

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: SB 530

SPONSOR: Senator Geller

SUBJECT: Parole for Juveniles

DATE: March 29, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Unfavorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>CF</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the possibility of parole release for persons who commit crimes punishable by death or life imprisonment when they are 15 years old or younger. The bill excludes an offender from parole eligibility if he or she had a prior adjudication for any of a number of specified offenses. Also, the bill provides that the offender must serve a minimum of 8 years in a youthful offender facility before becoming eligible for release.

The bill requires the Florida Parole Commission to conduct an initial interview within 8 months of the child's initial date of confinement in execution of the judgment, and every 2 years thereafter. An offender must be transferred to an adult prison if not paroled before reaching 25 years of age.

This bill substantially amends section 985.225, of the Florida Statutes.

II. Present Situation:

In recent years, several cases have called the public's attention to the way in which children who commit serious criminal offenses are dealt with by the legal system. Earlier this year, Florida received a great deal of media attention as a result of the case of Lionel Tate. In 2001, Tate was sentenced to imprisonment for life without the possibility of parole for the 1999 murder of a 6-year old family friend. He was only 12 years old at the time of the crime. In December 2003, Tate's conviction was overturned on appeal on the basis that his constitutional right to due process had been violated by the trial court's failure to order either a pre-trial or post-trial competency evaluation. *See Tate v. State, 864 So.2d 44 (Fla. 4th Dist. 2003)*. In the midst of intense public speculation about whether he should be retried, Tate accepted a plea agreement that resulted in his release. His case and other recent cases involving children accused or

convicted of committing serious crimes has generated serious discussion about appropriate public policy for dealing with children who commit serious crimes.

Most crimes committed by children are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A person who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. *See Tate, supra*. A juvenile who is fourteen or older at the time of committing certain felony offenses may be tried as an adult if a grand jury indictment is returned; if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.226, F.S.; or if the state attorney direct files an information in adult court pursuant to s. 985.227, F.S. Section 985.225, F.S., provides that a juvenile charged with an offense punishable by death or life imprisonment may not be tried as an adult unless a grand jury indictment is returned.

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections. As of June 30, 2003, there were 743 parolees on parole from Florida sentences.

Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. Parole is not available for most crimes that were committed on or after October 1, 1983. The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995. There is no parole eligibility for any crime committed on or after October 1, 1995. Approximately 5,200 Florida inmates are still eligible for parole consideration, including a small percentage who committed their parole-eligible crime when they were less than 18 years of age.

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a parole examiner reviews the inmate's file and makes an initial recommendation. The date of the initial interview depends upon the length and character of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of 7 to 15 years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. An inmate may request one review of the initial PPRD within 60 days after notification.

If the PPRD is more than 2 years after the date of the initial interview, in most cases a hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter. However, the statute provides for less frequent reviews for an inmate whose PPRD is more than 5 years from the date of the initial interview if he or she was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S. In such cases, the interview and review may be conducted every 5 years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each reinterview. At this hearing, the commission considers the written recommendation of the parole examiner, documentary evidence, and any testimony presented on behalf of the victim or the inmate. Although the inmate is not entitled to appear at the hearing, he or she may be represented by an attorney. It is also common for the victim or victim's representative and law enforcement representatives to appear.

The parole examiner conducts a final interview of the inmate within 90 days of the PPRD. The purpose is to establish an effective parole release date and a parole release plan. The commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.

If the sentencing court retained jurisdiction over the offender for purposes of reviewing a parole release order, the commission must send notice of the release order to the sentencing judge and state attorney within 30 days of entry of the order. Retention of jurisdiction is available to the sentencing judge for a number of violent crimes that are enumerated in s. 947.16(4), F.S. If the court enters an order vacating the release order, the court's order is not appealable.

An inmate whose parole release order has been vacated must be reinterviewed within 2 years after receipt of the vacated release order and 2 years thereafter. However, the reinterviews may be scheduled every 5 years if the inmate was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., and the commission makes a written finding that it is not reasonable to expect that parole will be granted.

Clemency

Executive Clemency is a power vested in the Governor by the Florida Constitution. Article IV, Section 8(a) of the Constitution provides:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

The Governor and members of the Cabinet collectively are the Clemency Board. Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposes. Although the Florida Parole Commission provides investigatory and administrative support to the Clemency Board, the executive clemency process is independent of the parole process.

The Governor has discretion to deny clemency at any time, for any reason. The Governor, with the approval of at least two members of the Clemency Board, has discretion to grant clemency at any time and for any reason. The Rules of Executive Clemency list the following types of clemency: full pardon; pardon without firearm authority; pardon for misdemeanor; commutation

of sentence; remission of fines and forfeitures; specific authority to own, possess, or use firearms; restoration of civil rights in Florida; and restoration of alien status under Florida law.

All of the preceding forms of clemency may be granted subject to various conditions. If the conditions of clemency are violated or breached, clemency may be revoked by the Clemency Board. When clemency is revoked, the offender is returned to the status that he or she had prior to receiving the conditional clemency.

The Rules of Executive Clemency provide that a person is not eligible for commutation of sentence unless at least two years have elapsed since conviction and he or she has served at least one-third of any minimum mandatory sentence. However, the governor may waive these requirements in cases of extraordinary merit and compelling need.

III. Effect of Proposed Changes:

The bill amends s. 985.225, F.S., to create a new subsection establishing parole eligibility for offenders who are found to have committed crimes punishable by death or life imprisonment prior to the age of 16.

The bill has an effective date of July 1, 2004, but does not expressly state whether it is to be applied retroactively to previously sentenced inmates. In the absence of an express legislative declaration of intent to apply a new statute retroactively, it is presumed that the law is to be applied prospectively. *See Metro. Dade County v. Chase Fed. Housing Corp.*, 737 So.2d 494 (Fla.1999). This presumption against retroactive application generally does not apply to remedial legislation. However, "if a statute accomplishes a remedial purpose by creating new substantive rights or imposing new legal burdens, the presumption against retroactivity would still apply." *Metro* at 499.

It can be anticipated that current inmates who are serving sentences for crimes committed when they were 15 years old or younger will seek a judicial finding that the legislation is remedial and that the bill's provisions are to be applied retroactively. Under current decisions regarding statutory interpretation, it appears that such an effort would be unsuccessful. However, it is possible that the courts may be less strict in applying the presumption against retroactivity in the case of a law that is clearly advantageous to persons who committed crimes at a young age. An intermediate ground is that the law would apply prospectively, with current inmates who otherwise meet eligibility criteria eligible for parole consideration after serving 8 additional years beyond the bill's effective date.

If the bill only applies prospectively to offenders who commit crimes on or after July 1, 2004, no one could be eligible for parole release until the latter half of 2012.

Although it is likely that the courts will construe the bill to apply prospectively, the current inmate population provides a snapshot of the numbers of children who are incarcerated for committing serious crimes. As of February 29, 2004, there were 441 inmates in the custody of the Department of Corrections for an offense that is punishable by life imprisonment and that was committed when the inmate was 15 years of age or younger. The Office of Economic and Demographic Research estimates that approximately 126 of these inmates will not have a

disqualifying prior conviction and will have served at least 8 years in prison as of the bill's July 1, 2004, effective date. These 126 inmates would be eligible for immediate parole consideration if the bill were given retroactive effect.

Apart from the issue of retroactivity, an offender would not be eligible for parole under the bill if previously adjudicated for a violation of:

1. Any offense specified in s. 775.084(1)(b)1, F.S., which includes arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, or aggravated stalking.
2. Battery pursuant to s. 784.03, F.S.
3. Child abuse pursuant to s. 827.03, F.S.
4. Cruelty to animals pursuant to s. 828.12, F.S.

The bill requires that an offender who otherwise meets the parole eligibility criteria would not be eligible for parole release until serving a minimum of 8 years in a youthful offender facility. It also requires that an offender be transferred from the youthful offender facility to an adult facility upon reaching 25 years of age without being paroled. If the requirement for serving 8 years in a youthful offender facility is strictly construed, the interplay of these two provisions requires that a child be convicted, sentenced, and incarcerated in a youthful offender facility prior to the age of 17 in order to meet the parole eligibility condition of serving 8 years in a youthful offender facility.

The bill provides for the Parole Commission to review the offender for release in accordance with the procedures set forth in s. 947.17, F.S. However, the interview schedule is accelerated so that the commission must conduct an initial interview within 8 months after the initial date of confinement in execution of the sentence and every 2 years thereafter.

Section 2 of the bill provides an effective date of July 1, 2004. Because the provisions of the bill do not work to the disadvantage of offenders, there is no prohibition against retroactive application to currently incarcerated offenders who meet the eligibility requirements.

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:

None.

C. Government Sector Impact:

The Florida Parole Commission anticipates that it will need an additional FTE position in order to implement the interviewing provisions of the bill, at a recurring annual cost of \$43,876. There is also the potential for the state to incur litigation costs relating to inmate's efforts to seek retroactive application of the bill's provisions. In addition, there is a potential fiscal impact if the bill results in the placement of more inmates in youthful offender facilities.

If the bill applies prospectively, there is no potential for any fiscal impact upon other aspects of the state correctional system until FY 2012-2013. However, if the bill is applied retroactively and the 8-year imprisonment requirement is interpreted to include incarceration in adult prison as well as in a youthful offender facility, the Office of Economic and Demographic Research anticipates that 145 inmates would be eligible for parole under this bill in Fiscal Year 2004-2005. This includes 126 inmates who would be parole eligible as of the bill's effective date, and 19 additional inmates who would become eligible during the fiscal year. If no eligible inmates are paroled, the number would increase gradually to 273 parole eligible inmates at the end of Fiscal Year 2008-2009. Because the granting of parole would reduce the inmate population, the Criminal Justice Impact Conference found that any fiscal impact upon the state prison system would be positive.

VI. Technical Deficiencies:

The bill requires the Parole Commission to conduct an initial interview within 8 months after the child's incarceration for commission of an offense punishable by death or life imprisonment, and to review the case every 2 years thereafter. The interview requirement is not conditioned upon the actual length of the sentence that is imposed. Therefore, the Parole Commission would be required to interview and review the cases of child offenders even though they may not be serving a sentence that is long enough to make them eligible for parole release.

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.
