



630324

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/14/2011	.	
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The Committee on Criminal Justice (Evers) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. The Legislature recognizes the need to provide a means for the release of older inmates who have demonstrated that they have been rehabilitated while incarcerated. It is the intent of the Legislature to address this issue by establishing a conditional extension of the limits of confinement by providing a mechanism for determining eligibility for early release and supervising inmates who have been incarcerated for at least 25 consecutive years and are 60 years of age or older.



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13 It is the Legislature's intent that the provisions of this bill  
14 be applied to include inmates who have previously been sentences  
15 as well as those who will be sentenced in the future. The  
16 Legislature intends to provide for victim input and the  
17 enforcement of penalties for those who fail to comply with  
18 supervision while outside a prison facility. The Legislature  
19 also intends that a pilot program patterned after the program  
20 offered by Neighborhood Restorative Justice Centers be  
21 implemented and offered to inmates who are eligible for release  
22 under the Elderly Rehabilitated Inmate Supervision Program.

23 Section 2. Section 947.148, Florida Statutes, is created to  
24 read:

25 947.148 Elderly Rehabilitated Inmate Supervision Program.-

26 (1) This section may be cited as the "Elderly Rehabilitated  
27 Inmate Supervision Program Act."

28 (2) As used in this section, the term "program" means the  
29 Elderly Rehabilitated Inmate Supervision Program unless the  
30 context indicates otherwise.

31 (3) An inmate may petition the commission for supervised  
32 release under the program if the inmate:

33 (a) Is 60 years of age or older;

34 (b) Has been convicted of a felony and served at least 25  
35 consecutive years of incarceration;

36 (c) Is not eligible for parole or conditional medical  
37 release;

38 (d) Has not been sentenced for a capital felony;

39 (e) Is not serving a minimum mandatory sentence; and

40 (f) Has not received a disciplinary report within the  
41 previous 6 months.



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42           (4) Each petition filed on behalf of an inmate to  
43 participate in the program must contain:

44           (a) A proposed release plan;

45           (b) Documentation of the inmate's relevant medical history,  
46 including current medical prognosis;

47           (c) The inmate's prison experience and criminal history.  
48 The criminal history must include any claim of innocence, the  
49 degree to which the inmate accepts responsibility for his or her  
50 acts leading to the conviction of the crime, and how the claim  
51 of responsibility has affected the inmate's feelings of remorse;

52           (d) Documentation of the inmate's history of substance  
53 abuse and mental health;

54           (e) Documentation of any disciplinary action taken against  
55 the inmate while in prison;

56           (f) Documentation of the inmate's participation in prison  
57 work and programs; and

58           (g) Documentation of the inmate's renunciation of gang  
59 affiliation.

60           (5) An inmate may not file a new petition within one year  
61 of receiving notification of denial of his or her petition to  
62 participate in the program. Any petition that is filed prior to  
63 the one year period will be returned to the inmate with a  
64 notation indicating the date when a petition can be refiled.

65           (6) All matters relating to the granting, denying, or  
66 revoking of an inmate's supervised release in the program shall  
67 be decided in a meeting at which the public may be present. A  
68 victim of the crime committed by the inmate, a victim's parent  
69 or guardian if the victim is a minor, a lawful representative of  
70 the victim or of the victim's parent or guardian if the victim



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71 is a minor, or a homicide victim's next of kin may make an oral  
72 statement or submit a written statement regarding his or her  
73 views as to the granting, denying, or revoking of supervision. A  
74 person who is not a member or employee of the commission, the  
75 victim of the crime committed by the inmate, the victim's parent  
76 or guardian if the victim is a minor, a lawful representative of  
77 the victim or of the victim's parent or guardian if the victim  
78 is a minor, or a homicide victim's next of kin may participate  
79 in deliberations concerning the granting and revoking of an  
80 inmate's supervised release in the program only upon the prior  
81 written approval of the chair of the commission. The commission  
82 shall notify the victim, the victim's parent or guardian if the  
83 victim is a minor, a lawful representative of the victim or of  
84 the victim's parent or guardian if the victim is a minor, or the  
85 victim's next of kin if the victim is deceased no later than 30  
86 days after the petition is received by the commission, no later  
87 than 30 days before the commission's meeting, and no later than  
88 30 days after the commission's decision.

89 (7) The commission may approve an inmate for participation  
90 in the program if the inmate demonstrates:

91 (a) Successful participation in programs designed to  
92 restore the inmate as a useful and productive person in the  
93 community upon release;

94 (b) Genuine reform and changed behavior over a period of  
95 years;

96 (c) Remorse for actions that have caused pain and suffering  
97 to the victims of his or her offenses; and

98 (d) A renunciation of criminal activity and gang  
99 affiliation if the inmate was a member of a gang.



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100           (8) In considering eligibility for participation in the  
101 program, the commission shall review the inmate's:

102           (a) Entire criminal history and record;

103           (b) Complete medical history, including history of  
104 substance abuse, mental health, and current medical prognosis;

105           (c) Prison disciplinary record;

106           (d) Work record;

107           (e) Program participation; and

108           (f) Gang affiliation, if any.

109  
110 The commission shall consider the inmate's responsibility for  
111 the acts leading to the conviction, including any prior and  
112 continued statements of innocence and the inmate's feelings of  
113 remorse.

114           (9) (a) An examiner shall interview the inmate within 90  
115 days after a petition is filed on behalf of the inmate. An  
116 interview may be postponed for a period not to exceed 90 days.  
117 Such postponement must be for good cause, which includes, but  
118 need not be limited to, the need for the commission to obtain a  
119 presentence or postsentence investigation report or a violation  
120 report. The reason for postponement shall be noted in writing  
121 and included in the official record. A postponement for good  
122 cause may not result in an interview being conducted later than  
123 90 days after the inmate's initial scheduled interview.

124           (b) During the interview, the examiner shall explain the  
125 program to the inmate and review the inmate's institutional  
126 conduct record, criminal history, medical history, work records,  
127 program participation, gang affiliation, and satisfactory  
128 release plan for supervision under the program.



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129       (c) Within 10 days after the interview, the examiner shall  
130 recommend in writing to a panel of no fewer than two  
131 commissioners appointed by the chair a release date for the  
132 inmate. The commissioners are not bound by the examiner's  
133 recommended release date.

134       (10) An inmate may not be placed in the program merely as a  
135 reward for good conduct or efficient performance of duties  
136 assigned in prison. An inmate may not be placed in the program  
137 unless the commission finds that there is reasonable probability  
138 that, if the inmate is placed in the program, he or she will  
139 live and conduct himself or herself as a respectable and law-  
140 abiding person and that the inmate's release will be compatible  
141 with his or her own welfare and the welfare of society.

142       (11) When the commission has accepted the petition,  
143 approved the proposed release plan, and determined that the  
144 inmate is eligible for the program, a panel of no fewer than two  
145 commissioners shall establish the terms and conditions of the  
146 supervision. When granting supervised release under the program,  
147 the commission shall require the inmate to participate in 10  
148 hours of community service for each year served in prison,  
149 require that the inmate be subject to electronic monitoring for  
150 at least 1 year, and require that reparation or restitution be  
151 paid to the victim for the damage or loss caused by the offense  
152 for which the inmate was imprisoned. The commission may elect  
153 not to impose any or all of the conditions if it finds reasons  
154 that it should not do so. If the commission does not order  
155 restitution or orders only partial restitution, the commission  
156 must state on the record the reasons for its decision. The  
157 amount of such reparation or restitution shall be determined by



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158 the commission.

159 (12) The commission may impose any special conditions it  
160 considers warranted from its review of the release plan and  
161 inmate's record, including, but not limited to, a requirement  
162 that the inmate:

163 (a) Pay any debt due and owing to the state under s. 960.17  
164 or pay attorney's fees and costs that are owed to the state  
165 under s. 938.29;

166 (b) Not leave the state or any definite physical area  
167 within the state without the consent of the commission;

168 (c) Not associate with persons engaged in criminal  
169 activity; and

170 (d) Carry out the instructions of her or his supervising  
171 correctional probation officer.

172 (13) (a) An inmate may request a review of the terms and  
173 conditions of his or her supervised release under the program. A  
174 panel of at least two commissioners appointed by the chair shall  
175 consider the inmate's request, render a written decision and the  
176 reasons for the decision to continue or to modify the terms and  
177 conditions of the program supervision, and inform the inmate of  
178 the decision in writing within 30 days after the date of receipt  
179 of the request for review. During any period of review of the  
180 terms and conditions of supervision, the inmate shall be subject  
181 to the authorized terms and conditions of supervision until such  
182 time that a decision is made to continue or modify the terms and  
183 conditions of supervision.

184 (b) The length of supervision shall be the remaining amount  
185 of time the inmate has yet to serve, including calculations for  
186 gain-time credit, as determined by the department.



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187       (c) An inmate's participation in the program is voluntary,  
188 and the inmate must agree to abide by all conditions of release.  
189 The commission, upon authorizing a supervision release date,  
190 shall specify in writing the terms and conditions of the program  
191 supervision and provide a certified copy of these terms and  
192 conditions to the inmate.

193       (14) (a) At the time of sentencing, the trial court judge  
194 may enter an order retaining jurisdiction over the offender for  
195 review of a release order by the commission under this section.  
196 This jurisdiction of the trial court judge is limited to the  
197 first one-third of the maximum sentence imposed. When a person  
198 is convicted of two or more felonies and concurrent sentences  
199 are imposed, the jurisdiction of the trial court applies to the  
200 first one-third of the maximum sentence imposed for the highest  
201 felony of which the person was convicted. When any person is  
202 convicted of two or more felonies and consecutive sentences are  
203 imposed, the jurisdiction of the trial court judge applies to  
204 one-third of the total consecutive sentences imposed.

205       (b) In retaining jurisdiction for purposes of this  
206 subsection, the trial court must state the justification with  
207 individual particularity, and such justification shall be made a  
208 part of the court record. A copy of the justification and the  
209 uniform commitment form issued by the court pursuant to s.  
210 944.17 shall be delivered together to the department.

211       (c) Gain-time as provided for by law shall accrue, except  
212 that an offender over whom the trial court has retained  
213 jurisdiction as provided in this subsection may not be released  
214 during the first one-third of her or his sentence by reason of  
215 gain-time.





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216       (d) In such a case of retained jurisdiction, the  
217 commission, within 30 days after the entry of its release order,  
218 shall send notice of its release order to the original  
219 sentencing judge and to the appropriate state attorney. The  
220 release order shall be made contingent upon entry of an order by  
221 the appropriate circuit judge relinquishing jurisdiction as  
222 provided for in paragraph (e). If the original sentencing judge  
223 is no longer in service, such notice shall be sent to the chief  
224 judge of the circuit in which the offender was sentenced. The  
225 chief judge may designate any circuit judge within the circuit  
226 to act in the place of the original sentencing judge.

227       (e) The original sentencing judge or her or his replacement  
228 shall notify the commission within 10 days after receipt of the  
229 notice provided for in paragraph (d) as to whether the court  
230 desires to retain jurisdiction. If the original sentencing judge  
231 or her or his replacement does not so notify the commission  
232 within the 10-day period or notifies the commission that the  
233 court does not desire to retain jurisdiction, the commission may  
234 dispose of the matter as it sees fit.

235       (f) Upon receipt of notice of intent to retain jurisdiction  
236 from the original sentencing judge or her or his replacement,  
237 the commission shall, within 10 days, forward to the court its  
238 release order, the examiner's report and recommendation, and all  
239 supporting information upon which its release order was based.

240       (g) Within 30 days after receipt of the items listed in  
241 paragraph (f), the original sentencing judge or her or his  
242 replacement shall review the order, findings, and evidence. If  
243 the judge finds that the order of the commission is not based on  
244 competent, substantial evidence or that participation in the



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245 program is not in the best interest of the community or the  
246 inmate, the court may vacate the release order. The judge or her  
247 or his replacement shall notify the commission of the decision  
248 of the court, and, if the release order is vacated, such  
249 notification must contain the evidence relied on and the reasons  
250 for denial. A copy of the notice shall be sent to the inmate.

251 (15) A correctional probation officer as defined in s.  
252 943.10 shall supervise the inmate released under this program.

253 (16) The department and commission shall adopt rules to  
254 administer this section.

255 Section 3. Section 947.1481, Florida Statutes, is created  
256 to read:

257 947.1481 Restorative Justice Pilot Program.—

258 (1) As used in this section, the term "pilot program" means  
259 the Restorative Justice Pilot Program.

260 (2) The department shall develop the pilot program that is  
261 patterned after the program offered by the Neighborhood  
262 Restorative Justice Centers established under s. 985.155. The  
263 pilot program shall be implemented at one prison for women and  
264 at two prisons for men. The portion of the pilot program which  
265 include classes on the effect that crime has on victims shall be  
266 made available on a voluntary basis. Inmates who are eligible to  
267 participate in the Elderly Rehabilitated Inmate Supervision  
268 Program shall be given priority for participation in the pilot  
269 program.

270 (3) The pilot program created under this section shall be  
271 developed after identifying a need in the community for the  
272 pilot program through consultation with representatives of the  
273 public, members of the judiciary, law enforcement agencies,



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274 state attorneys, and defense attorneys.

275 (4) The department may provide departmental staff to  
276 conduct the pilot program or may contract with other public or  
277 private agencies for the delivery of services related to the  
278 pilot program.

279 (5) The department shall adopt rules to administer this  
280 section.

281 Section 4. Section 947.141, Florida Statutes, is amended to  
282 read:

283 947.141 Violations of conditional release, control release,  
284 ~~or~~ conditional medical release, ~~or~~ addiction-recovery  
285 supervision, or elderly rehabilitated inmate supervision.-

286 (1) If a member of the commission or a duly authorized  
287 representative of the commission has reasonable grounds to  
288 believe that an offender who is on release supervision under s.  
289 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has  
290 violated the terms and conditions of the release in a material  
291 respect, such member or representative may cause a warrant to be  
292 issued for the arrest of the releasee; if the offender was found  
293 to be a sexual predator, the warrant must be issued.

294 (2) Upon the arrest on a felony charge of an offender who  
295 is on release supervision under s. 947.1405, s. 947.146, s.  
296 947.148, s. 947.149, or s. 944.4731, the offender must be  
297 detained without bond until the initial appearance of the  
298 offender at which a judicial determination of probable cause is  
299 made. If the trial court judge determines that there was no  
300 probable cause for the arrest, the offender may be released. If  
301 the trial court judge determines that there was probable cause  
302 for the arrest, such determination also constitutes reasonable



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303 grounds to believe that the offender violated the conditions of  
304 the release. Within 24 hours after the trial court judge's  
305 finding of probable cause, the detention facility administrator  
306 or designee shall notify the commission and the department of  
307 the finding and transmit to each a facsimile copy of the  
308 probable cause affidavit or the sworn offense report upon which  
309 the trial court judge's probable cause determination is based.  
310 The offender must continue to be detained without bond for a  
311 period not exceeding 72 hours excluding weekends and holidays  
312 after the date of the probable cause determination, pending a  
313 decision by the commission whether to issue a warrant charging  
314 the offender with violation of the conditions of release. Upon  
315 the issuance of the commission's warrant, the offender must  
316 continue to be held in custody pending a revocation hearing held  
317 in accordance with this section.

318 (3) Within 45 days after notice to the Parole Commission of  
319 the arrest of a releasee charged with a violation of the terms  
320 and conditions of conditional release, control release,  
321 conditional medical release, ~~or~~ addiction-recovery supervision,  
322 or elderly rehabilitated inmate supervision, the releasee must  
323 be afforded a hearing conducted by a commissioner or a duly  
324 authorized representative thereof. If the releasee elects to  
325 proceed with a hearing, the releasee must be informed orally and  
326 in writing of the following:

- 327 (a) The alleged violation with which the releasee is  
328 charged.
- 329 (b) The releasee's right to be represented by counsel.
- 330 (c) The releasee's right to be heard in person.
- 331 (d) The releasee's right to secure, present, and compel the



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332 attendance of witnesses relevant to the proceeding.

333 (e) The releasee's right to produce documents on the  
334 releasee's own behalf.

335 (f) The releasee's right of access to all evidence used  
336 against the releasee and to confront and cross-examine adverse  
337 witnesses.

338 (g) The releasee's right to waive the hearing.

339 (4) Within a reasonable time following the hearing, the  
340 commissioner or the commissioner's duly authorized  
341 representative who conducted the hearing shall make findings of  
342 fact in regard to the alleged violation. A panel of no fewer  
343 than two commissioners shall enter an order determining whether  
344 the charge of violation of conditional release, control release,  
345 conditional medical release, ~~or~~ addiction-recovery supervision,  
346 or elderly rehabilitated inmate supervision has been sustained  
347 based upon the findings of fact presented by the hearing  
348 commissioner or authorized representative. By such order, the  
349 panel may revoke conditional release, control release,  
350 conditional medical release, ~~or~~ addiction-recovery supervision,  
351 or elderly rehabilitated inmate supervision and thereby return  
352 the releasee to prison to serve the sentence imposed, reinstate  
353 the original order granting the release, or enter such other  
354 order as it considers proper. Effective for inmates whose  
355 offenses were committed on or after July 1, 1995, the panel may  
356 order the placement of a releasee, upon a finding of violation  
357 pursuant to this subsection, into a local detention facility as  
358 a condition of supervision.

359 (5) Effective for inmates whose offenses were committed on  
360 or after July 1, 1995, notwithstanding the provisions of ss.



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361 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and  
362 951.23, or any other law to the contrary, by such order as  
363 provided in subsection (4), the panel, upon a finding of guilt,  
364 may, as a condition of continued supervision, place the releasee  
365 in a local detention facility for a period of incarceration not  
366 to exceed 22 months. Prior to the expiration of the term of  
367 incarceration, or upon recommendation of the chief correctional  
368 officer of that county, the commission shall cause inquiry into  
369 the inmate's release plan and custody status in the detention  
370 facility and consider whether to restore the inmate to  
371 supervision, modify the conditions of supervision, or enter an  
372 order of revocation, thereby causing the return of the inmate to  
373 prison to serve the sentence imposed. The provisions of this  
374 section do not prohibit the panel from entering such other order  
375 or conducting any investigation that it deems proper. The  
376 commission may only place a person in a local detention facility  
377 pursuant to this section if there is a contractual agreement  
378 between the chief correctional officer of that county and the  
379 Department of Corrections. The agreement must provide for a per  
380 diem reimbursement for each person placed under this section,  
381 which is payable by the Department of Corrections for the  
382 duration of the offender's placement in the facility. This  
383 section does not limit the commission's ability to place a  
384 person in a local detention facility for less than 1 year.

385 (6) Whenever a conditional release, control release,  
386 conditional medical release, ~~or~~ addiction-recovery supervision,  
387 or elderly rehabilitated inmate supervision is revoked by a  
388 panel of no fewer than two commissioners and the releasee is  
389 ordered to be returned to prison, the releasee, by reason of the



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390 misconduct, shall be deemed to have forfeited all gain-time or  
391 commutation of time for good conduct, as provided for by law,  
392 earned up to the date of release. However, if a conditional  
393 medical release is revoked due to the improved medical or  
394 physical condition of the releasee, the releasee shall not  
395 forfeit gain-time accrued before the date of conditional medical  
396 release. This subsection does not deprive the prisoner of the  
397 right to gain-time or commutation of time for good conduct, as  
398 provided by law, from the date of return to prison.

399 (7) If a law enforcement officer has probable cause to  
400 believe that an offender who is on release supervision under s.  
401 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has  
402 violated the terms and conditions of his or her release by  
403 committing a felony offense, the officer shall arrest the  
404 offender without a warrant, and a warrant need not be issued in  
405 the case.

406 (8) When a law enforcement officer or a correctional  
407 probation officer has reasonable grounds to believe that an  
408 offender who is supervised under the Elderly Rehabilitated  
409 Inmate Supervision Program has violated the terms and conditions  
410 of her or his supervision in a material respect, the officer may  
411 arrest the offender without warrant and bring her or him before  
412 one or more commissioners or a duly authorized representative of  
413 the commission. Proceedings shall take place when a warrant has  
414 been issued by a member of the commission or a duly authorized  
415 representative of the commission.

416 Section 5. This act shall take effect July 1, 2011.

417  
418 ===== T I T L E A M E N D M E N T =====



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419 And the title is amended as follows:

420 Delete everything before the enacting clause  
421 and insert:

422 A bill to be entitled

423 An act relating to elderly inmates; providing  
424 legislative intent; creating s. 947.148, F.S.;

425 providing a short title; creating the Elderly  
426 Rehabilitated Inmate Supervision Program to authorize  
427 the Parole Commission to approve the early release of  
428 certain elderly inmates; providing eligibility  
429 requirements for an inmate to participate in the  
430 program; requiring that the petition to participate in  
431 the program include certain documents; authorizing  
432 members of the public to be present at meetings of the  
433 commission held to determine an inmate's eligibility  
434 for the program; authorizing a victim to make an oral  
435 statement or provide a written statement regarding the  
436 granting, denying, or revoking of an inmate's  
437 supervised release under the program; requiring that  
438 the commission notify the victim or the victim's  
439 family within a specified period regarding the filing  
440 of a petition, the date of the commission's meeting,  
441 and the commission's decision; authorizing the  
442 commission to approve an inmate's participation in the  
443 program under certain conditions; providing  
444 eligibility requirements that the commission must  
445 review; requiring an examiner to interview within a  
446 specified time an inmate who has filed a petition for  
447 supervised release under the program; authorizing the





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448           postponement of the interview; requiring the examiner  
449           to explain and review certain criteria during the  
450           interview; requiring that the examiner recommend a  
451           release date for the inmate; providing certain  
452           conditions under which an inmate may not be released;  
453           requiring a panel of commissioners to establish terms  
454           and conditions of the supervised release under certain  
455           circumstances; requiring that the inmate participate  
456           in community service, submit to electronic monitoring,  
457           and provide restitution to victims as a condition for  
458           participating in the program; authorizing the  
459           commission to impose special conditions of  
460           supervision; authorizing the inmate to request a  
461           review of the terms and conditions of his or her  
462           program supervision; requiring a panel of  
463           commissioners to render a decision within a specified  
464           period regarding a request to modify or continue the  
465           supervised release; providing that participation in  
466           the program is voluntary; requiring the commission to  
467           specify in writing the terms and conditions of  
468           supervision and provide a certified copy to the  
469           inmate; authorizing the trial court judge to enter an  
470           order to retain jurisdiction over the offender;  
471           providing a limitation of the trial court's  
472           jurisdiction; providing for gain-time to accrue;  
473           providing procedures if the trial court retains  
474           jurisdiction of the inmate; requiring a correctional  
475           probation officer to supervise an inmate who is  
476           released under the program; authorizing the Department



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477 of Corrections to conduct the program using  
478 departmental employees or private agencies; requiring  
479 the department and commission to adopt rules; creating  
480 s. 947.1481, F.S.; creating the Restorative Justice  
481 Pilot Program; requiring the Department of Corrections  
482 to develop a pilot program patterned after the  
483 juvenile justice program offered by Neighborhood  
484 Restorative Justice Centers; requiring that inmates  
485 who are eligible to participate in the Elderly  
486 Rehabilitated Inmate Supervision Program be given  
487 priority for participating in the pilot program;  
488 providing that the pilot program be developed after  
489 consultation with specified persons; authorizing the  
490 department to conduct the pilot program using  
491 departmental employees or private agencies; requiring  
492 the department to adopt rules; amending s. 947.141,  
493 F.S.; conforming provisions to changes made by the  
494 act; authorizing a law enforcement officer or  
495 correctional probation officer to arrest an inmate  
496 under certain circumstances who has been released  
497 under the Elderly Rehabilitated Inmate Supervision  
498 Program; providing an effective date.