

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 and commission to adopt rules; creating

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

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88 older. It is the Legislature's intent that the provisions of
89 this act be applied to include inmates who have previously been
90 sentenced as well as those who will be sentenced in the future.
91 The Legislature intends to provide for victim input and the
92 enforcement of penalties for those who fail to comply with
93 supervision while outside a prison facility. The Legislature
94 also intends that a pilot program patterned after the program
95 offered by Neighborhood Restorative Justice Centers be
96 implemented and offered to inmates who are eligible for release
97 under the Elderly Rehabilitated Inmate Supervision Program.

98 Section 2. Section 947.148, Florida Statutes, is created to
99 read:

100 947.148 Elderly Rehabilitated Inmate Supervision Program.-

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

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

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

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

108 (b) Has been convicted of a felony and has served at least
109 25 consecutive years of incarceration;

110 (c) Is not eligible for parole or conditional medical
111 release;

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

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

114 (f) Has not received a disciplinary report within the
115 previous 6 months.

116 (4) Each petition filed on behalf of an inmate to

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117 participate in the program must contain:

118 (a) A proposed release plan;

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

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

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

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

130 (f) Documentation of the inmate's participation in prison
131 work and other prison programs; and

132 (g) Documentation of the inmate's renunciation of gang
133 affiliation.

134 (5) An inmate may not file a new petition within 1 year
135 after receiving notification of denial of his or her petition to
136 participate in the program. Any petition that is filed before
137 the 1-year period ends shall be returned to the inmate, along
138 with a notation indicating the date that the petition may be
139 refiled.

140 (6) All matters relating to the granting, denying, or
141 revoking of an inmate's supervised release in the program shall
142 be decided in a meeting at which the public may be present. A
143 victim of the crime committed by the inmate, a victim's parent
144 or guardian if the victim was a minor, a lawful representative
145 of the victim or of the victim's parent or guardian if the

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146 victim was a minor, or a homicide victim's next of kin may make
147 an oral statement or submit a written statement regarding his or
148 her views as to the granting, denying, or revoking of
149 supervision. A person who is not a member or employee of the
150 commission, the victim of the crime committed by the inmate, the
151 victim's parent or guardian if the victim was a minor, a lawful
152 representative of the victim or of the victim's parent or
153 guardian if the victim was a minor, or a homicide victim's next
154 of kin may participate in deliberations concerning the granting
155 and revoking of an inmate's supervised release in the program
156 only upon the prior written approval of the chair of the
157 commission. The commission shall notify the victim, the victim's
158 parent or guardian if the victim was a minor, a lawful
159 representative of the victim or of the victim's parent or
160 guardian if the victim was a minor, or the victim's next of kin
161 if the victim is deceased no later than 30 days after the
162 petition is received by the commission, no later than 30 days
163 before the commission's meeting, and no later than 30 days after
164 the commission's decision.

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

167 (a) Successful participation in programs designed to
168 restore the inmate as a useful and productive person in the
169 community upon release;

170 (b) Genuine reform and changed behavior over a period of
171 years;

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

174 (d) A renunciation of criminal activity and gang

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175 affiliation if the inmate was a member of a gang.

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

178 (a) Entire criminal history and record;

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

181 (c) Prison disciplinary record;

182 (d) Work record;

183 (e) Participation in prison programs; and

184 (f) Gang affiliation, if any.

185
186 The commission shall consider the inmate's responsibility for
187 the acts leading to the conviction, including any prior and
188 continued statements of innocence and the inmate's feelings of
189 remorse.

190 (9) (a) An examiner shall interview the inmate within 90
191 days after a petition is filed on behalf of the inmate. An
192 interview may be postponed for a period not to exceed 90 days.
193 Such postponement must be for good cause, which includes, but
194 need not be limited to, the need for the commission to obtain a
195 presentence or postsentence investigation report or a violation
196 report. The reason for postponement shall be noted in writing
197 and included in the official record. A postponement for good
198 cause may not result in an interview being conducted later than
199 90 days after the inmate's initial scheduled interview.

200 (b) During the interview, the examiner shall explain the
201 program to the inmate and review the inmate's institutional
202 conduct record, criminal history, medical history, work records,
203 participation in prison programs, gang affiliation, and release

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204 plan for supervision under the program.

205 (c) Within 10 days after the interview, the examiner shall
206 recommend in writing to a panel of no fewer than two
207 commissioners appointed by the chair a release date for the
208 inmate. The commissioners are not bound by the examiner's
209 recommended release date.

210 (10) An inmate may not be placed in the program merely as a
211 reward for good conduct or efficient performance of duties
212 assigned in prison. An inmate may not be placed in the program
213 unless the commission finds that there is reasonable probability
214 that, if the inmate is placed in the program, he or she will
215 live and conduct himself or herself as a respectable and law-
216 abiding person and that the inmate's release will be compatible
217 with his or her own welfare and the welfare of society.

218 (11) When the commission has accepted the petition,
219 approved the proposed release plan, and determined that the
220 inmate is eligible for the program, a panel of no fewer than two
221 commissioners shall establish the terms and conditions of the
222 supervision. When granting supervised release under the program,
223 the commission shall require the inmate to participate in 10
224 hours of community service for each year served in prison,
225 require that the inmate be subject to electronic monitoring for
226 at least 1 year, and require that reparation or restitution be
227 paid to the victim for the damage or loss caused by the offense
228 for which the inmate was imprisoned. The commission may elect
229 not to impose any or all of the conditions if it finds reasons
230 that it should not do so. If the commission does not order
231 restitution or orders only partial restitution, the commission
232 must state on the record the reasons for its decision. The

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233 amount of such reparation or restitution shall be determined by
234 the commission.

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

239 (a) Pay any debt due and owing to the state under s. 960.17
240 or pay attorney fees and costs that are owed to the state under
241 s. 938.29;

242 (b) Not leave the state or a specified physical area within
243 the state without the consent of the commission;

244 (c) Not associate with persons engaged in criminal
245 activity; and

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

248 (13) (a) An inmate may request a review of the terms and
249 conditions of his or her supervised release under the program. A
250 panel of at least two commissioners appointed by the chair shall
251 consider the inmate's request, render a written decision and the
252 reasons for the decision to continue or to modify the terms and
253 conditions of the program supervision, and inform the inmate of
254 the decision in writing within 30 days after the date of receipt
255 of the request for review. During any period of review of the
256 terms and conditions of supervision, the inmate shall be subject
257 to the authorized terms and conditions of supervision until such
258 time that a decision is made to continue or modify the terms and
259 conditions of supervision.

260 (b) The length of supervision shall be the remaining amount
261 of time the inmate has yet to serve, including calculations for

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262 gain-time credit, as determined by the department.

263 (c) An inmate's participation in the program is voluntary,
264 and the inmate must agree to abide by all conditions of release.
265 The commission, upon authorizing a supervision release date,
266 shall specify in writing the terms and conditions of the program
267 supervision and provide a certified copy of these terms and
268 conditions to the inmate.

269 (14) (a) At the time of sentencing, the trial court judge
270 may enter an order retaining jurisdiction over the offender for
271 review of a release order by the commission under this section.
272 This jurisdiction of the trial court judge is limited to the
273 first one-third of the maximum sentence imposed. When a person
274 is convicted of two or more felonies and concurrent sentences
275 are imposed, the jurisdiction of the trial court applies to the
276 first one-third of the maximum sentence imposed for the most
277 severe felony for which the person was convicted. When any
278 person is convicted of two or more felonies and consecutive
279 sentences are imposed, the jurisdiction of the trial court judge
280 applies to one-third of the total consecutive sentences imposed.

281 (b) In retaining jurisdiction for purposes of this
282 subsection, the trial court must state the justification with
283 individual particularity, and such justification shall be made a
284 part of the court record. A copy of the justification and the
285 uniform commitment form issued by the court pursuant to s.
286 944.17 shall be delivered to the department.

287 (c) Gain-time as provided for by law shall accrue, except
288 that an offender over whom the trial court has retained
289 jurisdiction as provided in this subsection may not be released
290 during the first one-third of her or his sentence by reason of

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291 gain-time.

292 (d) In such a case of retained jurisdiction, the
293 commission, within 30 days after the entry of its release order,
294 shall send notice of its release order to the original
295 sentencing judge and to the appropriate state attorney. The
296 release order shall be made contingent upon entry of an order by
297 the appropriate circuit judge relinquishing jurisdiction as
298 provided for in paragraph (e). If the original sentencing judge
299 is no longer serving, notice shall be sent to the chief judge of
300 the circuit in which the offender was sentenced. The chief judge
301 may designate any circuit judge within the circuit to act in the
302 place of the original sentencing judge.

303 (e) The original sentencing judge or her or his replacement
304 shall notify the commission within 10 days after receipt of the
305 notice provided for in paragraph (d) as to whether the court
306 desires to retain jurisdiction. If the original sentencing judge
307 or her or his replacement does not so notify the commission
308 within the 10-day period or notifies the commission that the
309 court does not desire to retain jurisdiction, the commission may
310 dispose of the matter as it sees fit.

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

316 (g) Within 30 days after receipt of the items listed in
317 paragraph (f), the original sentencing judge or her or his
318 replacement shall review the order, findings, and evidence. If
319 the judge finds that the order of the commission is not based on

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320 competent, substantial evidence or that participation in the
321 program is not in the best interest of the community or the
322 inmate, the court may vacate the release order. The judge or her
323 or his replacement shall notify the commission of the decision
324 of the court, and, if the release order is vacated, such
325 notification must contain the evidence relied on and the reasons
326 for denial. A copy of the notice shall be sent to the inmate.

327 (15) A correctional probation officer as defined in s.
328 943.10 shall supervise the inmate released under this program.

329 (16) The department and commission shall adopt rules to
330 administer this section.

331 Section 3. Restorative Justice Pilot Program.—

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

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

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

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349 (4) The department may provide departmental staff to
350 conduct the pilot program or may contract with other public or
351 private agencies for the delivery of services related to the
352 pilot program.

353 (5) The department shall adopt rules to administer this
354 section.

355 Section 4. Section 947.141, Florida Statutes, is amended to
356 read:

357 947.141 Violations of conditional release, control release,
358 ~~or~~ conditional medical release, ~~or~~ addiction-recovery
359 supervision, or elderly rehabilitated inmate supervision.-

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

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

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378 the release. Within 24 hours after the trial court judge's
379 finding of probable cause, the detention facility administrator
380 or designee shall notify the commission and the department of
381 the finding and transmit to each a facsimile copy of the
382 probable cause affidavit or the sworn offense report upon which
383 the trial court judge's probable cause determination is based.
384 The offender must continue to be detained without bond for a
385 period not exceeding 72 hours excluding weekends and holidays
386 after the date of the probable cause determination, pending a
387 decision by the commission whether to issue a warrant charging
388 the offender with violation of the conditions of release. Upon
389 the issuance of the commission's warrant, the offender must
390 continue to be held in custody pending a revocation hearing held
391 in accordance with this section.

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

401 (a) The alleged violation with which the releasee is
402 charged.

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

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

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

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

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

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

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

433 (5) Effective for inmates whose offenses were committed on
434 or after July 1, 1995, notwithstanding the provisions of ss.
435 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and

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436 951.23, or any other law to the contrary, by such order as
437 provided in subsection (4), the panel, upon a finding of guilt,
438 may, as a condition of continued supervision, place the releasee
439 in a local detention facility for a period of incarceration not
440 to exceed 22 months. Prior to the expiration of the term of
441 incarceration, or upon recommendation of the chief correctional
442 officer of that county, the commission shall cause inquiry into
443 the inmate's release plan and custody status in the detention
444 facility and consider whether to restore the inmate to
445 supervision, modify the conditions of supervision, or enter an
446 order of revocation, thereby causing the return of the inmate to
447 prison to serve the sentence imposed. The provisions of this
448 section do not prohibit the panel from entering such other order
449 or conducting any investigation that it deems proper. The
450 commission may only place a person in a local detention facility
451 pursuant to this section if there is a contractual agreement
452 between the chief correctional officer of that county and the
453 Department of Corrections. The agreement must provide for a per
454 diem reimbursement for each person placed under this section,
455 which is payable by the Department of Corrections for the
456 duration of the offender's placement in the facility. This
457 section does not limit the commission's ability to place a
458 person in a local detention facility for less than 1 year.

459 (6) Whenever a conditional release, control release,
460 conditional medical release, ~~or~~ addiction-recovery supervision,
461 or elderly rehabilitated inmate supervision is revoked by a
462 panel of no fewer than two commissioners and the releasee is
463 ordered to be returned to prison, the releasee, by reason of the
464 misconduct, shall be deemed to have forfeited all gain-time or

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465 commutation of time for good conduct, as provided for by law,
466 earned up to the date of release. However, if a conditional
467 medical release is revoked due to the improved medical or
468 physical condition of the releasee, the releasee shall not
469 forfeit gain-time accrued before the date of conditional medical
470 release. This subsection does not deprive the prisoner of the
471 right to gain-time or commutation of time for good conduct, as
472 provided by law, from the date of return to prison.

473 (7) If a law enforcement officer has probable cause to
474 believe that an offender who is on release supervision under s.
475 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
476 violated the terms and conditions of his or her release by
477 committing a felony offense, the officer shall arrest the
478 offender without a warrant, and a warrant need not be issued in
479 the case.

480 (8) When a law enforcement officer or a correctional
481 probation officer has reasonable grounds to believe that an
482 offender who is supervised under the Elderly Rehabilitated
483 Inmate Supervision Program has violated the terms and conditions
484 of her or his supervision in a material respect, the officer may
485 arrest the offender without warrant and bring her or him before
486 one or more commissioners or a duly authorized representative of
487 the commission. Proceedings shall take place when a warrant has
488 been issued by a member of the commission or a duly authorized
489 representative of the commission.

490 Section 5. This act shall take effect July 1, 2012.