 6, and s. 947.1405, F.S.

<sup>18</sup> Sections 947.1405(6), and 947.141, F.S.

<sup>19</sup> *Supra* note 4 at p. 6.

<sup>20</sup> Section 947.149, F.S. A “terminally ill inmate” is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or to others. A “permanently incapacitated inmate” is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself, himself, or others.

<sup>21</sup> Section 947.149(3) and (4), F.S.

examine and dispose of any alleged violations of such terms and conditions. The FCOR may also revoke the CMR if the releasee's medical or physical condition improves to the point that he or she no longer meets the CMR criteria.<sup>22</sup>

In the past three fiscal years, the DOC has referred 180 inmates to the FCOR for consideration for CMR. The FCOR has granted release to 94 inmates.<sup>23</sup> In Fiscal Year 2019-2020, the FCOR granted CMR to 35 of the 65 inmates referred to them by the DOC.

### **Temporary Commissioners**

Subject to the approval of the Governor and the Cabinet, current law authorizes the chair of the FCOR to assign retired or former commissioners to serve temporarily when there is a workload need.<sup>24</sup> These temporary commissioners are paid \$100 per day or portion of day spent on work for the FCOR.<sup>25</sup> They are also entitled to reimbursement for travel expenses in accordance with state law.<sup>26</sup>

Temporary commissioners serve when sitting commissioners are on annual or sick leave, or when a vacancy on the FCOR arises.<sup>27</sup> The temporary commissioner's duties include making public safety decisions, revocation decisions, release decisions, and issuing warrants for violations of the terms and conditions of supervision. Additionally, the temporary commissioners also require training on all new and relevant federal and state laws, FCOR rules, and FCOR policies and procedures.<sup>28</sup>

The pay for temporary commissioners has not changed since the authority to appoint such commissioners was enacted in law in 1983.<sup>29</sup> The 2021 Legislature added a provision to the Fiscal Year 2021-2022 Implementing Bill that permitted retired commissioners to be paid \$13 per hour; however, this provision expires July 1, 2021.<sup>30</sup> Over the last two years, the FCOR has utilized temporary commissioners 50 times each year.<sup>31</sup>

### **III. Effect of Proposed Changes:**

The bill increases the rate of payment for retired and former commissioners who serve temporarily from \$100 to \$200 per day or portion of day spent on work for the FCOR, when

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<sup>22</sup> Section 947.149(5), F.S.

<sup>23</sup> *Supra* note 4 at p. 6.

<sup>24</sup> Section 947.04, F.S.

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

<sup>26</sup> Section 112.061, F.S., governs the reimbursement of travel expenses.

<sup>27</sup> E-mail from Eric Carr, Director of Legislative Affairs, FCOR, (Nov. 4, 2021) (on file with the Senate Committee on Criminal Justice).

<sup>28</sup> *Id.*

<sup>29</sup> *See* ch. 83-131, s. 22, L.O.F. The original law authorized only retired commissioners to serve temporary duty; former commissioners were authorized to perform such duty in 1986, *see* ch. 86-183, s. 27, L.O.F.

<sup>30</sup> Ch. 2021-37, s. 68, subsection (2), Laws of Fla.

<sup>31</sup> E-mail from Eric Carr, Director of Legislative Affairs, FCOR, (Oct. 25, 2021) (on file with the Senate Committee on Criminal Justice).

there is a workforce need. According to the FCOR, the increase in the daily rate will also meet state minimum wage standards.<sup>32</sup>

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, the FCOR spends \$5,000 per year in OPS funding to pay temporary commissioners.<sup>33</sup> The FCOR is requesting an additional \$5,174 in recurring general revenue funding.<sup>34</sup>

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<sup>32</sup> Florida Commission on Offender Review, *2022 Agency Analysis of SB 454* (Oct. 21, 2021) (on file with the Senate Committee on Criminal Justice).

<sup>33</sup> *Supra* note 31.

<sup>34</sup> Florida Commission on Offender Review, *Legislative Budget Request for Fiscal Year 2022-23: Hearing Before the Fla. S. Comm. on Approp., Subcomm. on Crim. and Civ. Just.*, (Oct. 20, 2021), committee meeting packet available at [https://www.flsenate.gov/Committees/Show/ACJ/MeetingPacket/5289/9510\\_MeetingPacket\\_5289.pdf](https://www.flsenate.gov/Committees/Show/ACJ/MeetingPacket/5289/9510_MeetingPacket_5289.pdf) (last visited November 4, 2021).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 947.04 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.