

By the Committees on Fiscal Policy; and Criminal Justice; and  
Senator Clemens

594-04389-16

2016360c2

1 A bill to be entitled

2 An act relating to criminal justice; amending ss.  
3 784.078, 800.09, 947.002, and 947.02, F.S.; conforming  
4 provisions to changes made by chapter 2014-191, Laws  
5 of Florida; repealing s. 947.021, F.S., relating to  
6 expedited appointments to the Florida Commission on  
7 Offender Review; amending s. 947.10, F.S.; conforming  
8 provisions to changes made by chapter 2014-191, Laws  
9 of Florida; deleting an applicability provision;  
10 amending s. 947.172, F.S.; conforming provisions to  
11 changes made by chapter 2014-191, Laws of Florida;  
12 deleting a provision requiring the assigning of cases  
13 on a random basis; amending ss. 947.16, 947.174,  
14 947.1745, and 947.22, F.S.; conforming provisions to  
15 changes made by chapter 2014-191, Laws of Florida;  
16 amending s. 960.001, F.S.; requiring a law enforcement  
17 agency to provide specified instructions to a victim;  
18 requiring a law enforcement agency to promptly make  
19 reasonable efforts to provide the victim with  
20 specified information under certain circumstances;  
21 amending s. 20.32, F.S.; conforming provisions to  
22 changes made by the act; providing effective dates.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26 Section 1. Paragraph (b) of subsection (2) of section  
27 784.078, Florida Statutes, is amended to read:

28 784.078 Battery of facility employee by throwing, tossing,  
29 or expelling certain fluids or materials.—

30 (2)

31 (b) "Employee" includes any person who is a commission

594-04389-16

2016360c2

32 investigator ~~parole examiner~~ with the Florida Commission on  
33 Offender Review.

34 Section 2. Paragraph (a) of subsection (1) of section  
35 800.09, Florida Statutes, is amended to read:

36 800.09 Lewd or lascivious exhibition in the presence of an  
37 employee.—

38 (1) As used in this section, the term:

39 (a) "Employee" means any person employed by or performing  
40 contractual services for a public or private entity operating a  
41 facility or any person employed by or performing contractual  
42 services for the corporation operating the prison industry  
43 enhancement programs or the correctional work programs under  
44 part II of chapter 946. The term also includes any person who is  
45 a commission investigator ~~parole examiner~~ with the Florida  
46 Commission on Offender Review.

47 Section 3. Subsection (4) of section 947.002, Florida  
48 Statutes, is amended to read:

49 947.002 Intent.—

50 (4) Commission investigators ~~Hearing examiners~~ are assigned  
51 on the basis of caseload needs as determined by the chair.

52 Section 4. Section 947.02, Florida Statutes, is amended to  
53 read:

54 947.02 Florida Commission on Offender Review; members,  
55 appointment.—

56 (1) ~~Except as provided in s. 947.021,~~ The members of the  
57 Florida Commission on Offender Review shall be appointed by the  
58 Governor and Cabinet from a list of eligible applicants  
59 submitted by a commissioner ~~parole~~ qualifications committee. The  
60 appointments of members of the commission shall be certified to

594-04389-16

2016360c2

61 the Senate by the Governor and Cabinet for confirmation, and the  
62 membership of the commission shall include representation from  
63 minority persons as defined in s. 288.703.

64 (2) A commissioner ~~parole~~ qualifications committee shall  
65 consist of five persons who are appointed by the Governor and  
66 Cabinet. One member shall be designated as chair by the Governor  
67 and Cabinet. The committee shall provide for statewide  
68 advertisement and the receiving of applications for any position  
69 or positions on the commission and shall devise a plan for the  
70 determination of the qualifications of the applicants by  
71 investigations and comprehensive evaluations, including, but not  
72 limited to, investigation and evaluation of the character,  
73 habits, and philosophy of each applicant. Each commissioner  
74 ~~parole~~ qualifications committee shall exist for 2 years. If  
75 additional vacancies on the commission occur during this 2-year  
76 period, the committee may advertise and accept additional  
77 applications; however, all previously submitted applications  
78 shall be considered along with the new applications according to  
79 the previously established plan for the evaluation of the  
80 qualifications of applicants.

81 (3) Within 90 days before an anticipated vacancy by  
82 expiration of term pursuant to s. 947.03 or upon any other  
83 vacancy, the Governor and Cabinet shall appoint a commissioner  
84 ~~parole~~ qualifications committee if one has not been appointed  
85 during the previous 2 years. The committee shall consider  
86 applications for the commission seat, including the application  
87 of an incumbent commissioner if he or she applies, according to  
88 subsection (2). The committee shall submit a list of three  
89 eligible applicants, which may include the incumbent if the

594-04389-16

2016360c2

90 committee so decides, without recommendation, to the Governor  
91 and Cabinet for appointment to the commission. In the case of an  
92 unexpired term, the appointment must be for the remainder of the  
93 unexpired term and until a successor is appointed and qualified.  
94 If more than one seat is vacant, the committee shall submit a  
95 list of eligible applicants, without recommendation, containing  
96 a number of names equal to three times the number of vacant  
97 seats; however, the names submitted may not be distinguished by  
98 seat, and each submitted applicant shall be considered eligible  
99 for each vacancy.

100 (4) Upon receiving a list of eligible persons from the  
101 commissioner parole qualifications committee, the Governor and  
102 Cabinet may reject the list. If the list is rejected, the  
103 committee shall reinitiate the application and examination  
104 procedure according to subsection (2).

105 (5) Section 120.525 and chapters 119 and 286 apply to all  
106 activities and proceedings of a commissioner parole  
107 qualifications committee.

108 Section 5. Section 947.021, Florida Statutes, is repealed.

109 Section 6. Section 947.10, Florida Statutes, is amended to  
110 read:

111 947.10 Business and political activity upon part of members  
112 and full-time employees of commission.—No member of the  
113 commission and no full-time employee thereof shall, during her  
114 or his service upon or under the commission, engage in any other  
115 business or profession or hold any other public office, nor  
116 shall she or he serve as the representative of any political  
117 party, or any political executive committee or other political  
118 governing body thereof, or as an executive officer or employee

594-04389-16

2016360c2

119 of any political committee, organization, or association or be  
120 engaged on the behalf of any candidate for public office in the  
121 solicitation of votes or otherwise. ~~However, this shall not be~~  
122 ~~deemed to exclude the appointment of the Secretary of~~  
123 ~~Corrections to the commission under the terms and conditions set~~  
124 ~~forth in this chapter.~~

125 Section 7. Subsections (1) and (2) of section 947.172,  
126 Florida Statutes, are amended to read:

127 947.172 Establishment of presumptive parole release date.-

128 (1) The commission investigator ~~hearing examiner~~ shall  
129 conduct an initial interview in accordance with the provisions  
130 of s. 947.16. This interview shall include introduction and  
131 explanation of the objective parole guidelines as they relate to  
132 presumptive and effective parole release dates and an  
133 explanation of the institutional conduct record and satisfactory  
134 release plan for parole supervision as each relates to parole  
135 release.

136 (2) Based on the objective parole guidelines and any other  
137 competent evidence relevant to aggravating and mitigating  
138 circumstances, the commission investigator ~~hearing examiner~~  
139 shall, within 10 days after the interview, recommend in writing  
140 to a panel of no fewer than two commissioners appointed by the  
141 chair a presumptive parole release date for the inmate. ~~The~~  
142 ~~chair shall assign cases to such panels on a random basis,~~  
143 ~~without regard to the inmate or to the commissioners sitting on~~  
144 ~~the panel.~~ If the recommended presumptive parole release date  
145 falls outside the matrix time ranges as determined by the  
146 objective parole guidelines, the commission investigator ~~hearing~~  
147 ~~examiner~~ shall include with the recommendation a statement in

594-04389-16

2016360c2

148 writing as to the reasons for the decision, specifying  
149 individual particularities. If a panel fails to reach a decision  
150 on a recommended presumptive parole release date, the chair or  
151 any other commissioner designated by the chair shall cast the  
152 deciding vote. Within 90 days after the date of the initial  
153 interview, the inmate shall be notified in writing of the  
154 decision as to the inmate's presumptive parole release date.

155 Section 8. Subsection (1) and paragraph (e) of subsection  
156 (4) of section 947.16, Florida Statutes, are amended to read:

157 947.16 Eligibility for parole; initial parole interviews;  
158 powers and duties of commission.-

159 (1) Every person who has been convicted of a felony or who  
160 has been convicted of one or more misdemeanors and whose  
161 sentence or cumulative sentences total 12 months or more, who is  
162 confined in execution of the judgment of the court, and whose  
163 record during confinement or while under supervision is good,  
164 shall, unless otherwise provided by law, be eligible for  
165 interview for parole consideration of her or his cumulative  
166 sentence structure as follows:

167 (a) An inmate who has been sentenced for an indeterminate  
168 term or a term of 3 years or less shall have an initial  
169 interview conducted by a commission investigator ~~hearing~~  
170 ~~examiner~~ within 8 months after the initial date of confinement  
171 in execution of the judgment.

172 (b) An inmate who has been sentenced for a minimum term in  
173 excess of 3 years but of less than 6 years shall have an initial  
174 interview conducted by a commission investigator ~~hearing~~  
175 ~~examiner~~ within 14 months after the initial date of confinement  
176 in execution of the judgment.

594-04389-16

2016360c2

177 (c) An inmate who has been sentenced for a minimum term of  
178 6 or more years but other than for a life term shall have an  
179 initial interview conducted by a commission investigator ~~hearing~~  
180 ~~examiner~~ within 24 months after the initial date of confinement  
181 in execution of the judgment.

182 (d) An inmate who has been sentenced for a term of life  
183 shall have an initial interview conducted by a commission  
184 investigator ~~hearing examiner~~ within 5 years after the initial  
185 date of confinement in execution of the judgment.

186 (e) An inmate who has been convicted and sentenced under  
187 ss. 958.011-958.15, or any other inmate who has been determined  
188 by the department to be a youthful offender, shall be  
189 interviewed by a commission investigator ~~parole examiner~~ within  
190 8 months after the initial date of confinement in execution of  
191 the judgment.

192 (4) A person who has become eligible for an initial parole  
193 interview and who may, according to the objective parole  
194 guidelines of the commission, be granted parole shall be placed  
195 on parole in accordance with the provisions of this law; except  
196 that, in any case of a person convicted of murder, robbery,  
197 burglary of a dwelling or burglary of a structure or conveyance  
198 in which a human being is present, aggravated assault,  
199 aggravated battery, kidnapping, sexual battery or attempted  
200 sexual battery, incest or attempted incest, an unnatural and  
201 lascivious act or an attempted unnatural and lascivious act,  
202 lewd and lascivious behavior, assault or aggravated assault when  
203 a sexual act is completed or attempted, battery or aggravated  
204 battery when a sexual act is completed or attempted, arson, or  
205 any felony involving the use of a firearm or other deadly weapon

594-04389-16

2016360c2

206 or the use of intentional violence, at the time of sentencing  
207 the judge may enter an order retaining jurisdiction over the  
208 offender for review of a commission release order. This  
209 jurisdiction of the trial court judge is limited to the first  
210 one-third of the maximum sentence imposed. When any person is  
211 convicted of two or more felonies and concurrent sentences are  
212 imposed, then the jurisdiction of the trial court judge as  
213 provided herein applies to the first one-third of the maximum  
214 sentence imposed for the highest felony of which the person was  
215 convicted. When any person is convicted of two or more felonies  
216 and consecutive sentences are imposed, then the jurisdiction of  
217 the trial court judge as provided herein applies to one-third of  
218 the total consecutive sentences imposed.

219 (e) Upon receipt of notice of intent to retain jurisdiction  
220 from the original sentencing judge or her or his replacement,  
221 the commission shall, within 10 days, forward to the court its  
222 release order, the findings of fact, the commission  
223 investigator's ~~parole hearing examiner's~~ report and  
224 recommendation, and all supporting information upon which its  
225 release order was based.

226 Section 9. Subsections (1), (2), and (4) of section  
227 947.174, Florida Statutes, are amended to read:

228 947.174 Subsequent interviews.—

229 (1) (a) For any inmate, except an inmate convicted of an  
230 offense enumerated in paragraph (b), whose presumptive parole  
231 release date falls more than 2 years after the date of the  
232 initial interview, a commission investigator ~~hearing examiner~~  
233 shall schedule an interview for review of the presumptive parole  
234 release date. Such interview shall take place within 2 years



594-04389-16

2016360c2

235 after the initial interview and every 2 years thereafter.

236 (b) For any inmate convicted of murder or attempted murder;  
237 sexual battery or attempted sexual battery; kidnapping or  
238 attempted kidnapping; or robbery, burglary of a dwelling,  
239 burglary of a structure or conveyance, or breaking and entering,  
240 or the attempt thereof of any of these crimes, in which a human  
241 being is present and a sexual act is attempted or completed, or  
242 any inmate who has been sentenced to a 25-year minimum mandatory  
243 sentence previously provided in s. 775.082, and whose  
244 presumptive parole release date is more than 7 years after the  
245 date of the initial interview, a commission investigator ~~hearing~~  
246 ~~examiner~~ shall schedule an interview for review of the  
247 presumptive parole release date. The interview shall take place  
248 once within 7 years after the initial interview and once every 7  
249 years thereafter if the commission finds that it is not  
250 reasonable to expect that parole will be granted at a hearing  
251 during the following years and states the bases for the finding  
252 in writing. For an inmate who is within 7 years of his or her  
253 tentative release date, the commission may establish an  
254 interview date before the 7-year schedule.

255 (c) Such interviews shall be limited to determining whether  
256 or not information has been gathered which might affect the  
257 presumptive parole release date. The provisions of this  
258 subsection shall not apply to an inmate serving a concurrent  
259 sentence in another jurisdiction pursuant to s. 921.16(2).

260 (2) The commission, for good cause, may at any time request  
261 that a commission investigator ~~hearing-examiner~~ conduct a  
262 subsequent hearing according to the procedures outlined in this  
263 section. Such request shall specify in writing the reasons for

594-04389-16

2016360c2

264 such review.

265 (4) The department or a commission investigator ~~hearing~~  
266 ~~examiner~~ may recommend that an inmate be placed in a work-  
267 release program prior to the last 18 months of her or his  
268 confinement before the presumptive parole release date. If the  
269 commission does not deny the recommendation within 30 days of  
270 the receipt of the recommendation, the inmate may be placed in  
271 such a program, and the department shall advise the commission  
272 of the fact prior to such placement.

273 Section 10. Subsection (1) of section 947.1745, Florida  
274 Statutes, is amended to read:

275 947.1745 Establishment of effective parole release date.—If  
276 the inmate's institutional conduct has been satisfactory, the  
277 presumptive parole release date shall become the effective  
278 parole release date as follows:

279 (1) Within 90 days before the presumptive parole release  
280 date, a commission investigator ~~hearing examiner~~ shall conduct a  
281 final interview with the inmate in order to establish an  
282 effective parole release date and parole release plan. If it is  
283 determined that the inmate's institutional conduct has been  
284 unsatisfactory, a statement to this effect shall be made in  
285 writing with particularity and shall be forwarded to a panel of  
286 no fewer than two commissioners appointed by the chair.

287 Section 11. Subsection (1) of section 947.22, Florida  
288 Statutes, is amended to read:

289 947.22 Authority to arrest parole violators with or without  
290 warrant.—

291 (1) If a member of the commission or a duly authorized  
292 representative of the commission has reasonable grounds to

594-04389-16

2016360c2

293 believe that a parolee has violated the terms and conditions of  
294 her or his parole in a material respect, such member or  
295 representative may issue a warrant for the arrest of such  
296 parolee. The warrant shall be returnable before a member of the  
297 commission or a duly authorized representative of the  
298 commission. The commission, a commissioner, or a commission  
299 investigator ~~parole examiner~~ with approval of the commission  
300 ~~parole examiner supervisor~~, may release the parolee on bail or  
301 her or his own recognizance, conditioned upon her or his  
302 appearance at any hearings noticed by the commission. If not  
303 released on bail or her or his own recognizance, the parolee  
304 shall be committed to jail pending hearings pursuant to s.  
305 947.23. The commission, at its election, may have the hearing  
306 conducted by one or more commissioners or by a duly authorized  
307 representative of the commission. Any parole and probation  
308 officer, any officer authorized to serve criminal process, or  
309 any peace officer of this state is authorized to execute the  
310 warrant.

311 Section 12. Effective July 1, 2016, paragraph (h) of  
312 subsection (1) of section 960.001, Florida Statutes, is amended  
313 to read:

314 960.001 Guidelines for fair treatment of victims and  
315 witnesses in the criminal justice and juvenile justice systems.—

316 (1) The Department of Legal Affairs, the state attorneys,  
317 the Department of Corrections, the Department of Juvenile  
318 Justice, the Florida Commission on Offender Review, the State  
319 Courts Administrator and circuit court administrators, the  
320 Department of Law Enforcement, and every sheriff's department,  
321 police department, or other law enforcement agency as defined in

594-04389-16

2016360c2

322 s. 943.10(4) shall develop and implement guidelines for the use  
323 of their respective agencies, which guidelines are consistent  
324 with the purposes of this act and s. 16(b), Art. I of the State  
325 Constitution and are designed to implement s. 16(b), Art. I of  
326 the State Constitution and to achieve the following objectives:

327 (h) *Return of property to victim.*—

328 1. A law enforcement agency ~~agencies~~ and the state attorney  
329 shall promptly return a victim's property held for evidentiary  
330 purposes unless there is a compelling law enforcement reason for  
331 retaining it. The trial or juvenile court exercising  
332 jurisdiction over the criminal or juvenile proceeding may enter  
333 appropriate orders to implement this subsection, including  
334 allowing photographs of the victim's property to be used as  
335 evidence at the criminal trial or the juvenile proceeding in  
336 place of the victim's property if no related substantial  
337 evidentiary issue ~~related thereto~~ is in dispute.

338 2. A law enforcement agency shall give a victim  
339 instructions that outline the process for a replevin action and  
340 the procedures specified in s. 539.001(15) for obtaining  
341 possession of the victim's property located in a pawnshop. If a  
342 law enforcement agency locates the property in the possession of  
343 a pawnbroker, the law enforcement agency shall promptly make  
344 reasonable efforts to provide the victim with the name and  
345 location of the pawnshop.

346 Section 13. Subsection (2) of section 20.32, Florida  
347 Statutes, is amended to read:

348 20.32 Florida Commission on Offender Review.—

349 (2) All powers, duties, and functions relating to the  
350 appointment of the Florida Commission on Offender Review as

594-04389-16

2016360c2

351 provided in s. 947.02 ~~or s. 947.021~~ shall be exercised and  
352 performed by the Governor and Cabinet. ~~Except as provided in s.~~  
353 ~~947.021,~~ Each appointment shall be made from among the first  
354 three eligible persons on the list of the persons eligible for  
355 said position.

356 Section 14. Except as otherwise expressly provided in this  
357 act, this act shall take effect upon becoming a law.