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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2020	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 49 - 341

and insert:

(1) FINDINGS.—The Legislature finds that the number of aging inmates incarcerated in the state's prisons has grown significantly in recent years. Further, the Legislature finds that imprisonment tends to exacerbate the effects of aging due to histories of substance abuse and inadequate preventative care prior to imprisonment and stress linked to prison life. The



937440

11 Legislature also finds that recidivism rates are greatly reduced
12 with older inmates who are released into the community.

13 Therefore, the Legislature finds that it is of great public
14 importance to find a compassionate solution to the challenges
15 presented by the imprisonment of aging inmates while also
16 ensuring that the public safety of Florida's communities remains
17 protected.

18 (2) CREATION.—There is established a conditional aging
19 inmate release program within the department for the purpose of
20 determining eligible inmates who are appropriate for such
21 release, supervising the released inmates, and conducting
22 revocation hearings as provided for in this section. The program
23 must include a panel of at least three people appointed by the
24 secretary or his or her designee for the purpose of determining
25 the appropriateness of conditional aging inmate release and
26 conducting revocation hearings on the inmate releases.

27 (3) ELIGIBILITY.—

28 (a) An inmate is eligible for consideration for release
29 under the conditional aging inmate release program when the
30 inmate has reached 65 years of age and has served at least 10
31 years on his or her term of imprisonment. Notwithstanding any
32 other provision of law, an inmate who meets the above criteria
33 may be released from the custody of the department pursuant to
34 this section prior to satisfying 85 percent of his or her term
35 of imprisonment.

36 (b) An inmate may not be considered for release through the
37 program if he or she has ever been found guilty of, regardless
38 of adjudication, or entered a plea of nolo contendere or guilty
39 to, or has been adjudicated delinquent for committing:



937440

40 1. Any offense classified as a capital felony, life felony,
41 or first degree felony punishable by a term of years not
42 exceeding life imprisonment.

43 2. Any violation of law that results in the killing of a
44 human being.

45 3. Any felony offense that serves as a predicate to
46 registration as a sexual offender in accordance with s.
47 943.0435; or

48 4. Any similar offense committed in another jurisdiction
49 which would be an offense listed in this paragraph if it had
50 been committed in violation of the laws of this state.

51 (c) An inmate who has previously been released on any form
52 of conditional or discretionary release and who was recommitted
53 to the department as a result of a finding that he or she
54 subsequently violated the terms of such conditional or
55 discretionary release may not be considered for release through
56 the program.

57 (4) REFERRAL FOR CONSIDERATION.-

58 (a)1. Notwithstanding any provision to the contrary, an
59 inmate in the custody of the department who is eligible for
60 consideration pursuant to subsection (3) must be considered for
61 the conditional aging inmate release program.

62 2. The authority to grant conditional aging inmate release
63 rests solely with the department. An inmate does not have a
64 right to such release.

65 (b) The department must identify inmates who may be
66 eligible for the conditional aging inmate release program. In
67 considering an inmate for conditional aging inmate release, the
68 department may require the production of additional evidence or



937440

69 any other additional investigations that the department deems
70 are necessary for determining the appropriateness of the
71 eligible inmate's release.

72 (c) The department must refer an inmate to the panel
73 established under subsection (2) for review and determination of
74 conditional aging inmate release upon his or her identification
75 as potentially eligible for release pursuant to this section.

76 (d) If the case that resulted in the inmate's commitment to
77 the department involved a victim, and the victim specifically
78 requested notification pursuant to s. 16, Art. I of the State
79 Constitution, the department must notify the victim, in a manner
80 prescribed by rule, of the inmate's referral to the panel
81 immediately upon identification of the inmate as potentially
82 eligible for release under this section. Additionally, the
83 victim must be afforded the right to be heard regarding the
84 release of the inmate.

85 (5) DETERMINATION OF RELEASE.—

86 (a) Within 45 days after receiving the referral, the panel
87 established in subsection (2) must conduct a hearing to
88 determine whether the inmate is appropriate for conditional
89 aging inmate release.

90 (b) A majority of the panel members must agree that the
91 inmate is appropriate for release pursuant to this section. If
92 conditional aging inmate release is approved, the inmate must be
93 released by the department to the community within a reasonable
94 amount of time with necessary release conditions imposed
95 pursuant to subsection (6). An inmate who is granted conditional
96 aging inmate release is considered an aging releasee upon
97 release to the community.



937440

98 (c)1. An inmate who is denied conditional aging inmate
99 release by the panel may have the decision reviewed by the
100 department's general counsel, who must make a recommendation to
101 the secretary. The secretary must review all relevant
102 information and make a final decision about the appropriateness
103 of conditional aging inmate release pursuant to this section.
104 The decision of the secretary is a final administrative decision
105 not subject to appeal.

106 2. An inmate that requests to have the decision reviewed in
107 accordance with this paragraph must do so in a manner prescribed
108 in rule. An inmate who is denied conditional aging inmate
109 release may be subsequently reconsidered for such release in a
110 manner prescribed by rule.

111 (6) RELEASE CONDITIONS.—

112 (a) An inmate granted release pursuant to this section is
113 released for a period equal to the length of time remaining on
114 his or her term of imprisonment on the date the release is
115 granted. Such inmate is considered an aging releasee upon
116 release from the department into the community. The aging
117 releasee must comply with all reasonable conditions of release
118 the department imposes, which must include, at a minimum:

119 1. Supervision by an officer trained to handle special
120 offender caseloads.

121 2. Active electronic monitoring, if such monitoring is
122 determined to be necessary to ensure the safety of the public
123 and the aging releasee's compliance with release conditions.

124 3. Any conditions of community control provided for in s.
125 948.101.

126 4. Any other conditions the department deems appropriate to



937440

127 ensure the safety of the community and compliance by the aging
128 releasee.

129 (b) An aging releasee is considered to be in the custody,
130 supervision, and control of the department, which, for purposes
131 of this section does not create a duty for the department to
132 provide the aging releasee with medical care upon release into
133 the community. The aging releasee remains eligible to earn or
134 lose gain-time in accordance with s. 944.275 and department
135 rule. The aging releasee may not be counted in the prison system
136 population, and the aging releasee's approved community-based
137 housing location may not be counted in the capacity figures for
138 the prison system.

139 (7) REVOCATION HEARING AND RECOMMITMENT.—

140 (a)1. An aging releasee's conditional aging inmate release
141 may be revoked for a violation of any condition of the release
142 established by the department, including, but not limited to, a
143 new violation of law. The department may terminate the aging
144 releasee's conditional aging inmate release and return him or
145 her to the same or another institution designated by the
146 department.

147 2. If a duly authorized representative of the department
148 has reasonable grounds to believe that an aging releasee has
149 violated the conditions of his or her release in a material
150 respect, such representative may cause a warrant to be issued
151 for the arrest of the aging releasee. A law enforcement officer
152 or a probation officer may arrest the aging releasee without a
153 warrant in accordance with s. 948.06, if there are reasonable
154 grounds to believe he or she has violated the terms and
155 conditions of his or her conditional aging inmate release. The



156 law enforcement officer must report the aging releasee's alleged
157 violations to the supervising probation office or the
158 department's emergency action center for initiation of
159 revocation proceedings as prescribed by the department by rule.

160 3. If the basis of the violation of release conditions is
161 related to a new violation of law, the aging releasee must be
162 detained without bond until his or her initial appearance, at
163 which a judicial determination of probable cause is made. If the
164 judge determines that there was no probable cause for the
165 arrest, the aging releasee may be released. If the judge
166 determines that there was probable cause for the arrest, the
167 judge's determination also constitutes reasonable grounds to
168 believe that the aging releasee violated the conditions of the
169 release.

170 4. The department must order that the aging releasee
171 subject to revocation under this subsection be returned to
172 department custody for a conditional aging inmate release
173 revocation hearing as prescribed by rule. An aging releasee may
174 admit to the alleged violation of the conditions of conditional
175 aging inmate release or may elect to proceed to a revocation
176 hearing.

177 5. A majority of the panel members must agree that
178 revocation is appropriate for the aging releasee's conditional
179 aging inmate release to be revoked. If conditional aging inmate
180 release is revoked pursuant to this subsection, the aging
181 releasee must serve the balance of his or her sentence in an
182 institution designated by the department with credit for the
183 actual time served on conditional aging inmate release. However,
184 the aging releasee's gain-time accrued before recommitment may



937440

185 be forfeited pursuant to s. 944.28(1). An aging releasee whose
186 conditional aging inmate release is revoked and is recommitted
187 to the department under this subsection must comply with the 85
188 percent requirement in accordance with ss. 921.002 and 944.275
189 upon recommitment. If the aging releasee whose conditional aging
190 inmate release is revoked subject to this subsection would
191 otherwise be eligible for parole or any other release program,
192 he or she may be considered for such release program pursuant to
193 law.

194 6. An aging releasee whose release has been revoked
195 pursuant to this subsection may have the revocation reviewed by
196 the department's general counsel, who must make a recommendation
197 to the secretary. The secretary must review all relevant
198 information and make a final decision about the appropriateness
199 of the revocation of conditional aging inmate release pursuant
200 to this subsection. The decision of the secretary is a final
201 administrative decision not subject to appeal.

202 (b) If the aging releasee subject to revocation under
203 paragraph (a) elects to proceed with a hearing, the aging
204 releasee must be informed orally and in writing of the
205 following:

206 1. The alleged violation with which the releasee is
207 charged.

208 2. The releasee's right to be represented by counsel.
209 However, this subparagraph does not create a right to publicly
210 funded legal counsel.

211 3. The releasee's right to be heard in person.

212 4. The releasee's right to secure, present, and compel the
213 attendance of witnesses relevant to the proceeding.



937440

214 5. The releasee's right to produce documents on his or her
215 own behalf.

216 6. The releasee's right of access to all evidence used
217 against the releasee and to confront and cross-examine adverse
218 witnesses.

219 7. The releasee's right to waive the hearing.

220 (c) If the panel approves the revocation of the aging
221 releasee's conditional aging inmate release, the panel must
222 provide a written statement as to evidence relied on and reasons
223 for revocation.

224 (8) SOVEREIGN IMMUNITY.—Unless otherwise provided by law
225 and in accordance with s. 13, Art. X of the State Constitution,
226 members of the panel established in subsection (2) who are
227 involved with decisions that grant or revoke conditional aging
228 inmate release are provided immunity from liability for actions
229 that directly relate to such decisions.

230 (9) RULEMAKING AUTHORITY.—The department may adopt rules as
231 necessary to implement this section.

232 Section 2. Subsection (6) of section 316.1935, Florida
233 Statutes, is amended to read:

234 316.1935 Fleeing or attempting to elude a law enforcement
235 officer; aggravated fleeing or eluding.—

236 (6) Notwithstanding s. 948.01, no court may suspend, defer,
237 or withhold adjudication of guilt or imposition of sentence for
238 any violation of this section. A person convicted and sentenced
239 to a mandatory minimum term of incarceration under paragraph
240 (3) (b) or paragraph (4) (b) is not eligible for statutory gain-
241 time under s. 944.275 or any form of discretionary early
242 release, other than pardon or executive clemency, ~~or~~ conditional



937440

243 medical release under s. 947.149, or conditional aging inmate
244 release under s. 945.0912, prior to serving the mandatory
245 minimum sentence.

246 Section 3. Paragraph (k) of subsection (4) of section
247 775.084, Florida Statutes, is amended to read:

248 775.084 Violent career criminals; habitual felony offenders
249 and habitual violent felony offenders; three-time violent felony
250 offenders; definitions; procedure; enhanced penalties or
251 mandatory minimum prison terms.—

252 (4)

253 (k)1. A defendant sentenced under this section as a
254 habitual felony offender, a habitual violent felony offender, or
255 a violent career criminal is eligible for gain-time granted by
256 the Department of Corrections as provided in s. 944.275(4)(b).

257 2. For an offense committed on or after October 1, 1995, a
258 defendant sentenced under this section as a violent career
259 criminal is not eligible for any form of discretionary early
260 release, other than pardon or executive clemency, ~~or~~ conditional
261 medical release under ~~granted pursuant to~~ s. 947.149, or
262 conditional aging inmate release under s. 945.0912.

263 3. For an offense committed on or after July 1, 1999, a
264 defendant sentenced under this section as a three-time violent
265 felony offender shall be released only by expiration of sentence
266 and shall not be eligible for parole, control release, or any
267 form of early release.

268 Section 4. Paragraph (b) of subsection (2) and paragraph
269 (b) of subsection (3) of section 775.087, Florida Statutes, are
270 amended to read:

271 775.087 Possession or use of weapon; aggravated battery;



937440

272 felony reclassification; minimum sentence.-

273 (2)

274 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
275 (a)3. does not prevent a court from imposing a longer sentence
276 of incarceration as authorized by law in addition to the minimum
277 mandatory sentence, or from imposing a sentence of death
278 pursuant to other applicable law. Subparagraph (a)1.,
279 subparagraph (a)2., or subparagraph (a)3. does not authorize a
280 court to impose a lesser sentence than otherwise required by
281 law.

282

283 Notwithstanding s. 948.01, adjudication of guilt or imposition
284 of sentence shall not be suspended, deferred, or withheld, and
285 the defendant is not eligible for statutory gain-time under s.
286 944.275 or any form of discretionary early release, other than
287 pardon or executive clemency, ~~or~~ conditional medical release
288 under s. 947.149, or conditional aging inmate release under s.
289 945.0912, prior to serving the minimum sentence.

290 (3)

291 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
292 (a)3. does not prevent a court from imposing a longer sentence
293 of incarceration as authorized by law in addition to the minimum
294 mandatory sentence, or from imposing a sentence of death
295 pursuant to other applicable law. Subparagraph (a)1.,
296 subparagraph (a)2., or subparagraph (a)3. does not authorize a
297 court to impose a lesser sentence than otherwise required by
298 law.

299

300 Notwithstanding s. 948.01, adjudication of guilt or imposition



937440

301 of sentence shall not be suspended, deferred, or withheld, and
302 the defendant is not eligible for statutory gain-time under s.
303 944.275 or any form of discretionary early release, other than
304 pardon or executive clemency, ~~or~~ conditional medical release
305 under s. 947.149, or conditional aging inmate release under s.
306 945.0912, prior to serving the minimum sentence.

307 Section 5. Subsection (3) of section 784.07, Florida
308 Statutes, is amended to read:

309 784.07 Assault or battery of law enforcement officers,
310 firefighters, emergency medical care providers, public transit
311 employees or agents, or other specified officers;
312 reclassification of offenses; minimum sentences.-

313 (3) Any person who is convicted of a battery under
314 paragraph (2)(b) and, during the commission of the offense, such
315 person possessed:

316 (a) A "firearm" or "destructive device" as those terms are
317 defined in s. 790.001, shall be sentenced to a minimum term of
318 imprisonment of 3 years.

319 (b) A semiautomatic firearm and its high-capacity
320 detachable box magazine, as defined in s. 775.087(3), or a
321 machine gun as defined in s. 790.001, shall be sentenced to a
322 minimum term of imprisonment of 8 years.

323
324 Notwithstanding s. 948.01, adjudication of guilt or imposition
325 of sentence shall not be suspended, deferred, or withheld, and
326 the defendant is not eligible for statutory gain-time under s.
327 944.275 or any form of discretionary early release, other than
328 pardon or executive clemency, ~~or~~ conditional medical release
329 under s. 947.149, or conditional aging inmate release under s.



937440

330 945.0912, prior to serving the minimum sentence.

331 Section 6. Subsection (1) of section 790.235, Florida
332 Statutes, is amended to read:

333 790.235 Possession of firearm or ammunition by violent
334 career criminal unlawful; penalty.—

335 (1) Any person who meets the violent career criminal
336 criteria under s. 775.084(1)(d), regardless of whether such
337 person is or has previously been sentenced as a violent career
338 criminal, who owns or has in his or her care, custody,
339 possession, or control any firearm, ammunition, or electric
340 weapon or device, or carries a concealed weapon, including a
341 tear gas gun or chemical weapon or device, commits a felony of
342 the first degree, punishable as provided in s. 775.082, s.
343 775.083, or s. 775.084. A person convicted of a violation of
344 this section shall be sentenced to a mandatory minimum of 15
345 years' imprisonment; however, if the person would be sentenced
346 to a longer term of imprisonment under s. 775.084(4)(d), the
347 person must be sentenced under that provision. A person
348 convicted of a violation of this section is not eligible for any
349 form of discretionary early release, other than pardon,
350 executive clemency, ~~or~~ conditional medical release under s.
351 947.149, or conditional aging inmate release under s. 945.0912.

352
353 ===== T I T L E A M E N D M E N T =====

354 And the title is amended as follows:

355 Delete lines 3 - 40

356 and insert:

357 creating s. 945.0912, F.S.; providing legislative
358 findings; establishing the conditional aging inmate



359 release program within the Department of Corrections;
360 establishing a panel to consider specified matters;
361 providing for program eligibility; providing that an
362 inmate may be released on conditional aging inmate
363 release prior to serving 85 percent of his or her term
364 of imprisonment; requiring that an inmate who meets
365 certain criteria be considered for conditional aging
366 inmate release; providing that the inmate does not
367 have a right to release; requiring the department to
368 identify eligible inmates; requiring the department to
369 refer an inmate to the panel for consideration;
370 providing victim notification requirements under
371 certain circumstances; requiring the panel to conduct
372 a hearing within a specified timeframe; providing
373 requirements for the hearing; providing that an inmate
374 who is approved for conditional aging inmate release
375 must be released from the department's custody within
376 a reasonable amount of time; providing that an inmate
377 is considered an aging releasee upon release from the
378 department into the community; providing a review
379 process for an inmate who is denied release; providing
380 conditions for release; providing that the department
381 does not have a duty to provide medical care to an
382 aging releasee; prohibiting an aging releasee or his
383 or her community-based housing from being counted in
384 the prison system population and the prison capacity
385 figures, respectively; providing for the revocation of
386 conditional aging inmate release; requiring the aging
387 releasee to be detained if a violation is based on



937440

388 certain circumstances; authorizing the aging releasee
389 to be returned to the department if he or she violates
390 any conditions of the release; providing the
391 department with authority to issue an arrest warrant
392 in specified circumstances; authorizing a law
393 enforcement officer or a probation officer may arrest
394 the aging releasee without a warrant in certain
395 circumstances; requiring a majority of the panel to
396 agree on the appropriateness of revocation;
397 authorizing the forfeiture of gain-time if the
398 revocation is based on certain violations; providing
399 that an aging releasee whose conditional aging inmate
400 release is revoked and is recommitted to the
401 department must comply with the 85 percent requirement
402 upon recommitment; providing a review process for an
403 aging releasee who has his or her released revoked;
404 requiring the aging releasee to be given specified
405 information in certain instances; requiring the panel
406 to provide a written statement as to evidence relied
407 on and reasons for revocation; providing members of
408 the panel have sovereign immunity related to specified
409 decisions; providing rulemaking authority; amending
410 ss. 316.1935, 775.084, 775.087, 784.07, 790.235,
411 893.135, 921.0024, 944.605,