

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 698

SPONSOR: Senator Smith

SUBJECT: Parole Commission

DATE: February 12, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill amends s. 947.06, F.S., to require that victims of a crime, or their next of kin, are to be given a copy of any documents, findings, and evidence prior to a meeting of the Florida Parole Commission at which the granting, denying, or revocation of parole will be discussed. The bill also amends s. 947.16, F.S., and s. 947.172, F.S., to provide that an inmate who has been convicted of kidnapping may be reinterviewed once every five years rather than once every two years. The bill provides an effective date of July 1, 2004.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 947.06, 947.16, and 947.172.

## II. Present Situation:

The Florida Parole Commission administers parole, which is a discretionary prison release mechanism. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections. As of June 30, 2003, there were 743 parolees on parole from Florida sentences.

Parole is not available for most crimes that were committed on or after October 1, 1983. The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995. There is no parole eligibility for any crime committed on or after October 1, 1995. There are still approximately 5200 Florida inmates who are eligible for parole consideration.

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a parole examiner reviews the inmate's file and makes an initial recommendation. The date of the initial interview depends upon the length and character of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of 7 to 15 years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. An inmate may request one review of the initial PPRD within 60 days after notification.

If the PPRD is more than 2 years after the date of the initial interview, in most cases a hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter. However, the statute provides for less frequent reviews for an inmate whose PPRD is more than 5 years from the date of the initial interview if he or she was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S. In such cases, the interview and review may be conducted every 5 years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each reinterview. At this hearing, the commission considers the written recommendation of the parole examiner, documentary evidence, and any testimony presented on behalf of the victim or the inmate. Although the inmate is not entitled to appear at the hearing, he or she may be represented by an attorney. It is also common for the victim or victim's representative and law enforcement representatives to appear.

The parole examiner conducts a final interview of the inmate within 90 days of the PPRD. The purpose is to establish an effective parole release date and a parole release plan. The commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.

If the sentencing court retained jurisdiction over the offender for purposes of reviewing a parole release order, the commission must send notice of the release order to the sentencing judge and state attorney within 30 days of entry of the order. Retention of jurisdiction is available to the sentencing judge for a number of violent crimes that are enumerated in s. 947.16(4), F.S. If the court enters an order vacating the release order, the court's order is not appealable.

An inmate whose parole release order has been vacated must be reinterviewed within 2 years after receipt of the vacated release order and 2 years thereafter. However, the reinterviews may be scheduled every 5 years if the inmate was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., and the commission makes a written finding that it is not reasonable to expect that parole will be granted.

### **III. Effect of Proposed Changes:**

Section 1 of the bill amends s. 947.06, F.S., to require the commission to present a copy of all documents, findings, and evidence that relates to the granting, denying, or revoking of parole to the victim or the victim's next of kin prior to any meeting of the commission at which the

offender's parole will be considered. The bill does not specify who is responsible for paying the costs of reproducing the materials, but the use of the term "shall be presented with" implies that the cost is to be borne by the commission.

Section 2 amends s. 947.16(4)(g), F.S., to add kidnapping to the category of offenses for which an inmate's reinterview schedule may be reduced from every 2 years to every 5 years after vacation of a parole release order by a circuit judge who retained jurisdiction over the offender.

Section 3 amends s. 947.174, F.S., to add kidnapping to the category of offenses for which an inmate's reinterview schedule may be reduced from every 2 years to every 5 years after the parole-eligible inmate receives an initial interview to establish a presumptive parole release date.

Section 4 provides that the act takes effect July 1, 2004.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although parole is a matter of grace and is not a right, alteration of parole-consideration procedures must be considered in light of the constitutional prohibition against *ex post facto* laws. It appears that the addition of kidnapping to the category of crimes for which interviews may be conducted every 5 years would not be an impermissible *ex post facto* law under the United States Supreme Court holdings in *California Department of Corrections v. Morales*, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) and *Garner v. Jones*, 529 U.S. 244, 120 S.Ct. 1362, 146 L.Ed.2d 236 (2000). However, an individual inmate may be able to present evidence that the change creates a significant risk of increasing his punishment. *Garner, supra*; see also *Harris v. Hammonds*, 217 F.3d 1346 (11th Cir. 2000).

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

This bill may result in the reduction of the frequency of parole hearings for the class of offenders whose crime was the offense of kidnapping. To the extent that hearings are held less frequently, there will be a reduction in costs incurred by victims and victim representatives, as well as families of inmates, who attend the hearings. The amount of reduction cannot be determined because a reduction of frequency will be determined depending upon the individual merits of the inmate's case, and the cost to attend hearings is variable depending upon individual circumstances.

**C. Government Sector Impact:**

Any reduction in the frequency of parole hearings for kidnappers has the potential to reduce the number of hearings conducted by the commission, which may result in a cost savings to the commission. However, the amount of such savings cannot be determined until the commission considers individual cases and makes a decision on whether to apply its new authority to the case.

The requirement to present materials to the victim or the victim's next of kin will result in increased costs to the commission for the cost of reproducing the documents or other materials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that the victim or the victim's next of kin is to be presented with a copy of all documents, findings, and evidence that relate to the decision of the parole. It does not address the disposition of materials that are considered in the parole decision, but for which release is prohibited under other provisions of state or federal law.

**VIII. Amendments:**

None.