

By Senator Smith

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1 A bill to be entitled
2 An act relating to elderly inmates; providing
3 legislative intent; creating s. 947.148, F.S.;
4 providing a short title; creating the Elderly
5 Rehabilitated Inmate Supervision Program to authorize
6 the Parole Commission to approve the early release of
7 certain elderly inmates; providing eligibility
8 requirements for an inmate to participate in the
9 program; requiring that the petition to participate in
10 the program include certain documents; authorizing
11 members of the public to be present at meetings of the
12 commission held to determine an inmate's eligibility
13 for the program; authorizing a victim to make an oral
14 statement or provide a written statement regarding the
15 granting, denying, or revoking of an inmate's
16 supervised release under the program; requiring that
17 the commission notify the victim or the victim's
18 family within a specified period regarding the filing
19 of a petition, the date of the commission's meeting,
20 and the commission's decision; authorizing the
21 commission to approve an inmate's participation in the
22 program under certain conditions; providing
23 eligibility requirements that the commission must
24 review; requiring an examiner to interview within a
25 specified time an inmate who has filed a petition for
26 supervised release under the program; authorizing the
27 postponement of the interview; requiring the examiner
28 to explain and review certain criteria during the
29 interview; requiring that the examiner recommend a

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30 release date for the inmate; providing certain
31 conditions under which an inmate may not be released;
32 requiring a panel of commissioners to establish terms
33 and conditions of the supervised release under certain
34 circumstances; requiring that the inmate participate
35 in community service, submit to electronic monitoring,
36 and provide restitution to victims as a condition for
37 participating in the program; authorizing the
38 commission to impose special conditions of
39 supervision; authorizing the inmate to request a
40 review of the terms and conditions of his or her
41 program supervision; requiring a panel of
42 commissioners to render a decision within a specified
43 period regarding a request to modify or continue the
44 supervised release; providing that participation in
45 the program is voluntary; requiring the commission to
46 specify in writing the terms and conditions of
47 supervision and provide a certified copy to the
48 inmate; authorizing the trial court judge to enter an
49 order to retain jurisdiction over the offender;
50 providing a limitation of the trial court's
51 jurisdiction; providing for gain-time to accrue;
52 providing procedures if the trial court retains
53 jurisdiction of the inmate; requiring a correctional
54 probation officer to supervise an inmate who is
55 released under the program; authorizing the Department
56 of Corrections to conduct the program using
57 departmental employees or private agencies; requiring
58 the department to adopt rules; creating s. 947.1481,

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59 F.S.; creating the Restorative Justice Pilot Program;
60 requiring the Department of Corrections to develop a
61 pilot program patterned after the juvenile justice
62 program offered by Neighborhood Restorative Justice
63 Centers; requiring that inmates who are eligible to
64 participate in the Elderly Rehabilitated Inmate
65 Supervision Program be given priority for
66 participating in the pilot program; providing that the
67 pilot program be developed after consultation with
68 specified persons; authorizing the department to
69 conduct the pilot program using departmental employees
70 or private agencies; requiring the department to adopt
71 rules; amending s. 947.141, F.S.; conforming
72 provisions to changes made by the act; authorizing a
73 law enforcement officer to arrest an inmate under
74 certain circumstances who has been released under the
75 Elderly Rehabilitated Inmate Supervision Program;
76 providing an effective date.

77

78 Be It Enacted by the Legislature of the State of Florida:

79

80 Section 1. The Legislature recognizes the need to provide a
81 means for the release of older inmates who have demonstrated
82 that they have been rehabilitated while incarcerated. It is the
83 intent of the Legislature to address this issue by establishing
84 a conditional extension of the limits of confinement by
85 providing a mechanism for determining eligibility for early
86 release and supervising inmates who have been incarcerated for
87 at least 25 cumulative years and are 50 years of age or older.

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88 The Legislature intends to provide for victim input and the
89 enforcement of penalties for those who fail to comply with
90 supervision while outside a prison facility. The Legislature
91 also intends that a pilot program patterned after the program
92 offered by Neighborhood Restorative Justice Centers be
93 implemented and offered to inmates who are eligible for release
94 under the Elderly Rehabilitated Inmate Supervision Program.

95 Section 2. Section 947.148, Florida Statutes, is created to
96 read:

97 947.148 Elderly Rehabilitated Inmate Supervision Program.—

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

100 (2) As used in this section, the term "program" means the
101 Elderly Rehabilitated Inmate Supervision Program.

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

104 (a) Is 50 years of age or older;

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

107 (c) Is not eligible for parole or conditional medical
108 release;

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

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

111 (f) Has not received a disciplinary report within the
112 previous 6 months.

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

115 (a) A proposed release plan;

116 (b) Documentation of the inmate's relevant medical history,

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117 including current medical prognosis;

118 (c) The inmate's prison experience and criminal history.

119 The criminal history must include any claim of innocence, the
120 degree to which the inmate accepts responsibility for his or her
121 acts leading to the conviction of the crime, and how the claim
122 of responsibility has affected the inmate's feelings of remorse;

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

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

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

129 (g) Documentation of the inmate's renunciation of gang
130 affiliation.

131 (5) An inmate may file only one petition to participate in
132 the program.

133 (6) All matters relating to the granting, denying, or
134 revoking of an inmate's supervised release in the program shall
135 be decided in a meeting at which the public may be present. A
136 victim of the crime committed by the inmate, a victim's parent
137 or guardian if the victim is a minor, a lawful representative of
138 the victim or of the victim's parent or guardian if the victim
139 is a minor, or a homicide victim's next of kin may make an oral
140 statement or submit a written statement regarding his or her
141 views as to the granting, denying, or revoking of supervision. A
142 person who is not a member or employee of the commission, the
143 victim of the crime committed by the inmate, the victim's parent
144 or guardian if the victim is a minor, a lawful representative of
145 the victim or of the victim's parent or guardian if the victim

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146 is a minor, or a homicide victim's next of kin may participate
147 in deliberations concerning the granting and revoking of an
148 inmate's supervised release in the program only upon the prior
149 written approval of the chair of the commission. The commission
150 shall notify the victim, the victim's parent or guardian if the
151 victim is a minor, a lawful representative of the victim or of
152 the victim's parent or guardian if the victim is a minor, or the
153 victim's next of kin if the victim is deceased no later than 30
154 days after the petition is received by the commission, no later
155 than 30 days before the commission's meeting, and no later than
156 30 days after the commission's decision.

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

159 (a) Successful participation in programs designed to
160 restore the inmate as a useful and productive person in the
161 community upon release;

162 (b) Genuine reform and changed behavior over a period of
163 years;

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

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

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

170 (a) Entire criminal history and record;

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

173 (c) Prison disciplinary record;

174 (d) Work record;

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175 (e) Program participation; and

176 (f) Gang affiliation, if any.

177
178 The commission shall consider the inmate's responsibility for
179 the acts leading to the conviction, including any prior and
180 continued statements of innocence and the inmate's feelings of
181 remorse.

182 (9) (a) An examiner shall interview the inmate within 90
183 days after a petition is filed on behalf of the inmate. An
184 interview may be postponed for a period not to exceed 90 days.
185 Such postponement must be for good cause, which includes, but
186 need not be limited to, the need for the commission to obtain a
187 presentence or postsentence investigation report or a violation
188 report. The reason for postponement shall be noted in writing
189 and included in the official record. A postponement for good
190 cause may not result in an interview being conducted later than
191 90 days after the inmate's initial scheduled interview.

192 (b) During the interview, the examiner shall explain the
193 program to the inmate and review the inmate's institutional
194 conduct record, criminal history, medical history, work records,
195 program participation, gang affiliation, and satisfactory
196 release plan for supervision under the program.

197 (c) Within 10 days after the interview, the examiner shall
198 recommend in writing to a panel of no fewer than two
199 commissioners appointed by the chair a release date for the
200 inmate. The commissioners are not bound by the examiner's
201 recommended release date.

202 (10) An inmate may not be placed in the program merely as a
203 reward for good conduct or efficient performance of duties

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204 assigned in prison. An inmate may not be placed in the program
205 unless the commission finds that there is reasonable probability
206 that, if the inmate is placed in the program, he or she will
207 live and conduct himself or herself as a respectable and law-
208 abiding person and that the inmate's release will be compatible
209 with his or her own welfare and the welfare of society.

210 (11) When the commission has accepted the petition,
211 approved the proposed release plan, and determined that the
212 inmate is eligible for the program, a panel of no fewer than two
213 commissioners shall establish the terms and conditions of the
214 supervision. When granting supervised release under the program,
215 the commission shall require the inmate to participate in 10
216 hours of community service for each year served in prison,
217 require that the inmate be subject to electronic monitoring for
218 at least 1 year, and require reparation or restitution be paid
219 to the victim for the damage or loss caused by the offense for
220 which the inmate was imprisoned, unless the commission finds
221 reasons to the contrary. If the commission does not order
222 restitution or orders only partial restitution, the commission
223 must state on the record the reasons for its decision. The
224 amount of such reparation or restitution shall be determined by
225 the commission.

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

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

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

235 (c) Not associate with persons engaged in criminal
236 activity; and

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

239 (13) (a) An inmate may request a review of the terms and
240 conditions of his or her supervised release under the program. A
241 panel of at least two commissioners appointed by the chair shall
242 consider the inmate's request, render a written decision and the
243 reasons for the decision to continue or to modify the terms and
244 conditions of the program supervision, and inform the inmate of
245 the decision in writing within 30 days after the date of receipt
246 of the request for review. During any period of review of the
247 terms and conditions of supervision, the inmate shall be subject
248 to the authorized terms and conditions of supervision until such
249 time that a decision is made to continue or modify the terms and
250 conditions of supervision.

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

254 (c) An inmate's participation in the program is voluntary,
255 and the inmate must agree to abide by all conditions of release.
256 The commission, upon authorizing a supervision release date,
257 shall specify in writing the terms and conditions of the program
258 supervision and provide a certified copy of these terms and
259 conditions to the inmate.

260 (14) (a) At the time of sentencing, the trial court judge
261 may enter an order retaining jurisdiction over the offender for

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262 review of a release order by the commission under this section.
263 This jurisdiction of the trial court judge is limited to the
264 first one-third of the maximum sentence imposed. When a person
265 is convicted of two or more felonies and concurrent sentences
266 are imposed, the jurisdiction of the trial court applies to the
267 first one-third of the maximum sentence imposed for the highest
268 felony of which the person was convicted. When any person is
269 convicted of two or more felonies and consecutive sentences are
270 imposed, the jurisdiction of the trial court judge applies to
271 one-third of the total consecutive sentences imposed.

272 (b) In retaining jurisdiction for purposes of this
273 subsection, the trial court must state the justification with
274 individual particularity, and such justification shall be made a
275 part of the court record. A copy of the justification and the
276 uniform commitment form issued by the court pursuant to s.
277 944.17 shall be delivered together to the department.

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

283 (d) In such a case of retained jurisdiction, the
284 commission, within 30 days after the entry of its release order,
285 shall send notice of its release order to the original
286 sentencing judge and to the appropriate state attorney. The
287 release order shall be made contingent upon entry of an order by
288 the appropriate circuit judge relinquishing jurisdiction as
289 provided for in paragraph (e). If the original sentencing judge
290 is no longer in service, such notice shall be sent to the chief

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291 judge of the circuit in which the offender was sentenced. The
292 chief judge may designate any circuit judge within the circuit
293 to act in the place of the original sentencing judge.

294 (e) The original sentencing judge or her or his replacement
295 shall notify the commission within 10 days after receipt of the
296 notice provided for in paragraph (d) as to whether the court
297 desires to retain jurisdiction. If the original sentencing judge
298 or her or his replacement does not so notify the commission
299 within the 10-day period or notifies the commission that the
300 court does not desire to retain jurisdiction, the commission may
301 dispose of the matter as it sees fit.

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

307 (g) Within 30 days after receipt of the items listed in
308 paragraph (f), the original sentencing judge or her or his
309 replacement shall review the order, findings, and evidence. If
310 the judge finds that the order of the commission is not based on
311 competent, substantial evidence or that participation in the
312 program is not in the best interest of the community or the
313 inmate, the court may vacate the release order. The judge or her
314 or his replacement shall notify the commission of the decision
315 of the court, and, if the release order is vacated, such
316 notification must contain the evidence relied on and the reasons
317 for denial. A copy of the notice shall be sent to the inmate.

318 (15) A correctional probation officer as defined in s.
319 943.10 shall supervise the inmate released under this program.

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320 (16) The department may provide departmental staff to
321 conduct the program created under this section or may contract
322 with other public or private agencies for the delivery of
323 services related to the program created under this section.

324 (17) The department shall adopt rules to administer this
325 section.

326 Section 3. Section 947.1481, Florida Statutes, is created
327 to read:

328 947.1481 Restorative Justice Pilot Program.—

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

331 (2) The department shall develop the pilot program that is
332 patterned after the program offered by the Neighborhood
333 Restorative Justice Centers established under s. 985.155. The
334 pilot program shall be implemented at one maximum security
335 prison for women and at two maximum security prisons for men.
336 The portion of the pilot program which include classes on the
337 effect that crime has on victims shall be made available on a
338 voluntary basis. Inmates who are eligible to participate in the
339 Elderly Rehabilitated Inmate Supervision Program shall be given
340 priority for participation in the pilot program.

341 (3) The pilot program created under this section shall be
342 developed after identifying a need in the community for the
343 pilot program through consultation with representatives of the
344 public, members of the judiciary, law enforcement agencies,
345 state attorneys, and defense attorneys.

346 (4) The department may provide departmental staff to
347 conduct the pilot program or may contract with other public or
348 private agencies for the delivery of services related to the

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349 pilot program.

350 (5) The department shall adopt rules to administer this
351 section.

352 Section 4. Section 947.141, Florida Statutes, is amended to
353 read:

354 947.141 Violations of conditional release, control release,
355 or conditional medical release or addiction-recovery
356 supervision.—

357 (1) If a member of the commission or a duly authorized
358 representative of the commission has reasonable grounds to
359 believe that an offender who is on release supervision under s.
360 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
361 violated the terms and conditions of the release in a material
362 respect, such member or representative may cause a warrant to be
363 issued for the arrest of the releasee; if the offender was found
364 to be a sexual predator, the warrant must be issued.

365 (2) Upon the arrest on a felony charge of an offender who
366 is on release supervision under s. 947.1405, s. 947.146, s.
367 947.148, s. 947.149, or s. 944.4731, the offender must be
368 detained without bond until the initial appearance of the
369 offender at which a judicial determination of probable cause is
370 made. If the trial court judge determines that there was no
371 probable cause for the arrest, the offender may be released. If
372 the trial court judge determines that there was probable cause
373 for the arrest, such determination also constitutes reasonable
374 grounds to believe that the offender violated the conditions of
375 the release. Within 24 hours after the trial court judge's
376 finding of probable cause, the detention facility administrator
377 or designee shall notify the commission and the department of

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378 the finding and transmit to each a facsimile copy of the
379 probable cause affidavit or the sworn offense report upon which
380 the trial court judge's probable cause determination is based.
381 The offender must continue to be detained without bond for a
382 period not exceeding 72 hours excluding weekends and holidays
383 after the date of the probable cause determination, pending a
384 decision by the commission whether to issue a warrant charging
385 the offender with violation of the conditions of release. Upon
386 the issuance of the commission's warrant, the offender must
387 continue to be held in custody pending a revocation hearing held
388 in accordance with this section.

389 (3) Within 45 days after notice to the Parole Commission of
390 the arrest of a releasee charged with a violation of the terms
391 and conditions of conditional release, control release,
392 conditional medical release, or addiction-recovery supervision,
393 the releasee must be afforded a hearing conducted by a
394 commissioner or a duly authorized representative thereof. If the
395 releasee elects to proceed with a hearing, the releasee must be
396 informed orally and in writing of the following:

397 (a) The alleged violation with which the releasee is
398 charged.

399 (b) The releasee's right to be represented by counsel.

400 (c) The releasee's right to be heard in person.

401 (d) The releasee's right to secure, present, and compel the
402 attendance of witnesses relevant to the proceeding.

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

405 (f) The releasee's right of access to all evidence used
406 against the releasee and to confront and cross-examine adverse

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407 witnesses.

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

409 (4) Within a reasonable time following the hearing, the
410 commissioner or the commissioner's duly authorized
411 representative who conducted the hearing shall make findings of
412 fact in regard to the alleged violation. A panel of no fewer
413 than two commissioners shall enter an order determining whether
414 the charge of violation of conditional release, control release,
415 conditional medical release, or addiction-recovery supervision
416 has been sustained based upon the findings of fact presented by
417 the hearing commissioner or authorized representative. By such
418 order, the panel may revoke conditional release, control
419 release, conditional medical release, or addiction-recovery
420 supervision and thereby return the releasee to prison to serve
421 the sentence imposed, reinstate the original order granting the
422 release, or enter such other order as it considers proper.
423 Effective for inmates whose offenses were committed on or after
424 July 1, 1995, the panel may order the placement of a releasee,
425 upon a finding of violation pursuant to this subsection, into a
426 local detention facility as a condition of supervision.

427 (5) Effective for inmates whose offenses were committed on
428 or after July 1, 1995, notwithstanding the provisions of ss.
429 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and
430 951.23, or any other law to the contrary, by such order as
431 provided in subsection (4), the panel, upon a finding of guilt,
432 may, as a condition of continued supervision, place the releasee
433 in a local detention facility for a period of incarceration not
434 to exceed 22 months. Prior to the expiration of the term of
435 incarceration, or upon recommendation of the chief correctional

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436 officer of that county, the commission shall cause inquiry into
437 the inmate's release plan and custody status in the detention
438 facility and consider whether to restore the inmate to
439 supervision, modify the conditions of supervision, or enter an
440 order of revocation, thereby causing the return of the inmate to
441 prison to serve the sentence imposed. The provisions of this
442 section do not prohibit the panel from entering such other order
443 or conducting any investigation that it deems proper. The
444 commission may only place a person in a local detention facility
445 pursuant to this section if there is a contractual agreement
446 between the chief correctional officer of that county and the
447 Department of Corrections. The agreement must provide for a per
448 diem reimbursement for each person placed under this section,
449 which is payable by the Department of Corrections for the
450 duration of the offender's placement in the facility. This
451 section does not limit the commission's ability to place a
452 person in a local detention facility for less than 1 year.

453 (6) Whenever a conditional release, control release,
454 conditional medical release, or addiction-recovery supervision
455 is revoked by a panel of no fewer than two commissioners and the
456 releasee is ordered to be returned to prison, the releasee, by
457 reason of the misconduct, shall be deemed to have forfeited all
458 gain-time or commutation of time for good conduct, as provided
459 for by law, earned up to the date of release. However, if a
460 conditional medical release is revoked due to the improved
461 medical or physical condition of the releasee, the releasee
462 shall not forfeit gain-time accrued before the date of
463 conditional medical release. This subsection does not deprive
464 the prisoner of the right to gain-time or commutation of time

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465 for good conduct, as provided by law, from the date of return to
466 prison.

467 (7) If a law enforcement officer has probable cause to
468 believe that an offender who is on release supervision under s.
469 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
470 violated the terms and conditions of his or her release by
471 committing a felony offense, the officer shall arrest the
472 offender without a warrant, and a warrant need not be issued in
473 the case.

474 (8) When a law enforcement officer has reasonable grounds
475 to believe that a releasee has violated the terms and conditions
476 of her or his supervision in a material respect under the
477 Elderly Rehabilitated Inmate Supervision Program, the law
478 enforcement officer may arrest the releasee without warrant and
479 bring her or him before one or more commissioners or a duly
480 authorized representative of the commission. Proceedings shall
481 take place when a warrant has been issued by a member of the
482 commission or a duly authorized representative of the
483 commission.

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