

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: CS/SB 620

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Long-Term Inmates

DATE: March 3, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Siples | Jones | CJ | Fav/CS |
| 2. | | | ACJ | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 620 revises the legislative intent regarding the determination of parole of eligible inmates by the Florida Commission on Offender Review (FCOR). The bill requires the FCOR to consider an inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in the decision to parole the inmate.

The bill requires the FCOR and the Department of Corrections (DOC) to jointly create a long-term inmate program for parole-eligible inmates to prepare them for reintegration into the community. The program, which is to be housed within the DOC, must be voluntary and provide evidence-based programming to inmates within three years of their presumptive parole release date. Prior to enrollment in the long-term inmate program, the bill requires the FCOR to refer an inmate for placement. The bill provides that the FCOR consider inmates for referral for the long-term inmate program if the inmate does not have disqualifying factors that would preclude placement into the program and is serving a parole-eligible sentence. Inmates who subsequently receive a parole-ineligible sentence may be considered for participation in the long-term inmate program.

The bill requires individuals participating in the program to complete 250 hours of community service, 100 hours of enrichment programs, and an evidence-based curriculum that address such topics as anger management, criminal thinking, educational and vocational needs, family relationships, lifestyle and wellness, substance use disorder treatment, and victim impact. The bill provides that a participant may be removed from program for failing to complete duties and

assignments as instructed. Upon completion, the bill requires participants receive a certificate of completion. However, the bill states that completion of the program does not guarantee that an inmate will be paroled.

The bill requires the FCOR and the DOC to adopt rules as necessary to implement the long-term inmate program.

According to the FCOR, the bill may have an indeterminate fiscal impact on the commission. The bill may have a negative fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Parole

Parole is a discretionary release that allows certain offenders to serve the remainder of their court-imposed sentences in the community under strict supervision. The Florida Commission on Offender Release (FCOR) is a 3-member body that administers parole in this state.¹ The FCOR's powers and duties, as it relates to parole, include:

- Determining what persons shall be placed on parole;
- Fixing the time and conditions of parole;
- Determining whether a person has violated parole and taking action with respect to such violation; and
- Making such investigations as may be necessary.²

In Florida, parole is limited; and the only inmates who are eligible for parole consideration are those who committed:

- Any felony prior to October 1, 1983, or those who elected to be sentenced outside the sentencing guidelines for felonies committed prior to July 1, 1984;
- A capital felony prior to October 1, 1995, except:
 - Murder or felony murder committed after May 25, 1994;
 - Making, possessing, throwing, placing, or discharging a destructive device or attempting to do so which results in the death of another after May 25, 1994;
 - First degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
 - First degree murder of a justice or judge committed after October 1, 1990;
- Any continuing criminal enterprise before June 7, 1993; and
- Any attempted murder of a law enforcement officer between October 1, 1988 and October 1, 1995.³

¹ Section 947.01, F.S.

² Section 947.13, F.S. The FCOR has other powers and duties related to clemency, conditional release, conditional medical release, and Control Release Authority.

³ Florida Commission on Offender Review, *2020 Annual Report*, p. 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202020.pdf> (last visited February 9, 2021).

As of January 6, 2021, there were approximately 3,754 inmates who were serving a parole-eligible sentence; however, roughly 603 of these inmates also have a parole-ineligible life sentence which renders them disqualified for release on parole.⁴ Of the remaining 3,151 parole-eligible inmates, 79 are female. In Fiscal Year 2019-20, the FCOR made 1,419 parole determinations, granted parole to 41 inmates, and released 43 inmates on parole. There are 424 releasees on parole supervision.⁵

The decision to grant parole is an act of grace of the state and is not considered a right.⁶ The FCOR established objective parole guidelines to guide its parole decisions, including setting a presumptive parole date for eligible offenders.⁷ The presumptive parole date, which is the tentative date an eligible offender may be released, can change, with the FCOR deciding to modify or suspend it.⁸

In granting parole, the FCOR must find that the inmate, if released on parole, will live and conduct himself or herself as a respectable law-abiding person and that the inmate's release will be compatible with his or her own welfare and the welfare of society.⁹ The FCOR must also be satisfied that the parolee will be suitably employed in self-sustaining employment or that he or she will not become a public charge.

If parole is to be granted, the FCOR must determine the conditions on which the inmate is released on parole.¹⁰ The FCOR has adopted standard conditions of parole in rule; however, it has authority to impose special conditions of parole.¹¹ If the inmate was convicted of a controlled substance violation, one of the conditions must be that the person submit to random substance abuse testing intermittently throughout the term of supervision. Payment of any debt due and owing to the state, as well as any payment of attorney's fees and costs due and owing to the state must also be a condition of parole, as well as the payment of any other fines, fees, restitution, or other court-ordered costs.¹²

The FCOR must provide the inmate with a certified copy of the terms and conditions of his or her parole once it authorizes the actual parole release date.¹³ If a parolee violates the terms of parole, he or she is subject to arrest and a return to prison to serve out the term for which the parolee was sentenced.¹⁴ Within 30 days of an arrest of a person charged with a violation of the terms and conditions of his or her parole, the parolee is entitled to a preliminary hearing to

⁴ The DOC, *2021 Agency Bill Analysis for SB 620*, February 10, 2021, p. 2 (on file with the Senate Committee on Criminal Justice).

⁵ *Id.*

⁶ Section 947.002(5), F.S.

⁷ Section 947.165, F.S. *See also* rr. 23-21.007-21.011, F.A.C., and Office of Program Policy Analysis and Government Accountability, *Parole and Early Release, Report No. 19-13*, (Nov. 2019), p. 5, available at <https://oppaga.fl.gov/Documents/Reports/19-13.pdf> (last visited February 9, 2021).

⁸ *Id.*

⁹ Section 947.18, F.S.

¹⁰ *Id.*

¹¹ *See* r. 23-21.0165, F.A.C.

¹² *Id.*, and s. 947.18, F.S.

¹³ Section 947.19, F.S.

¹⁴ Section 947.21, F.S.

determine if probable cause exists to believe that the parolee has committed such violation.¹⁵ If probable cause is found, a final revocation hearing is convened to determine if the charge of parole violation is sustained and based on the findings, the FCOR may:

- Revoke parole and return the parolee to prison to serve the sentence imposed upon him or her;
- Reinstate the original order of parole;
- Order the placement of the parolee into a community control program; or
- Enter such other order as is proper.¹⁶

More than 90 percent of parolees successfully complete their supervision without revocation within the first three years.¹⁷

Department of Corrections

Office of Programs and Re-Entry

The Office of Programs and Re-Entry (Office), within the DOC, provides programming for productive learning, positively transforming behaviors, and teaching pro-social skills that assist with re-integration into communities.¹⁸ The Office operates four sections:

- The Bureau of Program Development develops and implements technology used by institutions, community corrections, and community stakeholders to provide information about offenders.¹⁹
- The Bureau of Substance Abuse Treatment offers services and develops and fosters resources to facilitate successful reintegration from prison into the community.²⁰
- The Bureau of Education provides opportunities to inmates, such as academic education, career and technical education, library services, transition programs, and services specific to the special needs of youthful offenders.²¹
- Chaplaincy and Volunteer Services provides for the spiritual needs of inmates and coordinates religious education.²²

Programs for Parole-Eligible Inmates

Inmates incarcerated in DOC institutions generally have access to educational opportunities at faith- and character-based programs.²³ The goals of the programs are criminal rehabilitation, the

¹⁵ Section 947.23(1), F.S.

¹⁶ Section 947.23(2)-(5), F.S.

¹⁷ *Supra* note 3 at 9.

¹⁸ The DOC, *Office of Programs and Re-Entry*, available at <http://www.dc.state.fl.us/development/index.html> (last visited February 10, 2021).

¹⁹ The DOC, *Bureau of Program Development*, available at <http://www.dc.state.fl.us/development/applied.html> (last visited February 10, 2021).

²⁰ The DOC, *Bureau of Substance Abuse Treatment*, available at <http://www.dc.state.fl.us/development/readiness.html> (last visited February 10, 2021).

²¹ The DOC, *Bureau of Education*, available at <http://www.dc.state.fl.us/development/programs.html> (last visited February 10, 2021).

²² The DOC, *Bureau of Chaplaincy and Volunteer Services*, available at <http://www.dc.state.fl.us/development/chaplaincy.html> (last visited February 10, 2021).

²³ *Id.*

successful reintegration of offenders into the community, and the reduction of recidivism.²⁴ These programs must emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.²⁵

A lifer's program is a reentry/transition program for long-term offenders that offers life skills and other social and educational courses to prepare them for successful reintegration into the community, and includes such courses as:

- Critical thinking;
- Problem solving;
- Substance abuse;
- Mental health;
- Stress/Anger management;
- Conflict resolution; and
- Life planning/goal setting.²⁶

According to the DOC, the New River Correctional Institution, which houses adult male inmates, is the only prison that offers a lifer's program, the "Pathways Program." The Bureau of Education developed the program and the academic staff at the facility facilitates the program.²⁷ Program participants must:

- Complete at least 250 hours of community service activities, such as leading enrichment or wellness activities or tutoring other participants in academics;
- Participate for 100 hours in an enrichment program which is offered on Fridays, and may include activities such as art expression or creative writing; and
- Complete the available courses within each of the following paths:
 - Academic Path, which offers adult basic education and GED preparation;
 - Cognitive Path, which offers a cognitive-behavioral curriculum and includes courses that address anger management, communication skills, and critical thinking;
 - Employment Path, which offers financial literacy, computer literacy, employability, and a 100-hour course that covers job readiness and life management skills; and
 - Wellness Path, which offers courses on parenting, lifestyle and wellness, and transition elements, and a men-only workshop that addresses sensitive topics of relationships, sexuality, and intimacy.²⁸

The program is available to parole-eligible male inmates recommend by the FCOR, which typically refers an inmate as he approaches his presumptive parole release date.²⁹ Completion of the program does not guarantee that a participant will be granted parole nor will it lengthen the participant's remaining sentence time.³⁰

²⁴ Section 944.803(7), F.S.

²⁵ Section 944.803(4)(b), F.S.

²⁶ The FCOR, *2021 Agency Bill Analysis for SB 620*, p. 3, February 10, 2021, (on file with the Senate Committee on Criminal Justice).

²⁷ *Supra* note 4.

²⁸ E-mail correspondence from Chris Taylor, Legislative Specialist, Department of Corrections, (February 10, 2021) (on file with the Senate Committee on Criminal Justice).

²⁹ *Supra* note 26.

³⁰ *Supra* note 28.

Although parole-eligible female inmates do not have access to the lifer's program, all female inmates have access to the faith-and character-based programs.³¹

III. Effect of Proposed Changes:

The bill revises the legislative intent of the parole statute, ch. 947, F.S., to require the FCOR to consider an inmate's institutional achievements, lack of disciplinary reports, and all indications of the lack of risk to the public in its decision to parole an inmate from the incarceration portion of the inmate's sentence.

The bill creates s. 947.136, F.S., to require the FCOR to partner with the DOC to jointly develop a voluntary long-term inmate program for parole-eligible inmates to prepare the inmates for reintegration into the community. The long-term inmate program must provide evidence-based programming to inmates who are within three years of their presumptive parole release date, as established by the FCOR.

Prior to enrollment in the long-term inmate program, the bill requires the FCOR to refer inmates for participation in the program. The FCOR may consider inmates who:

- Do not have factors, as identified in rule, which would preclude placement at an institution operating a long-term inmate program; and
- Are serving a parole-eligible sentence.

Inmates who have subsequently received a parole-ineligible sentence may be considered for participation in the long-term inmate program on a case-by-case basis.

To successfully complete the program, the bill requires a participant to, at a minimum:

- Complete at least 250 hours of community service projects, approved by the DOC;
- Participate in at least 100 hours of enrichment programs, as defined by rule; and
- Complete an evidence-based curriculum, as provided in rule, that, at a minimum, addresses:
 - Anger management;
 - Criminal thinking;
 - Educational and vocational needs;
 - Family relationships;
 - Lifestyle and wellness;
 - Substance use disorder treatment; and
 - Victim impact.

The bill provides that an inmate who fails to perform the duties and assignments as instructed may be removed from the program. Upon successful completion of the long-term inmate program, the bill requires an inmate to be awarded a certificate of completion. Successful completion of the program does not guarantee that an inmate will be paroled and program participation may not extend the length of an inmate's sentence.

The bill requires the FCOR and the DOC to adopt rules as necessary to implement the long-term inmate program.

³¹ *Supra* note 4.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FCOR indicates that the bill may have a potential fiscal impact as it may need to create a position to coordinate the long-term inmate program.³²

The DOC is unable to precisely determine the fiscal effect on the department. The DOC estimates that it would need additional personnel and resources to develop, implement, and maintain a long-term inmate program that is equally available to all parole-eligible inmates. The DOC would also require additional staff for its Office of Community Corrections as it is anticipated that there will be an increased caseload as the population shifts to community corrections.³³

³² *Supra* note 26 at 4-5.

³³ *Supra* note 4 at 4.

The DOC provides that the department would need 13 additional staff to provide community supervision of parolees. The staffing and funds requested by the DOC is as follows:

| Class Title | Class Code | Salary & Benefits | FTE # | Year 1 Annual Costs |
|---|-------------------|------------------------------|--------------|----------------------------|
| Correctional Probation Specialist | 8040 | \$ 62,307 | 13 | \$ 809,991 |
| Total salaries & benefits | | | 13 | \$ 809,991 |
| Recurring expense - P&P | | \$ 8,455 | | \$ 109,915 |
| Non-recurring expense - P&P | | \$ 5,949 | | \$ 77,337 |
| Total expenses | | | | \$ 187,252 |
| Human Resource Services | | \$ 330 | | \$ 4,290 |
| Salary incentive (if applicable) | | \$ 1,128 | | \$ 14,664 |
| Technology Impact (100 hours @ \$87 per hour) | | | | \$ 8,700 |
| Total | | | 13 | \$ 1,024,897 |
| Summary of Costs | | | | |
| Recurring | | | | \$ 938,860 |
| Non-recurring | | | | \$ 86,037 |
| Total | | | | \$ 1,024,897 |

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 947.002 of the Florida Statutes.

This bill creates section 947.136 of the Florida Statutes.

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

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

CS by Criminal Justice on March 2, 2021:

The committee substitute:

- Removes bill language indicating that a pardon is an act of discretion based on reliable evidence and maintains current statutory language that a pardon is an act of grace of the state.
- Revises the intent to require the commission to consider certain factors rather than requiring the commission focus on such factors.
- Requires the FCOR and the DOC to jointly create a voluntary long-term inmate program for inmates who are eligible for parole. An inmate is eligible to participate in the program if he or she is within three years of his or her presumptive parole date and meets certain criteria.
- Establishes minimum requirements for the program relating to community service, enrichment programs, and an evidence-based curriculum.
- Provides for the removal of inmates from the program and declares that completion of the program does not guarantee parole. Participation in the program may not extend an inmate's sentence.
- Requires the FCOR and the DOC to adopt rules to implement the program.

B. Amendments:

None.