

By the Committee on Judiciary; and Senators Bennett and Gaetz

590-05195-09

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1 A bill to be entitled
2 An act relating to illegal or undocumented aliens;
3 requiring the Department of Corrections and the Parole
4 Commission to establish agreements to implement a
5 federal deportation program for state inmates;
6 specifying the goals of the program;
7 amending s. 947.146, F.S., relating to the Control
8 Release Authority; requiring the authority to
9 implement a program to execute an immediate
10 deportation order; creating s. 947.1461, F.S.,
11 relating to control release for removal and
12 deportation; requiring the department to identify
13 eligible inmates at the reception process; specifying
14 eligibility criteria; requiring the department to
15 coordinate with federal authorities to determine
16 immigration status and eligibility for removal;
17 specifying that eligible inmates waive administrative
18 and appellate rights; requiring the Control Release
19 Authority to establish control release dates;
20 authorizing the control release dates to be set after
21 the alien has served a minimum 50 percent of his or
22 her court-imposed sentence; requiring the Control
23 Release Authority to give notice to aliens concerning
24 reentering the United States; prohibiting aliens from
25 benefiting from control release awards when removal is
26 not reasonably foreseeable; requiring the department
27 to compile and report certain statistics; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. The Department of Corrections and the Parole
33 Commission shall immediately initiate, coordinate, and establish
34 agreements among multiple state, local, and federal authorities
35 to implement the United States Immigration and Customs
36 Enforcement Rapid Removal of Eligible Parolees Accepted for
37 Transfer (REPAT) program. The goals of this effort shall be to:

38 (1) Ensure that deportable aliens are not released from
39 prison to the community;

40 (2) Reduce the number of criminal aliens incarcerated in
41 the state prison system;

42 (3) Provide for the mandatory revocation of control release
43 and the confinement of criminal aliens who reenter the United
44 States;

45 (4) Allow eligible inmates to be released for deportation
46 purposes before the expiration of the sentence;

47 (5) Expedite the deportation process; and

48 (6) Improve information-sharing procedures between the
49 Immigration and Customs Enforcement Section of the United States
50 Department of Homeland Security and the department.

51 Section 2. Subsections (2), (5), and (7) of section
52 947.146, Florida Statutes, are amended to read:

53 947.146 Control Release Authority.—

54 (2) The authority shall implement a system for determining
55 the number and type of inmates who must be released into the
56 community under control release in order to maintain the state
57 prison system between 99 and 100 percent of its total capacity
58 as defined in s. 944.023 or to execute an immediate deportation

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59 order from federal immigration authorities. An ~~no~~ inmate does
60 not have ~~has~~ a right to control release. Control release is an
61 administrative function solely used to manage the state prison
62 population within total capacity and to expedite the deportation
63 process. An inmate may not receive an advancement of his or her
64 control release date by an award of control release allotments
65 for any period of time before the date the inmate becomes
66 statutorily eligible for control release or before the
67 subsequent date of establishment of the inmate's advanceable
68 control release date.

69 (5) Whenever the inmate population drops below 99 percent
70 of total capacity and remains below 99 percent for 90
71 consecutive days without requiring the release of inmates under
72 this section, all control release dates shall become void and an
73 no inmate is not ~~shall be~~ eligible for release under any
74 previously established control release date. However, control
75 release dates for deportation purposes do not become void when
76 the inmate population changes. An inmate does ~~shall~~ not have a
77 right to a control release date, and ~~nor shall~~ the authority is
78 not be required to establish or reestablish any additional
79 control release dates except under ~~the provisions of~~ subsection
80 (2).

81 (7) The authority has the power and duty to:

82 (a) Extend or advance the control release date of any
83 inmate for whom a date has been established pursuant to
84 subsection (2), based upon one or more of the following:

- 85 1. Recently discovered information of:
86 a. Past criminal conduct;
87 b. Verified threats by inmates provided by victims, law

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88 enforcement, or the department;

89 c. Potential risk to or vulnerability of a victim;

90 d. Psychological or physical trauma to the victim due to
91 the criminal offense;

92 e. Court-ordered restitution;

93 f. History of abuse or addiction to a chemical substance
94 verified by a presentence or postsentence investigation report;

95 g. The inmate's ties to organized crime;

96 h. A change in the inmate's sentence structure;

97 i. Cooperation with law enforcement;

98 j. Strong community support; and

99 k. A documented mental condition as a factor for future
100 criminal behavior.

101 2. The recommendation of the department regarding:

102 a. A medical or mental health-related condition; or

103 b. Institutional adjustment of the inmate, which may
104 include refusal by the inmate to sign the agreement to the
105 conditions of the release plan.

106 3. Total capacity of the state prison system.

107 4. Arrangements for the transfer of custody pending
108 deportation.

109 (b) Authorize an individual commissioner to postpone a
110 control release date for not more than 60 days without a hearing
111 for any inmate who has become the subject of a disciplinary
112 proceeding, a criminal arrest, an information, or an indictment;
113 who has been terminated from work release; or about whom there
114 is any recently discovered information as specified in paragraph
115 (a).

116 (c) Determine the terms, conditions, and period of time of

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117 control release for persons released under ~~pursuant to~~ this
118 section.

119 (d) Determine violations of control release and what
120 actions shall be taken with reference thereto.

121 (e) Provide for victim input into the decisionmaking
122 process which may be used by the authority as aggravation or
123 mitigation in determining which persons shall be released on
124 control release.

125 (f) Make such investigations as may be necessary for the
126 purposes of establishing, modifying, or revoking a control
127 release date.

128 (g) Contract with a public defender or private counsel for
129 representation of indigent persons charged with violating the
130 terms of control release.

131 (h) Adopt such rules as the authority deems necessary for
132 implementation of ~~the provisions of~~ this section.

133 Section 3. Section 947.1461, Florida Statutes, is created
134 to read:

135 947.1461 Control release for removal and deportation only.-

136 (1) The Department of Corrections shall begin during the
137 inmate reception process a procedure to identify eligible aliens
138 and determine if deportation is feasible and in the best
139 interests of the state. Aliens who are ineligible for the
140 federal deportation process under this section are inmates who
141 are ineligible for control release under s. 947.146(3)(a)-(m).

142 (2) The Department of Corrections shall coordinate with the
143 federal authorities to determine immigration status and
144 eligibility for removal and to obtain the final removal order.

145 (3) The Department of Corrections shall identify aliens for

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146 removal who have voluntarily waived all administrative and
147 judicial appellate rights in writing and who have agreed in
148 writing to fully cooperate with federal authorities to obtain
149 valid travel documentation and facilitate removal.

150 (4) Upon acceptance into the federal deportation program,
151 the Control Release Authority shall establish a control release
152 date for the alien to be transferred into federal custody.
153 Notwithstanding s. 944.275(4)(b)3., the Control Release
154 Authority may establish a control release date after the alien
155 has served a minimum of 50 percent of his or her court-imposed
156 sentence.

157 (5) The Department of Corrections shall maintain exclusive
158 control and responsibility for the custody and transportation of
159 an alien who is accepted into the federal deportation program
160 until the alien is physically transferred to federal custody.

161 (6) The Control Release Authority shall provide notice and
162 obtain acknowledgement in writing that notice was given to each
163 alien who is eligible for deportation that reentry into the
164 United States requires the return of such alien to the custody
165 of the Department of Corrections to complete the remainder of
166 his or her court-imposed sentence. The alien must also waive in
167 writing all rights of extradition which would challenge the
168 alien's return to the Department of Corrections and Control
169 Release Authority to complete the remainder of his or her
170 sentence.

171 (7) An alien may not under any circumstances receive the
172 benefits of control release awards when the federal authorities
173 determine that the alien's removal is not reasonably
174 foreseeable.

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175 (8) The Department of Corrections shall compile statistics
176 on this program, including the number of aliens who are
177 transferred to federal custody, the number of aliens who are
178 actually removed from the United States, the number of aliens
179 who reenter the United States, and the annualized cost-avoidance
180 achieved.

181 Section 4. This act shall take effect July 1, 2009.