

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5017      PCB FC 06-09      Corrections

**SPONSOR(S):** Fiscal Council & Barreiro

**TIED BILLS:** \_\_\_\_\_ **IDEN./SIM. BILLS:** \_\_\_\_\_

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Fiscal Council	16 Y, 5 N	Sneed	Kelly
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### SUMMARY ANALYSIS

This bill:

- abolishes the Florida Corrections Commission;
- eliminates probation and restitution centers as a sentencing option and eliminates the Department of Corrections probation and restitution centers;
- eliminates the Department of Corrections pretrial intervention program and provides counties with the authority to supervise pretrial intervention offenders;
- abolishes the Parole Commission; provides for the creation of regional parole boards for the purpose of conducting parole hearings, granting or denying parole to eligible inmates, and setting conditions of parole; requires the Department of Legal Affairs/Office of Attorney General to administratively house and support the boards; grants control over the administrative and investigative functions related to clemency to the Executive Office of the Governor; grants the sentencing court authority over revocation, and setting conditional control and addiction recovery release terms; and
- revises the membership and reporting requirements of the Prison Per-Diem Workgroup.

The House version of the General Appropriations Act deletes \$3,172,964 in recurring general revenue appropriations for probation and restitution centers and deletes 76 positions, 2,882,556 of salary rate and \$4,368,916 in recurring general revenue funding for the pretrial intervention program in the Department of Corrections. The bill also transfers one-half of the funding for the 2006-2007 fiscal year for the Parole Commission to a lump sum appropriation category to be distributed to other governmental entities. The positions and the budget authority for the Florida Corrections Commission were eliminated in the 2004-2005 and 2005-2006 fiscal years.

The Governor's Recommended Budget proposes the elimination of the DOC probation and restitution centers and pretrial intervention program, determining that both programs are not critical to the mission of the agency.

With the exception of the provisions related to the abolishment of the Parole Commission, this bill is effective July 1, 2006. The Parole Commission is abolished on January 1, 2007.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h5017.FC.doc

**DATE:** 3/30/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government –

This bill abolishes the Parole Commission and the Florida Corrections Commission and eliminates the Department of Corrections (DOC) pretrial intervention program and probation and restitution centers.

#### B. EFFECT OF PROPOSED CHANGES:

This is a conforming bill to the House version of the General Appropriations Act. It amends various statutes relating to correctional programs. This bill eliminates the Florida Corrections Commission and the Florida Parole Commission. This bill also eliminates two programs within the DOC: Pretrial Intervention and Probation and Restitution Centers. In addition, this bill revises the membership and reporting requirements of the Prison Per-Diem Workgroup.

### **FLORIDA CORRECTIONS COMMISSION**

#### ***Background:***

The Florida Corrections Commission (commission) was established in Chapter 93-404, Laws of Florida, during a special session of the Legislature in 1993. Its specific membership, responsibilities and powers are defined in s. 20.315(6), F.S. The commission's primary role is to oversee Florida's correctional system, which includes reviewing the effectiveness and efficiency of the state's correctional efforts, recommending policies, and evaluating the implementation of approved policies.

The commission is administratively housed in the DOC. Although organizationally located in the department, the commission functions as an independent entity in carrying out its mission.

The commission consists of 9 members, appointed by the Governor with confirmation by the Senate. The commissioners are unpaid volunteers representing all geographic areas of the state and have diverse backgrounds in law, construction, education, health care, information technology, business, food service, and inmate rehabilitation.

The primary functions of the commission include the following:

1. recommend major correctional policies for the Governor's approval, and assure that approved policies and revisions are properly executed;
2. periodically review the status of the state correctional system and recommend improvements to the Governor and the Legislature;
3. annually review community-based intermediate sanctions and recommend to the Governor and the Legislature approaches for planning and implementing such sanctions and programs;
4. evaluate the DOC's annual legislative budget request, the comprehensive correctional master plan and the tentative construction program, determining compliance with all applicable laws and departmental policies and determining that the DOC's goals will be achieved in an effective, efficient and businesslike manner;
5. routinely monitor the financial status of the DOC, assuring that the department is managing revenue and any applicable bond proceeds responsibly and in accordance with law;
6. regularly evaluate the efficiency, productivity, and management of the DOC using performance and production standards;

7. provide public education on corrections and criminal justice issues;
8. report to the Senate President and the Speaker of the House every November 1; and
9. resolve disputes between the DOC and contractors for the private correctional facilities entered into under chapter 957, F.S., when a contractor proposes to waive a rule, policy, or procedure concerning operating standards.

***Impact of Bill:***

The commission has not been a functioning body since Fiscal Year 2004-2005. Staff support positions and funding for the commission were eliminated in the 2004-2005 and 2005-2006 fiscal years. This bill eliminates all references to the commission in the statutes.

## **PROBATION AND RESTITUTION CENTERS**

***Background:***

Chapter 944, F.S., includes a list of terms of probation or community control which may be imposed by a sentencing court. Probation is a court-ordered term of community supervision under specified conditions for a specific period of time that cannot exceed the maximum sentence for the offense. The probationer is required to abide by all conditions ordered by the court. Violation of these conditions may result in revocation by the court and imposition of any sentence, which it might have imposed when originally placing the offender on probation. The probationer is generally required to pay the cost of supervision to the state of Florida, and may have additional conditions requiring payment of restitution, court costs and fines, public service and various types of treatment.

Section 944.026, F.S., requires the DOC to develop, provide or contract for a statewide system of probation and restitution facilities, or centers, whereby probationers, drug offender probationers, and community controllees who have violated their terms or conditions, and whose presumptive sentence exceeds 22 months, may be required to reside while working, receiving treatment, or attending school, or for persons on probation, drug offender probation, or community control who may be required to attend outpatient substance abuse counseling and whereby inmates may be placed who are nearing their date of release from a correctional institution or a community correctional center, who are in need of placement in a substance abuse transition housing program, and who are considered eligible for such placement by the department. The purpose of these facilities and services is to provide the court with an alternative to committing offenders to more secure state correctional institutions. The probation and restitution centers provide a highly structured community-based environment. They often assist offenders who struggle with unemployment, limited educational and vocational skills, or lack structure, self-discipline and a sense of personal responsibility. The DOC probation and restitution center program has 2 components: a 4 to 6-month residential phase followed by a 3 to 6-month non-residential support and follow-up services phase.

Offenders enrolled in the 2003-04 and 2004-2005 fiscal years totaled 392 and 342, respectively. In Fiscal Year 2004-2005 enrollees included 135 violators of felony probation, 105 violators of community control, and 28 violators of drug offender probation. Today, the DOC contracts with two vendors to provide 3 probation and restitution centers, located in Pensacola, Orlando, and Jacksonville. As of February 2006, approximately 370 offenders were enrolled in the program.

***Impact of Bill:***

This bill amends section 944.026, F.S., by eliminating probation and restitution centers as a sentencing option and eliminating the Department of Corrections probation and restitution centers. The House version of the General Appropriations Act eliminates funding for this program.

## **PRETRIAL INTERVENTION PROGRAM**

### ***Background:***

The criminal justice system diverts some of the least serious offenders into the DOC pretrial intervention program. The program has conditions similar to probation, including fees, restitution, public service, and counseling to prevent a return to criminal behavior. If the participant successfully completes the conditions of the program the state dismisses the charges and the defendant avoids a criminal record related to that offense. Failure to successfully complete the program results in normal prosecution of the case.

Section 948.08, F.S., states that any first offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of a third degree, is eligible for release to the pretrial intervention program. Approval for eligibility must first be obtained from the administrator of the program, and consent must also be obtained from the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender. The criminal charges against an offender admitted to the program shall be continued without final disposition for a period of 90 days after the date the offender was released to the program, if the offender's participation in the program is satisfactory, and for an additional 90 days upon the request of the program administrator and consent of the state attorney, if the offender's participation in the program is satisfactory.

Any person charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893, F.S., or who has committed prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud, and who has not been charged with a crime involving violence and who has not previously been convicted of a felony, nor previously been admitted to a pretrial program, is eligible for admission into a pretrial substance abuse education and treatment intervention program approved by the chief judge of the circuit, for a period of not less than one year. At the end of the pretrial intervention period, the court will make a decision as to the disposition of the pending charges. The court will determine, by written finding, whether the defendant has successfully completed the pretrial intervention program. Failure to successfully complete the program results in the continued prosecution of the case by the state attorney's office.

In addition to the approximately 87,000 inmates currently in state prisons, there are another 143,000 offenders that are serving some form of community supervision. As of January 2006, 8,486 offenders, or 5.9 percent of the total community supervision population, were enrolled in pre-trial intervention programs (3,193 drug offenders and 5,293 other offenders). Recombitment data published for the 2004-2005 fiscal year indicates that during a 2-year follow-up period, 66% of enrollees had successfully completed their sentence or were still under supervision.

### ***Impact of Bill:***

This bill amends chapter 948, F.S., by eliminating the Department of Corrections pretrial intervention program and providing counties with the authority to supervise pretrial intervention offenders if they elect to do so. The House version of the General Appropriations Act eliminates funding for pretrial intervention supervision by the department.

## **PAROLE COMMISSION**

### ***Background:***

Article IV, Section 8, of the Florida Constitution provides that there may be created by law a parole and probation commission with the power to supervise persons on probation and grant paroles. Chapter 947, F.S., provides the duties and responsibilities of the Florida Parole Commission. The commission performs two roles: (1) it determines the suitability of releasing certain offenders from incarceration and sets the terms and conditions of supervision for post prison releasees and (2) it acts as an investigative body that

supports the Board of Executive Clemency in considering petitions for clemency. According to the commission, clemency activities take up approximately 49 percent of staff time. The commission consists of 3 commissioners and 148 staff positions.

The Parole Commission is responsible for administering parole, conditional release, conditional medical release, control release, and addiction recovery supervision to eligible criminal offenders.

**Parole.** One of the basic functions of the commission is determining when inmates should be paroled from prison. 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. On June 30, 2005, there were 2,161 parolees in Florida (625 Florida cases and 1,536 other state cases). Although Florida no longer has parole except for those offenders sentenced for offenses committed prior to October 1, 1983, caseloads continue to increase due to parole-eligible offenders whose supervision is transferred from another state.

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. As of September 2005 there were 5,178 inmates eligible for parole consideration.

The parole process begins with the setting of a presumptive parole release date by the commission after a parole examiner reviews the inmate's file and makes an initial recommendation. Subsequent reviews of the presumptive parole release date are held every 2 to 5 years in hearings open to the public. At these hearings, commissioners review the inmate's institutional adjustment, noting prison progress reports, program participation, disciplinary actions, psychological evaluations, educational and vocational training, and other factors. Commissioners then vote to reduce, extend, or order no change to the presumptive parole release date. Finally, as the presumptive parole release date approaches, the commission conducts a final review of the inmate and the threat he/she poses. The commission solicits input from the sentencing judge, state attorney, law enforcement, the inmate's family and victims; conducts a complete review of the inmate's file; interviews the inmate and scrutinizes the proposed release plan. The commissioners vote at a public hearing whether to grant parole.

**Conditional Release.** Conditional release requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, or who are sentenced as a habitual offender, violent habitual offender, violent career criminal, or sexual predator. Unlike parole, conditional release is not discretionary. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the commission and this supervision can be revoked and the releasee returned to prison if the commission determines that a violation of supervision has occurred.

**Control Release.** The control release program was a prison population management system administered by the commission to keep the prison population at its lawful capacity. It is not currently active because there are sufficient prison beds, but there are a small number of control releasees still under supervision. The commission monitors the progress of these releasees and conducts revocation hearings for alleged violations.

**Conditional Medical Release.** Conditional medical release is a discretionary release that allows the commission to release inmates on supervision who are "terminally ill" or "permanently incapacitated" and who are not a danger to others.

**Addiction Recovery Supervision.** The addiction-recovery supervision program provides mandatory post-prison supervision for offenders released from a state correctional facility, who are convicted of a crime committed on or after July 1, 2001; who have a history of substance abuse or addiction or have

participated in any drug treatment; and have not been convicted of a disqualifying offense. The commission sets the term and conditions of supervision, and considers revocation of supervision if the offender fails to abide by the conditions of supervision. During FY 2003-2004, 719 offenders were placed in the program.

**Clemency.** The clemency activity includes full pardons, which unconditionally releases an individual from punishment and forgives guilt for any Florida convictions; commutations of sentence, which adjust an offender's sentence to one less severe (including changing a death row inmate's sentence to life in prison); restoration of firearms authority for ex-felons; and restoration of civil rights—the right to vote, hold public office, serve on a jury, and obtain state-issued occupational licenses—for ex-felons.

The Executive Clemency Board, composed of the Florida Cabinet, makes all final decisions regarding the granting of clemency. It is assisted by the Parole Commission's Office of Executive Clemency and Office of Clemency Administration. These offices assist the board with the two main processes for clemency—clemency with a formal hearing and restoration of civil rights without a hearing.

*Clemency with a formal hearing.* All ex-felons seeking a pardon or commutation of sentence, and some ex-felons seeking restoration of civil rights, must use the formal hearing process. In these cases, the applicant completes a short application which prompts the initiation of a full investigation as mandated by the Clemency Board. The application information is verified by field investigators at the Office of Clemency Administration. The commission staff then forwards its recommendation and investigative report to the Clemency Board, which makes its decision following a formal hearing.

*Restoration of civil rights without a hearing.* In accordance with changes to the Rules of Executive Clemency adopted in December 2004, most nonviolent offenders are eligible for restoration of civil rights without a hearing, provided that they have remained arrest-free for at least five years and do not owe victim restitution. All offenders are eligible for restoration of civil rights without a hearing if they have remained arrest-free for 15 years and do not owe victim restitution, although in rare cases a formal hearing is requested.

#### ***Impact of Bill:***

This bill amends several sections of the Florida Statutes pertinent to the Parole Commission. Specifically, it abolishes the Parole Commission and provides for the creation of regional parole boards. The boards shall conduct parole hearings, grant or deny parole to eligible inmates, and sets conditions of parole. The boards are to be housed and supported administratively by the Department of Legal Affairs/Office of Attorney General. The bill also provides the Executive Office of the Governor with control over the administrative and investigative functions relating to clemency and grants the authority over revocation, conditional control, and addiction recovery release to the sentencing court. The House version of the General Appropriations Act transfers one-half of the 2006-2007 fiscal year funding for the Parole Commission to a lump sum appropriation category for distribution to other governmental entities.

## **PRISON PER-DIEM WORKGROUP**

#### ***Background:***

Section 957.07, F.S., states that the Department of Management Services (DMS) may not enter into a contract for the construction and operation of a privately operated prison unless it is determined that the total contract amount for the facility will result in a cost savings to the state of at least 7% over similar facilities constructed and operated by the state.

Section 957.07 (5)(a), F.S., states that by February 1 of each year, the Prison Per-Diem Workgroup shall develop consensus per diem rates to be used when determining per diem rates of privately operated prisons. The Department of Management Services, however, is directed by section 957.07(1), F.S., to use data provided by the Department of Corrections, rather than the per-diem workgroup, in determining whether a contract meets the 7% savings requirement.

Section 957.07 (5)(a), F.S., also states that the principals of the workgroup are the Office of Program Policy Analysis and Government Accountability (OPPAGA), the Office of the Auditor General, and the staffs of the House and Senate appropriations committees. Sections 957.07 (1) and (4)(a), F.S., require the Auditor General to certify cost data provided by the Department of Corrections and used by the workgroup in its analysis.

***Impact of Bill:***

This bill amends s. 957.07 (5)(a), F.S., to allow the Prison Per-Diem Workgroup to develop consensus per diem rates of the state's privately operated correctional facilities upon the request of the Senate President or the Speaker of the House rather than develop the per diem rates annually. The section is further amended to remove the Auditor General as one of the principals of the workgroup to eliminate its dual role of assisting in the development of the consensus per diem rate and performing oversight duties.

**C. SECTION DIRECTORY:**

Section 1. Repeals s. 20.315(6), F.S., to abolish the Florida Corrections Commission.

Section 2. Amends s. 20.32, F.S., abolishing the Parole Commission and providing for the creation of regional parole boards; prescribing board membership; administratively housing the boards within the Office of the Attorney General (OAG); requiring the OAG to provide administrative and staff support; providing the powers and duties of the boards; and prescribing the OAG's assignment of inmates for board review.

Sections 3-23. Amends chapters 23, 112, 186, 255, 322, 394, 775, 784, 843, 893 and 921, F.S., to conform references relating to parole and the roles of the regional parole boards, the DOC, and the OAG.

Sections 24-26. Amends chapters 940 and 941, F.S., to conform references relating to executive clemency and the roles of the boards and the Executive Office of the Governor.

Sections 27-31 and 38-43. Amends chapters 943, 944, 945 and 947, F.S., to conform references relating to the Parole Commission.

Sections 32 and 37. Amends s. 944.026, F.S., to delete references to state probation and restitution centers and pretrial intervention programs.

Section 33. Amends s. 944.23, F.S., to conform references relating to authorized prison visitations.

Sections 34. Amends s. 944.291(2), F.S., to conform references on matters concerning conditional release.

Sections 35 and 46. Amends ss. 944.4731 and 947.1405, F.S., to conform references relating to community supervision.

Section 36. Amends s. 944.8041, F.S., to delete all references to the Florida Corrections Commission relating to annual reporting requirements on elderly offenders within the correctional system and adds the Governor as a recipient of the annual report.

Sections 44 and 45. Amends ss. 947.02 and 947.021, F.S., to establish membership criteria for the parole boards and provide for reimbursement of the travel and per diem costs of board members.

Sections 46 and 47. Amends ss. 947.1405 and 947.141, F.S., to conform references, requiring the original sentencing court to impose conditional release at the initial sentencing or prior to release of the inmate, and determine violations, issue warrants, hold hearings and impose sanctions relating to conditional release.

Additionally, s. 947.1405, F.S., requires the DOC to adopt rules on conditional release and provide information and make recommendations to the court on conditional releasees.

Section 48. Amends s. 947.146, F.S., to conform references relating to control release.

Sections 49-51. Amends ch. 947, F.S., to conform references relating to parole.

Sections 52-56. Amends ch. 948, F.S., to conform references relating to probation and community control.

Sections 57-58, 60 and 64. Amends ss. 948.101, 948.51, 958.231, 958.04, F.S., to eliminate the DOC probation and restitution centers.

Section 59. Amends s. 949.05, F.S., to conform references relating to Parole Commission appointments.

Section 61. Amends s. 957.04, F.S., to replace the Florida Corrections Commission with the Department of Management Services involving contract bidding process prohibitions.

Section 62. Amends s. 957.06, F.S., to conform references relating to privately operated prison facilities.

Section 63. Amends s. 957.07, F.S., to provide for the development of consensus per diem rates of privately operated prisons by the Prison Per-Diem Workgroup at the request of the Speaker of the House or President of the Senate and establish that consensus rates may be used by the Legislature in determining a level of funding necessary to meet the 7 percent savings requirement.

Sections 65-70. Amends ss. 958.045, 960.001, 960.17, 985.04, 985.05, and 984.078, F.S., to conform references relating to the Parole Commission.

Section 71. Provides for the transfer of positions, salary rate and funding as necessary from the Parole Commission to the Executive Office of the Governor to support the Executive Board of Clemency.

Section 72. Repeals ss. 947.01 and 947.022, F.S., relating to the creation and membership of the Parole Commission.

Section 73. Provides for a title change for chapter 947, F.S., to "Regional Parole Boards".

Section 74. With the exception of the provisions related to the abolishment of the Parole Commission, this bill is effective July 1, 2006. The Parole Commission is abolished on January 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Probationers are generally required to pay the cost of supervision to the state of Florida. These funds are collected by DOC and remitted to general revenue unallocated. With the elimination of the DOC pretrial intervention program and the probation and restitution centers, any court-ordered DOC fees assessed to the offender would cease or be adjusted to reflect a replacement or alternative sentence imposed by the court.

#### **2. Expenditures:**

The House version of the General Appropriations Act deletes \$3,172,964 in recurring general revenue appropriations for probation and restitution centers and deletes 76 positions, 2,882,556 of salary rate and \$4,368,916 in recurring general revenue funding for the pretrial intervention program in the Department of Corrections. The bill also transfers one-half of the 2006-2007 fiscal year

funding for the Parole Commission to a lump sum appropriation category for distribution to other governmental entities. Positions and funding for the Florida Corrections Commission were eliminated in the 2004-2005 and 2005-2006 fiscal years.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

While this bill does not require counties to expend funds, it does provide the authority for counties to operate pretrial intervention programs if they elect to do so.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

This is a conforming bill to the House version of the General Appropriations Act.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**