

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.)

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

BILL: SB 238

INTRODUCER: Senator Bracy

SUBJECT: Conditional Medical Release Program

DATE: January 8, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	
4.			RC	

I. Summary:

SB 238 amends the eligibility criteria of conditional medical release (CMR) and requires, rather than permits, the Florida Commission on Offender Review (FCOR) to release an inmate if specified factors are met.

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 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 (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;
- Been convicted of a felony;
- No current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child;
- Not received a disciplinary report within the previous six months;
- Never received a disciplinary report for a violent act; and
- Renounced any gang affiliation.

If the FCOR verifies the DOC’s determination of eligibility of the above-mentioned criteria, the FCOR must release the inmate on CMR. The bill requires the DOC to develop a release plan for the inmate 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 requires the DOC's referral of an inmate to include specified information including a proposed CMR plan, relevant medical history, and prison experience and criminal history information.

The bill requires the FCOR to complete its verification of the DOC's referral within 60 days of such referral.

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

The bill is effective July 1, 2018.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² 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.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,⁴ 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.⁵

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 release⁶ and conditional medical release.

Conditional Medical Release

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

¹ 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.

² Section 921.0022, F.S.

³ Section 775.082, F.S.

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

⁵ Section 921.002(1), F.S.

⁶ 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.

⁷ Chapter 92-310, L.O.F.

⁸ Florida Commission on Offender Review, *Release Types, Post Release*, <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited December 7, 2017).

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.⁹

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.¹⁰ 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.¹¹

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 2014-15.¹²

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
- 35 in FY 2014-15.¹³

III. Effect of Proposed Changes:

The bill amends s. 947.149, F.S., modifying the current eligibility requirements of CMR and requiring, rather than permitting, the FCOR to release an inmate on CMR if specified factors are met.

⁹ Section 947.149(1), F.S.

¹⁰ Section 947.149(4), F.S.

¹¹ Section 947.149(5), F.S.

¹² 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).

¹³ *Id.*

The bill creates a new CMR designation 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 bill does not alter the current designations of permanently incapacitated inmate or terminally ill inmate.

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;
- Been convicted of a felony;
- No current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child;
- Not received a disciplinary report within the previous six months;
- Never received a disciplinary report for a violent act; and
- Renounced any gang affiliation.

If the FCOR verifies the DOC’s determination of eligibility of the above-mentioned criteria, the FCOR must release the inmate on CMR. The FCOR must complete its verification of the DOC’s referral within 60 days of such referral.

The bill requires the DOC to develop a release plan for the inmate 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 requires a referral for CMR by the DOC to include:

- The proposed conditional medical release plan;
- Any relevant medical history, including current medical prognosis; and
- Prison experience and 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;
 - How any claim of responsibility has affected the inmate’s feelings of remorse;
 - Any history of substance abuse and mental health issues;
 - Any disciplinary action taken against the inmate while in prison;
 - Any participation in prison work and other prison programs; and
 - Any other information the DOC deems necessary.

The new CMR eligibility criteria, described above, could preclude inmates who are otherwise currently eligible for a CMR referral by the DOC. Currently, only inmates sentenced to death are ineligible for CMR. Whereas, the bill excludes any inmate with a conviction for a capital or first degree felony offense from CMR consideration.

However, the bill also potentially expands the use of CMR with the addition of an “inmate with a debilitating illness” designation and requiring the FCOR to release any inmate that meets the CMR eligibility criteria.

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, 947.141, F.S., incorporating changes made by the act.

The bill is effective July 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 heard the bill at this time. However, the bill imposes new CMR eligibility criteria. The DOC reports that of the 56 inmates released over the last three fiscal years, only seven would be eligible for release under the new criteria. Therefore, the DOC reports the bill will likely result in a negative indeterminate prison bed impact on the DOC as a result of fewer inmates qualifying for CMR as are eligible in the current standards.¹⁴

However, the bill also creates a new designation which will permit a new pool of inmates to be considered for CMR. To the extent that the new designation increases the number of inmates eligible for CMR, the bill could result in a positive indeterminate prison bed impact.

¹⁴ The Florida Department of Corrections, *Senate Bill 238 Agency Analysis*, p. 3 (October 12, 2017) (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill excludes inmates who have been convicted of capital and first degree felonies from consideration for CMR; however, the bill is silent as to inmates who are convicted of life felonies.

Additionally, the DOC indicates that it cannot comply with the requirement to release substance abuse history records to the FCOR if the information is received in accordance with 42 C.F.R. Part 2.¹⁵

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 Changes:**

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

None.

B. Amendments:

None.

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

¹⁵ *Id.* On March 21, 2017, the United States Department of Health and Human Services updated 42 Code of Federal Regulations Part 2, related to Confidentiality of Substance Use Disorder Patient Records, which imposes restrictions upon the disclosure and use of substance use disorder patient records maintained in connection with the performance of any Part 2 program. These changes apply to any individual or entity that is federally assisted and holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment. *See* 42 C.F.R. s. 2. *See also Final Rule: 42 CFR Part 2, Confidentiality of Substance Use Disorder Patient Records*, American Psychiatric Association, <https://www.psychiatry.org/psychiatrists/practice/practice-management/hipaa/42-cfr-part-2> (last visited December 18, 2017).