

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 238

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Conditional Medical Release Program

DATE: January 11, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	
4.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 238 creates a new “Mandatory Conditional Medical Release” process that requires, rather than permits, the Florida Commission on Offender Review (FCOR) to release an inmate if specified factors are met. The current conditional medical release (CMR) structure remains substantially similar and is amended to be entitled “Permissive Conditional Medical Release.”

The bill creates a new CMR designation entitled “inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant and permanent nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society.

The bill provides that an inmate that meets one of the three CMR designations (permanently incapacitated inmate, terminally ill inmate, or inmate with debilitating illness) may be eligible for either Permissive or Mandatory CMR.

Mandatory CMR requires the Department of Corrections (DOC) to refer an inmate to the FCOR for release if the inmate meets one of the three CMR designations and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for:
  - A capital, life, or first degree felony;

- A sexual offense; or
- An offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

The DOC's referral of an inmate for either Mandatory or Permissive CMR must include specified information, including a proposed CMR plan, relevant medical history, and prison experience and criminal history information.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include necessary medical care details, including intervals for periodic medical evaluations, and may include supervision with electronic monitoring.

The bill reenacts a number of sections of law to incorporate changes made by the act.

The bill is effective October 1, 2018.

## II. Present Situation:

The Criminal Punishment Code<sup>1</sup> (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>2</sup> The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.<sup>3</sup>

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,<sup>4</sup> and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.<sup>5</sup>

However, there are several exceptions provided in law that allow an inmate to be released from imprisonment prior to the service of 85 percent of his or her sentence, including, but not limited to, control release<sup>6</sup> and conditional medical release.

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<sup>1</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>2</sup> Section 921.0022, F.S.

<sup>3</sup> Section 775.082, F.S.

<sup>4</sup> Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

<sup>5</sup> Section 921.002(1), F.S.

<sup>6</sup> Section 947.146, F.S., provides for the limited authority to release inmates to ensure that the prison bed capacity maintains between 99 and 100 percent of total capacity.

## Conditional Medical Release

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,<sup>7</sup> is a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to others.<sup>8</sup> The Florida Commission on Offender Review (FCOR) reviews eligible inmates for release under the CMR program.

Eligible inmates include inmates that are designated by the Department of Corrections (DOC) as a:

- “Permanently incapacitated inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- “Terminally ill inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.<sup>9</sup>

However, inmates sentenced to death are ineligible for CMR.

The release of an inmate on CMR is for the remainder of the inmate’s sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.<sup>10</sup> Supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or
- Her or his medical or physical condition improves to the point that the offender no longer meets the CMR criteria.<sup>11</sup>

Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 55 inmates for CMR in the last three fiscal years, including:

- 14 in FY 2016-17;
- 27 in FY 2015-16; and
- 14 in FY 2014-15.<sup>12</sup>

The DOC has recommended 120 inmates for release in the past three fiscal years, including:

- 34 in FY 2016-17;
- 51 in FY 2015-16; and

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<sup>7</sup> Chapter 92-310, L.O.F.

<sup>8</sup> Florida Commission on Offender Review, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited January 8, 2018).

<sup>9</sup> Section 947.149(1), F.S.

<sup>10</sup> Section 947.149(4), F.S.

<sup>11</sup> Section 947.149(5), F.S.

<sup>12</sup> Email from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data (attachment on file with the Senate Committee on Criminal Justice) (December 15, 2017).

- 35 in FY 2014-15.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill amends s. 947.149, F.S., by creating two processes for an inmate to be granted CMR, including “Permissive CMR” and “Mandatory CMR.”

A new CMR designation is created, entitled “inmate with a debilitating illness,” which is defined to include an inmate determined to be suffering from a significant and permanent nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society. The current designations of permanently incapacitated inmate or terminally ill inmate are not altered.

The current CMR process remains substantially the same, but is amended to be entitled “Permissive Conditional Medical Release.” The bill expands Permissive CMR from current law by permitting any inmate determined to be eligible under any of the three CMR designations (permanently incapacitated inmate, terminally ill inmate, or inmate with debilitating illness) and referred by the DOC to the FCOR to be considered for release by the FCOR. The FCOR continues to retain sole discretion on the determination of whether to release an inmate under Permissive CMR.

The bill creates a new CMR process, entitled “Mandatory Conditional Medical Release,” that imposes additional eligibility requirements than those required in Permissive CMR. If an inmate meets all of the eligibility requirements of Mandatory CMR, the FCOR is required to release the inmate on CMR upon verifying the inmate’s eligibility.

For Mandatory CMR, the bill requires the DOC to refer an inmate to the FCOR for release if the inmate meets one of the three CMR designations (permanently incapacitated inmate, terminally ill inmate, or inmate with debilitating illness) and the inmate has:

- Served at least 50 percent of his or her sentence.
- No current or prior conviction for:
  - A capital, life, or first degree felony;
  - A sexual offense; or
  - An offense involving a child.
- Not received a disciplinary report within the previous six months.
- Never received a disciplinary report for a violent act.
- Renounced any gang affiliation.

The FCOR must verify that an inmate meets the above-mentioned eligibility criteria within 60 days of the referral.

The DOC’s referral of an inmate for either Permissive or Mandatory CMR must include:

- The proposed conditional medical release plan.
- Any relevant medical history, including current medical prognosis.

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<sup>13</sup> *Id.*

- Criminal history, including:
  - The inmate's claim of innocence, if any;
  - The degree to which the inmate accepts responsibility for his or her actions leading to the conviction of the crime; and
  - How any claim of responsibility has affected the inmate's feelings of remorse.
- Any history of substance abuse and mental health issues, provided the inmate authorizes release when such information is collected in accordance with 42 C.F.R. s. 2.
- Any disciplinary action taken against the inmate while in prison.
- Any participation in prison work and other prison programs.
- Any other information the DOC deems necessary.

The bill requires the DOC to develop a release plan for an inmate released on Permissive or Mandatory CMR and the FCOR is authorized to approve the release plan. The release plan must include periodic medical evaluations and may include supervision with electronic monitoring.

The bill provides that an inmate's release on Permissive or Mandatory CMR is for the remainder of the inmate's sentence. However, the bill also applies the above-described process for revocation and recommitment to inmates released on Permissive or Mandatory CMR.

The bill reenacts ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., incorporating changes made by the act.

The bill is effective October 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not reviewed the bill at this time. However, the bill expands CMR by creating a new CMR designation which will likely cause an increased number of inmates to be referred to the FCOR for CMR. Additionally, the bill requires the FCOR to release inmates that qualify for release under the Mandatory CMR process. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 947.149 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 9, 2018:**

The committee substitute amends s. 947.149, F.S., expanding the process of CMR and:

- Establishing a new CMR designation, entitled “inmate with a debilitating illness”;
- Amending the current CMR process to be entitled “Permissive Conditional Medical Release”;
- Creating the Mandatory Conditional Medical Release process including eligibility requirements;
- Providing the DOC must refer an inmate to the FCOR if he or she meets all the eligibility requirements of Mandatory CMR;
- Requiring, rather than permitting, the FCOR to release an inmate referred by the DOC for Mandatory CMR upon verification of eligibility;
- Requiring specified information to be included in the DOC’s referral for either Permissive or Mandatory CMR;
- Requiring the DOC to submit a release plan that includes regular medical reviews and may include electronic monitoring; and
- Modifying the effective date to October 1.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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