

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL:           SJR 528  
 SPONSOR:       Senator Burt  
 SUBJECT:       Parole Commission  
 DATE:           February 19, 2001       REVISED:       \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gardner	Cannon	CJ	Favorable
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Article IV, Section 8(c), of the Florida Constitution, currently contains language saying the state may create a “parole *and probation* commission with power to *supervise persons on probation and* to grant paroles or conditional releases to persons under sentences for crime.” This joint resolution to amend the state constitution would delete those italicized words, thus making the language in the constitution more closely conform to the current practice in the law. The Florida Parole Commission (commission) is no longer involved in probation, and does not actually supervise persons on any form of parole, probation, or postprison release. That supervision function is handled by the Office of Community Corrections under the Department of Corrections (department), which supervises all persons on postprison supervision, including those released by the commission.

This bill substantially amends the following section of the Florida Constitution: Article IV, Section 8(c).

## II. Present Situation:

In the 2000 legislative session, HB 2325 was introduced, but did not pass the Legislature. HB 2325 would have required postprison supervision for all inmates granted early release by gaintime and would have made other changes to the commission’s structure and function. As a result of the bill’s failure to pass, the Governor and Cabinet passed a resolution authorizing the Florida Corrections Commission (FCC) to study the potential impact of HB 2325. In its report, the FCC recommended, among other things, amending the Florida Constitution by deleting the italicized words mentioned in the summary section of this analysis.

**A brief review of the Parole Commission** history reveals that Article IV, Section 8 of the state constitution authorized the state to create a parole and probation commission, which it did in

1941. The commission originally had control over all forms of community supervision, such as parole and probation. The commission was given broad discretion to set the rules governing an inmate's eligibility for parole. Management of the state's prisons was placed under the department of Health and Rehabilitative Services (HRS).

Since that time, there have been several changes made in the laws concerning the function of both the commission and the department, some of which relate to this joint resolution, such as:

- 1975 – The Division of Correction was removed from HRS and made into a separate agency named the Department of Offender Rehabilitation. See Chapter 75-49.
- 1975 – Parole and probation supervision field staff were moved from the commission to the new department.
- 1978 – The Mandatory Parole Guidelines Act limited the broad discretion of the commission by adding more details to the law concerning eligibility for parole.
- 1983 – The sentencing guidelines were enacted to:
  1. produce more uniform sentencing throughout the state by use of objective criteria; and
  2. establish gaintime within the department as a mechanism for early release.Companion legislation abolished parole for most crimes committed after October 1, 1983.
- 1988 – The Conditional Release Program was created to allow the department to supervise especially violent or repeat offenders who are granted early release through gaintime. While the department supervises all persons on whatever form of probation and postprison supervision, the commission is responsible for interviewing the inmate to be put on conditional release and setting the terms of that supervision.

During the past 25 years, the Legislature created two other postprison programs, which, along with parole were placed under the commission's quasi-judicial oversight: control release, which is no longer used, and conditional medical release, which affects about 12 prisoners at any given time. The commission also acts as the investigative arm of the Governor and Cabinet in clemency matters, sitting as the Board of Executive Clemency.

**The Florida Corrections Commission made several recommendations** to restructure the commission and shift some administrative functions to the department's Office of Community Corrections and Classifications. The FCC also determined that the commission's current function differs from the constitutional language in Article IV, Section 8(c), which authorized the state to create a parole and probation commission.

### III. Effect of Proposed Changes:

The first effect of SJR 528 would be to place a constitutional amendment on the ballot for voter approval. This amendment would delete eight words that no longer conform to the current state of the law. The new wording of Article IV, Section 8(c) would leave the constitution silent on the way the state handles community supervision; however, the amendment would not have an effect on the day to day function of the commission or any other state agency.

**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:**

As stated above in the history of the commission, the Legislature created the Department of Offender Rehabilitation in 1975. Chapter 75-49 took the Division of Corrections from HRS and all “non-quasi-judicial” functions (community supervision) from the commission, and combined these state functions into that new agency, now called the Department of Corrections.

Three groups of people brought suit in circuit court to have the new law declared unconstitutional because of the conflict with Article IV, Section 8(c). The plaintiffs were a minority of the parole commissioners, some field employees from the commission who were being absorbed into the new department, and some probationers who would be supervised by the department. The defendants were a variety of state officials responsible for enforcing the new law.

The Florida Supreme Court noted that the issue presented two questions before the court: whether the plaintiffs had standing to bring the action, and whether Chapter 75-49 violated Article IV, Section 8(c). *Williams v. Howard*, 329 So.2d 277 (Fla.1976). Because the court determined that the plaintiffs lacked standing, the court did not address the constitutionality question. The plaintiffs lacked standing because they could not demonstrate, “that their rights will be adversely affected, much less the nature or type of injury they might sustain.” 329 So.2d at 281. The court said the plaintiffs were only able to allege the possibility of injury which may or may not occur. The court’s ruling had the effect of dismissing the plaintiff’s cause of action.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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