

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2110

SPONSOR: Criminal Justice Committee and Senator Brown-Waite

SUBJECT: Parole Commission

DATE: April 25, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute directs the Florida Corrections Commission to research the impact of House Bill 2325, as reported favorably by the House Governmental Operations Committee on April 17, 2000. The report shall be submitted to the Executive Office of the Governor, the Speaker of the House of Representatives and the President of the Senate no later than December 1, 2000.

II. Present Situation:

The Parole Commission (Commission) was created under, and is governed by, the provisions in Chapter 947, F.S. The Commission performs a number of duties as the principal authority responsible for the administration of post-prison release programs as described below.

Conditional Release Program

The Legislature enacted the Conditional Release Program Act in 1988 which provides that certain inmates who are released from prison shall be supervised in the community.

(s. 947.1405, F.S.) The statute requires that *any* inmate who is convicted of a crime committed between October 1, 1988 and before January 1, 1994, *and* any inmate who is convicted of a crime committed on or after January 1, 1994 which falls into the sentencing guidelines categories 1 - 4 (murder, manslaughter, sexual offenses, robbery, violent personal crimes), *and* who has served at least one prior felony commitment in state or federal prison, *or* any inmate who is sentenced as a habitual or violent habitual offender or violent career criminal, *or* any inmate who is a sexual predator, shall be supervised under the conditional release program.

Special conditions of release on the conditional release program are statutorily imposed on inmates convicted of sex crimes under s. 947.1405(7)(a) and (b), F.S.

In 1997, s. 947.1405(8), F.S., was enacted which states:

“It is the finding of the Legislature that the population of offenders released from state prison into the community who meet the conditional release criteria poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, the Department of Corrections is to provide intensive supervision by experienced correctional probation officers to conditional release offenders. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 conditional release offenders per officer to provide for enhanced public safety and to effectively monitor conditions of electronic monitoring or curfews, if so ordered by the commission.”

Supervision of releasees on conditional release lasts for a period of time equal to the gain-time the inmate earned in prison.

- Terms and Conditions of Release

The Commission sets the terms and conditions of supervision for conditional releasees. Information is reviewed by the Commission for the purposes of verifying the inmate’s status, checking the inmate’s prison adjustment including program participation and disciplinary record, and obtaining the last known address of the victim for purposes of notification of impending release and interviewing the victim to determine the victim’s fear-level and any outstanding restitution issues.

The Commission interviews the inmate for the purposes of gathering information from the inmate about the inmate’s residential and employment plans upon release. The Commission’s examiner explains the Conditional Release Program to the inmate and has the inmate sign an Acknowledgment of Interview form. If the inmate plans to live out of state, the examiner has the inmate sign a Waiver of Extradition form.

The Commission reviews all the information gathered and sets the terms and conditions of release supervision which are geared toward victim protection and the inmate’s success in the community.

- Community Notification

As part of its function prior to an inmate’s release, the Commission notifies law enforcement and victims of the inmate’s impending release approximately six months prior to the release date. The arresting agency is likewise notified.

- Review of Releasee’s Progress

The Commission is charged with the responsibility of reviewing the status of each releasee after two years on release supervision and every two years thereafter. The Commission may modify the reporting schedule the releasee is subject to, or may terminate supervision if satisfactory rehabilitation and cooperation have been evident. s. 947.24, F.S.

- Revocation of Release

If a releasee is arrested on new criminal charges or otherwise violates the terms and conditions of conditional release, the Commission is notified and begins the revocation process. A warrant is prepared by the Commission in appropriate cases which is entered into the FCIC/NCIC database. Upon the arrest of the offender an interview is conducted by the Commission’s examiner at the

local detention facility. The offender is advised of his or her rights and a hearing is set unless the hearing is waived by the offender.

The examiner conducts the revocation hearing, usually at the local detention center where the offender is being held. The examiner issues subpoenas for the hearing and records the proceedings on a tape recorder. Legal counsel is rarely provided in conditional release revocation hearings because of the special nature of the hearing, as recognized by the U.S. Supreme Court in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). In *Scarpelli* the Court stated that, in parole revocation proceedings,

“[t]he introduction of counsel into a revocation proceeding will alter significantly the nature of the proceeding. If counsel is provided for the probationer or parolee, the State in turn will normally provide its own counsel; lawyers, by training and disposition, are advocates and bound by professional duty to present all available evidence and arguments in support of their clients’ positions and to contest with vigor all adverse evidence and views. ... the decisionmaking process will be prolonged, and the financial cost to the State - for appointed counsel, counsel for the State, a longer record, and the possibility of judicial review - will not be insubstantial.” *Id.* at 787, 788.

The Court held that counsel need not be provided in parole revocation hearings of an informal nature, conducted by the agency that oversees the parolee’s reintegration into society, and where there are no formal rules of evidence. Rather, it is to be decided on a case-by-case basis whether the need for appointed counsel exists under the guidelines suggested in *Scarpelli*.

The examiner makes a report of the hearing which is reviewed by staff at the central office. A recommendation is then made to the Commission. The Commission makes the final determination as to whether to revoke the offender’s release supervision and return the offender to prison, retain the offender on supervision status, or terminate supervision in cases where the offender is not guilty of a violation and his or her maximum supervision date has been reached.

Parole

The Commission’s responsibilities under the Parole Program are very much like those under the Conditional Release Program described above. The primary difference is that parole is a discretionary early release program. Parole may or may not be granted by the Commission, after a public meeting. (s. 947.18, F.S.) Although parole was effectively abolished when sentencing guidelines were enacted, there are still parole-eligible inmates in prison as well as offenders who are currently on parole supervision, and therefore require periodic review and, potentially, revocation hearings and determinations as described in greater detail above.

Conditional Medical Release

As provided in s. 947.149, F.S., Conditional Medical Release is a discretionary release program administered by the Commission. Under this program an inmate who is found to be “permanently incapacitated” or “terminally ill,” under the statutory definitions, may be released under conditions set forth by the Commission. Consideration of these cases often requires expeditious review of medical information, victim notification, and decisionmaking by the Commission. Inmates released on Conditional Medical Release are subject to periodic review by the Commission and can have

their status revoked if the releasee's condition improves or if there is a violation of release conditions.

Control Release

The Control Release Program is no longer operational for the purpose of releasing inmates, as it was a prison population management system that is not necessary at the present time. The Commission has responsibilities, which mirror those explained above under the Conditional Release section, with regard to inmates currently being supervised on Control Release status such as periodic review and revocation procedures.

Clemency

The Commission examiner conducts or coordinates investigations and provides support to the Clemency Board on cases involving pardons, firearm authority, commutation of sentences, remission of fines and forfeitures, and restoration of civil rights.

Post-Prison Supervision in the Community

The supervision of post-prison releasees in the community is the responsibility of the Department of Corrections' Correctional Probation Officers. According to the Department's Monthly Status Report for February 2000, as of February 29, 2000, there were 7,647 releasees on post-prison releasee supervision. For the same period, there were 196,659 offenders on community supervision under an original sentence (probation, community control, pretrial intervention).

Of the individuals under supervision, 48,466 had absconded from supervision, 5,350 were being supervised out of state, and 19,867 were on inactive status due to incarceration, drug treatment or hospital stays. A total of 130,850 individuals were being actively supervised as of February 29, 2000. Of those 130,850, there were 5,442 who were on post-prison releasee supervision status. According to the Department of Corrections, sex offender and post-prison releasee caseloads are combined for supervision by the same officers in the field. The statewide caseload average for those officers is 50.6 offenders and releasees on active supervision.

III. Effect of Proposed Changes:

The Committee Substitute directs the Florida Corrections Commission to research the impact of House Bill 2325, as reported favorably by the House Governmental Operations Committee on April 17, 2000. The report is to be submitted to the President of the Senate, the Speaker of the House, and the Executive Office of the Governor by December 1, 2000.

The research should include the fiscal impact on the following entities:

- the State Court System
- the Department of Corrections
- the Parole Commission
- county detention facilities
- State Prosecutors and

- Public Defenders.

The study should identify savings which could result from the Parole Commission reorganization and *compare* any savings to the estimated costs and any public safety benefits of providing mandatory post-prison supervision for *all* prisoners.

The Florida Corrections Commission is directed to consult with the following entities in preparing its report:

- House Criminal Justice Appropriations Committee
- House Criminal Justice and Corrections Council
- Senate Criminal Justice Committee
- Senate Fiscal Group
- Department of Legal Affairs
- Executive Office of the Governor
- Office of the State Courts Administrator
- Florida Sheriff's Association
- Department of Corrections
- Florida Prosecuting Attorneys Association
- Public Defender Association
- Florida Parole Commission

and any other appropriate entities or persons.

House Bill 2325 as reported favorably by the House Governmental Operations Committee would phase out the current Conditional Release Program, shifting the revocation process for post-prison supervision violations to the court system, and reorganizing the Parole Commission so that the Department of Corrections performs many of its current duties.

House Bill 2325 also increases the number of offenders who are supervised when they leave prison by creating the Mandatory Postprison Probation Program. In effect, this Program requires all inmates to be supervised in the community upon leaving prison. Those inmates who have less than 60 days remaining on their sentences would be placed on Administrative (non-reporting) Probation. The term of the postprison supervision would be the length of time remaining on the inmate's sentence, which is essentially the gain-time credits earned. The sentencing court would impose the mandatory postprison probation, thereby eliminating the Conditional Release functions currently performed by the Parole Commission. The probation office and the court system, including public defenders and state attorneys, would assume the responsibility for the revocation process for those offenders who violate the terms of postprison probation.

The House Bill closes the window on the Conditional Release Program in that inmates currently on supervision who violate their conditions of release would be dealt with in the court system rather than by the Parole Commission. Those inmates who become eligible for Conditional Release will have their cases handled administratively by the Department of Corrections rather than the Parole Commission, although the Commission would still set the terms and conditions of release.

The House Bill would eliminate the Commission's inspector general, planning officer and planning section as well as allowing the remaining Commission staff to be housed with the Department of

Corrections. The Department of Corrections would assume responsibility for administrative support for the Commission and process the Commission's expense reimbursements. The House bill would change the name of the Parole Commission to Parole Board.

The House bill provides for the Parole Commission to set a mandatory eight-hour curfew for sex-offenders on conditional release, allowing for some flexibility in the terms of the curfew, and eliminates the court's involvement in that process. The removal of the court from the process recognizes the fact that when an inmate is being released on Conditional Release, it is the Parole Commission setting the guidelines, not the court, because the inmate is not before a court at that point. The House bill also removes out-dated language referring to probation supervisors and replacing it with the more current term probation officer.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

The study required by the Committee Substitute should have no fiscal impact. The fiscal impact of House Bill 2325 is to be determined by the study. The study should compare the presumed savings from shifting the Parole Commission's duties and responsibilities, with the costs incurred by the Department of Corrections, the State Attorneys, the Public Defenders and the State Court System absorbing those duties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
