

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 and Civil Justice Appropriations Committee

BILL: CS/SB 200

INTRODUCER: Criminal Justice Committee and Senators Baker and Thrasher

SUBJECT: Presumptive Parole Release Date Review

DATE: April 1, 2010 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill amends ss. 947.16, 947.174, and 947.1745, .F.S, to permit the Florida Parole Commission to increase the interval between parole interviews to 7 years for those inmates whose interviews are currently every 5 years.

II. Present Situation:

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (“the commission”). The only inmates who are eligible for parole consideration are those who committed capital sexual battery prior to October 1, 1995, capital sexual murder prior to October 1, 1994, or another crime prior to October 1, 1983. The commission reports that 5,826 Florida inmates are still eligible for parole consideration because parole applied to their offense at the time it was committed.

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 November 30, 2009, there were 452 parolees on parole from Florida sentences.

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, interviews the inmate, 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 or 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. Of the 5,826 inmates who are eligible to be considered for parole, 4,852 have been convicted of one of the enumerated offenses.

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 in order to set an effective parole release date and to establish a parole release plan. Section 947.1745(6), F.S., requires the commission to give notice to the sentencing court prior to this final interview. If the court objects to the offender's release, the objection can be an exceptional circumstance under s. 947.173, F.S., for the commission to cancel the final interview and reset the case for future review. If the court does not object and the final interview is held, 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.

Section 947.16(4), F.S., permits a sentencing court to retain jurisdiction over certain violent crime cases in order to review any parole release order in the case. In such cases, the commission must send notice of the release order to the sentencing judge and state attorney within 30 days of entry of the order. The court can enter a non-appealable order vacating the release order, requiring the commission to schedule a new parole eligibility interview.

If the commission modifies a release date due to a court's objection under s. 947.1745(6), F.S., or if a court vacates a release order pursuant to s. 947.16(4), F.S., a re-interview must be held every 2 years. However, the interviews 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:

This bill amends ss. 947.16, 947.174, and 947.1745, F.S., to give the commission authority to increase the interval between parole consideration re-interviews to 7 years for parole-eligible offenders who have been convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or who are serving a 25-year minimum mandatory sentence under s. 775.082, F.S. The commission is currently permitted to increase the parole interview interval for these offenders to 5 years from the standard 2 years if it makes a written finding that it is unlikely to grant parole to the offender. The requirement for a written finding that parole is unlikely before increasing the interval is not changed by the bill.

The groups that would be most affected by this bill are victims and their families, parole-eligible inmates and their families, and the commission itself. For victims, reduction of the frequency of an opportunity for parole can be expected to lessen the stress associated with potential release of the offender. Because victims and families often attend the parole hearings, there is also a potential financial savings. For offenders, the normally-scheduled interviews would be reduced if their record indicates that granting of parole is not likely. For the commission, there would be some reduction in workload and the opportunity to focus on the cases that are more frequently reviewed.

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 punishment. In *California Department of Corrections v. Morales*, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995), the United States Supreme Court held that a California statute increasing the interval between parole interviews did not violate the ex post facto clause. Subsequent cases have relied on *Morales* to uphold the constitutionality of current s. 947.174(1)(b), F.S., which permitted an increase of the interview interval from 2 to 5 years. See *Tuff v. State*, 732 So.2d 461 (Fla. 3d Dist. 1999); *Pennoyer v. Briggs*, 206 Fed.Appx. 962 (11th Cir. 2006). Because there is no legal distinction

between increasing the interval from 2 to 5 years and increasing it from 5 to 7 years, the bill's provisions do not violate the ex post facto clauses of the United States and Florida constitutions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Holding parole hearings less frequently will reduce the costs incurred by persons who attend the hearings. This may include victims and their families and representatives, victims advocacy groups, law enforcement agencies, and the families and representatives of inmates. The amount of reduction cannot be quantified because a reduction of frequency will depend 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:

Authorization to reduce the frequency of parole hearings has the potential to reduce the number of hearings conducted by the commission, which may result in cost savings or reallocation of resources to other cases. However, the amount of any savings cannot be determined until the commission considers individual cases and makes a decision on whether to apply its new authority to the case.

There would be additional cost to incarcerate an inmate whose interview interval is changed from five years to seven years if the inmate is ultimately paroled. This would amount to approximately \$40,000 for the additional two years of incarceration.¹ The number of inmates in these circumstances who would be paroled is not predictable. However, it is not likely to be a large number because by definition the expanded interval applies only to those inmates whom the commission finds are unlikely to be granted parole.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹ The average annual cost per inmate for all DOC facilities, except private facilities, is approximately \$20,000. Department of Corrections Budget Summary (Fiscal Year 2008-2009), available at <http://www.dc.state.fl.us/pub/annual/0809/budget.html> (last viewed on January 12, 2010).

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 January 13, 2010:

The Committee Substitute amends ss. 947.16(4) and 947.1745, F.S., to extend the re-interview period from 5 to 7 years. This makes the reinterview schedule consistent throughout ch. 947, F.S.

- B. **Amendments:**

None.

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