

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 Criminal Justice Committee

BILL: CS/SB 1430

INTRODUCER: Criminal Justice Committee and Senators King and Joyner

SUBJECT: Adolescent Offenders/Parole

DATE: March 19, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.			JA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill makes certain inmates who committed their offense at a young age eligible for consideration for release on parole. The initial eligibility interview would not take place until the inmate is serving his or her eighth year of imprisonment. The threshold eligibility requirements are that the inmate:

- Must be serving a sentence of imprisonment for life or for a term of at least 10 years for a felony that was committed when he or she was 15 years old or younger
- Must not have been convicted of any of certain designated offenses in addition to the offense for which parole is sought
- Must have successfully completed a General Educational Development (GED) program
- Must not have received a disciplinary report for a period of at least 2 years

The bill requires that an adolescent offender be placed in a facility that has a GED program unless he or she has already successfully completed a GED program.

If the inmate meets the threshold requirements, the bill requires that he or she be interviewed and considered for parole by the Parole Commission after completing 8 years of the sentence. The bill includes additional criteria that must be considered by the Commission in evaluating whether the inmate has been sufficiently rehabilitated to be paroled. It also requires that any adolescent offender who is granted parole must participate in a reentry program for 2 years as a condition of parole.

This bill substantially amends section 947.16 of the Florida Statutes.

II. Present Situation:

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission). Eligibility for parole has been abolished in Florida, but approximately 6000 inmates are still eligible for parole consideration.¹ These are inmates who:

- Committed an offense other than capital felony murder or capital felony sexual battery prior to October 1, 1983;
- Committed capital felony murder prior to May 25, 1994; or
- Committed capital felony sexual battery prior to October 1, 1995.

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 Department of Corrections' probation officers. As of January 31, 2009, 469 offenders were actively supervised on parole from Florida sentences.²

Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. 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. If the PPRD is more than 2 years after the date of the initial interview, in most cases a parole commission hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter.³ These interviews are limited to determining whether or not information has been gathered which might affect the PPRD.⁴ The Department of Corrections (department) assists the commission by providing it with pertinent information such as current progress reports, psychological reports, and disciplinary reports.⁵

¹ Florida Parole Commission Analysis of Senate Bill 1430, revised March 3, 2009, page 2.

² Community Supervision Population Monthly Status Report, January 2009, Florida Department of Corrections, p. 1.

³ However, s. 947.16(4)(g), F.S., 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.

⁴ Section 947.174(1)(c), F.S.

⁵ Section 947.174(3), F.S.

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 common for the victim or victim's representative and law enforcement representatives to appear at the hearing.

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.

The commission has discretion in determining the terms and conditions of parole. Additionally, there are specific statutory conditions of parole that require:

- Random substance abuse testing, if the conviction was for a controlled substance violation (s. 947.18, F.S.)
- Not knowingly associate with other criminal gang members or associates, if the offense involved criminal gang activity (s. 947.18, F.S.)⁶
- Payment of any debt due to the state under s. 960.17, F.S., or attorney's fees and costs due to the state under s. 938.29, F.S. (s. 947.18, F.S.)
- Payment of victim restitution (s. 947.181, F.S.)
- The offender to apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded (s. 948.185, F.S.)

Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S.⁷ However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, a grand jury indictment is required to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.⁸

Youthful Offenders

Classification as a youthful offender is dependent upon an offender's age and the offense that is committed. A court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 years of age or was prosecuted as an adult pursuant to ch. 985, F.S., but is under 21 years old at the time of sentencing;

⁶ This condition applies only to offenses committed on or after October 1, 2008.

⁷ Section 985.03(6), F.S., defines juvenile as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years."

⁸ Section 985.58, F.S.

- Has been found guilty of or has pled nolo contendere or guilty to a felony that is not punishable by death or imprisonment for life; and
- Has not previously been classified as a youthful offender.⁹

Separate institutions and programs exist for youthful offenders that fall into two age groups: age 14 to 18 years old and age 19 to 24 years old.¹⁰ The department must assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender.¹¹ The department is also required to screen for and may classify as a youthful offender any inmate who is under 25 years old, who has not previously been classified as a youthful offender, and who has not committed a capital or life felony. The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful facility.¹²

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration.

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or part of the punishment for a crime. The power of clemency is vested in the Governor pursuant to Article IV, Section 8(a) of the Florida Constitution. All inmates, including those who are not eligible for parole, can apply for clemency.

The governor and members of the Cabinet are collectively the Clemency Board. The governor has discretion to deny clemency at any time for any reason and, with the approval of at least two members of the Cabinet, may grant clemency at any time and for any reason. There are several types of clemency, including pardon, commutation of sentence, remission of fines and forfeitures, restoration of authority to possess firearms, and restoration of civil rights. The Rules of Executive Clemency provide that a person is not eligible for commutation of sentence unless at least two years have elapsed since conviction and he or she has served at least one-third of any minimum mandatory sentence. However, the governor may waive these requirements in cases of extraordinary merit and compelling need.

The Parole Commission provides investigatory and administrative support to the Clemency Board, but the clemency process is independent of the parole process.

III. Effect of Proposed Changes:

This bill, named the "Second Chance for Children in Prison Act of 2009," amends s. 947.16, F.S., to establish parole eligibility for "adolescent offenders." If an adolescent offender is eligible for parole consideration, the initial interview would take place during his or her eighth year of incarceration. The bill defines an adolescent offender as an offender who:

⁹ Section 958.04(1), F.S.

¹⁰ Section 958.11(1), F.S.

¹¹ Section 944.1905(5)(a), F.S.

¹² Section 958.11(6), F.S.

- Committed a crime or crimes when 15 years old or younger; and
- Was sentenced to imprisonment for life or for 10 years or more.

Under the bill, an adolescent offender would be eligible for consideration for parole unless he or she pled nolo contendere to or was convicted of a disqualifying offense before the current offense.¹³ “Current offense” is defined as “...the offense for which the adolescent offender is being considered for parole and any other crimes committed by the adolescent offender within a 1-month period of that offense, or for which sentences run concurrent to that offense.” The following offenses would be disqualifying if committed in addition to the current offense:

- Murder (s. 782.04, F.S.)
- Felony battery or domestic battery by strangulation (s. 784.041, F.S.)
- Aggravated battery (s. 784.045, F.S.)
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents or other specified officers (s. 784.07, F.S.)
- Assault or battery on persons 65 years of age or older (s. 784.08, F.S.)
- Kidnapping (s. 787.01, F.S.)
- Persons engaged in criminal offense, having weapons (s. 790.07, F.S.)
- Sexual battery (s. 794.011, F.S.)
- Carjacking (s. 812.133, F.S.)
- Home-invasion robbery (s. 812.135, F.S.)
- Abuse, aggravated abuse, and neglect of a child (s. 827.03, F.S.)
- Cruelty to animals (s. 828.12, F.S.)

The department reports that there are currently 448 potentially eligible inmates who committed their primary offense at age 15 or younger and who are serving a sentence of 10 years or more, and that 148 have completed at least 8 years of their sentence. The number of offenders categorized by primary offense is as follows:¹⁴

Offense Category	10 Year or Longer Sentence	Served 8 or More Years of a 10 Year or Longer Sentence
Murder/Manslaughter	170	83
Aggravated Assault/Battery	49	11
Sexual/Lewd Behavior	64	15
Robbery	112	26
Burglary	44	11
Property Theft/Damage/Fraud	2	1

¹³ It appears from the context that the phrase “before the current offense” means before commission of the current offense, but it could be interpreted to mean before conviction of the current offense.

¹⁴ Department of Corrections 2009 Analysis of Senate Bill 1430, page 2.

Other	7	1
Total	448	148

The bill requires that an adolescent offender must also successfully complete a GED program in order to be eligible for parole, unless the requirement is waived based on disability. “Successful completion” is not defined in the bill, but the department currently defines “completion” to mean obtaining a GED certificate.¹⁵ Sixty-eight adolescent offenders have served at least 8 years of their sentence and have obtained a GED certificate.¹⁶ Obtaining a GED certificate or high school diploma is linked with increased employment and lower recidivism rates for offenders after release from prison.¹⁷

To facilitate successful GED completion, the bill specifies that an offender must serve his or her sentence in a facility that has a GED program. This requirement does not apply after the adolescent offender has successfully completed the GED program. All youthful offender facilities and approximately 60 percent of adult correctional facilities have GED programs.

The final mandatory requirement for an adolescent offender to be eligible for parole consideration is that he or she must not have had an approved disciplinary report for at least 2 years before the current eligibility interview. A disciplinary report is a document that initiates the process of disciplining an inmate for a violation of department rules. Upon receiving a disciplinary report, the inmate must be afforded administrative due process before the report is approved. Being found guilty of an infraction charged in a disciplinary report can result in administrative confinement and loss of gain time. After a disciplinary report is issued, the inmate’s due process rights include further investigation, a hearing to determine guilt or innocence and appropriate punishment, and final review by the warden or the regional director of institutions to approve, disapprove or modify the result of the hearing.¹⁸ The bill provides that the disciplinary report is not disqualifying unless it has been validated through this process.

Under the department’s disciplinary rules, the severity of punishment resulting from a disciplinary report is dependent upon the nature of the infraction. For example, the maximum punishment for failure to maintain personal hygiene or appearance is 10 days in disciplinary confinement and loss of 15 days of gain time, while the maximum punishment for possession of a weapon is 60 days in disciplinary confinement and loss of all gain time.¹⁹ The bill does not differentiate between the severities of the offense for which an approved disciplinary report is received.

If the adolescent offender meets all of the above criteria to be eligible for parole consideration, the bill specifies a number of areas that must be considered by the parole examiner. These

¹⁵ Department of Corrections Annual Report, 2006-2007, page 34, footnote “***” to table titled “Participation in Correctional Education Classes in FY 2006-07.”

¹⁶ Department of Corrections 2009 Analysis of Senate Bill 1430, page 2.

¹⁷ OPPAGA Report No. 07-14, Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population, February 2007. The report analyzed Department of Corrections’ data and found that male GED program completers have lower recidivism rates than non-completers.

¹⁸ The department’s rules concerning disciplinary reports and the inmate disciplinary process are found in Chapter 33-601.301 – 33-601.314, Florida Administrative Code.

¹⁹ Rule 33-601.314, Florida Administrative Code.

include taking the wishes of the victim or the victim's next of kin into serious consideration and also considering whether the adolescent offender:

- Was a principal to the criminal offense or an accomplice to the offense, a relatively minor participant in the criminal offense, or acted under extreme duress or domination of another person.
- Has shown remorse for the criminal offense.
- Was of an age, maturity, and psychological development at the time of the offense that affected his or her behavior.
- Has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates while in custody.
- Has successfully completed educational and self-rehabilitation programs.
- Was a victim of sexual, physical, or emotional abuse.

An adolescent offender who is granted parole must participate in any available reentry program for 2 years. The bill specifies that a reentry program is a program that promotes effective reintegration of offenders back into communities and that provides vocational training, placement services, transitional housing, mentoring, or drug rehabilitation. There is a preference for reentry programs that are residential, highly structured, self-reliant, and therapeutic communities.

The bill has an effective date of July 1, 2009, and expressly applies retroactively to previously sentenced inmates.

Other Potential Implications:

The bill specifically provides that it applies notwithstanding any other law to the contrary. Therefore, it allows adolescent offenders to be considered for parole prior to completion of a mandatory minimum sentence or of 85 percent of the term of imprisonment as required by s. 921.002, F.S.

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:

According to the Criminal Justice Impact Conference, the bill will have an indeterminate fiscal impact on the state prison system. The Parole Commission also reports that the fiscal impact is indeterminate, but foresees a positive fiscal impact due to bed cost savings that would be realized for each inmate who is paroled. In Fiscal Year 2007-2008, the average cost to house a male inmate was approximately \$16,000 and the annual cost to house a male youthful offender was approximately \$22,000. Costs of supervision would be significantly less for any adolescent offender who is released under parole supervision. The Department of Corrections anticipates that the work increase from reviewing existing and future cases would be slight, and does not anticipate that the number of adolescent offenders who would be paroled would be sufficient to require additional probation officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 17 of Senate Bill 2218 provides for parole consideration for any juvenile who is sentenced to an adult prison sentence for ten years or more and has served at least 8 years of the sentence, with exclusions for commission of certain offenses.

VIII. 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 March 18, 2009:

- Clarifies definitions of adolescent offender and current offense.
- Clarifies that provisions making adolescent offenders eligible to be considered for parole apply notwithstanding other laws to the contrary.
- Provides for an initial interview during the eighth year of incarceration, rather than after completion of eight years of incarceration.
- Adds additional disqualifying offenses.
- Provides for waiver of the GED program completion requirement based on disability.

- Clarifies that the offender must not have had any approved disciplinary reports for two years before the current parole eligibility interview.
- Removes requirement to house an adolescent offender in a facility designed for adolescent offenders up to age 24 and an adult facility thereafter, but requires that an adolescent offender be housed in a facility that has a GED program if he or she has not already completed a GED program.

B. Amendments:

None.

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