

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 426

INTRODUCER: Senators Smith and Gaetz

SUBJECT: Elderly Inmates

DATE: November 14, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates the Elderly Rehabilitated Inmate Program to provide a means for the release of inmates who are at least 60 years old, who have demonstrated that they have been rehabilitated while incarcerated for at least 25 years, and who have met certain other criteria. The release is in the form of conditional extension of the limits of confinement administered by the Florida Parole Commission (commission). The bill also requires the Department of Corrections to develop a pilot program based on restorative justice principles.

This bill amends s. 947.141 and creates sections 947.148 and 947.1481 of the Florida Statutes.

**II. Present Situation:**

**Elderly Inmates**

Florida considers an inmate who is 50 years old or older to be “aging or elderly.”<sup>1</sup> The age when an inmate is considered to be elderly is far lower than in the general population because of generally poorer health. This may be due to life experiences before and during incarceration that contribute to lower life expectancy.<sup>2</sup> Section 944.804, F.S., (the Elderly Offenders’ Correctional Facilities Program of 2000), reflected the Legislature’s concern that the population of elderly inmates was increasing then and would continue to increase. Because on average it costs approximately three times more to incarcerate an elderly offender as it does to incarcerate a younger inmate, the statute required exploration of alternatives to the current approaches to

<sup>1</sup> Chapter 33-601.217, Florida Administrative Code.

<sup>2</sup> State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51.

housing, programming, and treating the medical needs of elderly offenders.<sup>3</sup> There were no specific geriatric facilities at the time the law was passed, but the new statute specifically required the Department of Corrections (department) to establish River Junction Correctional Institution (RJCI) as a geriatric facility and to establish rules for which offenders are eligible to be housed there.

The elderly population has continued to increase since RJCI was opened as a geriatric facility. On June 30, 2011, 17,492 inmates in the department's custody fit into the elderly or aging classification. This represents approximately 17 percent of the entire inmate population.<sup>4</sup>

Section 944.8041, F.S., requires the department and the Correctional Medical Authority (CMA)<sup>5</sup> to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as specific information on RJCI. The report must also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States.

### **Parole**

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission). There is no possibility of parole for offenses committed after 1995, but 5,360 inmates are still eligible for parole consideration for earlier offenses.<sup>6</sup> These are inmates who:

- Committed an offense other than capital felony murder or capital felony sexual battery prior to October 1, 1983;
- Committed capital felony murder prior to May 25, 1994; or
- Committed capital felony sexual battery prior to October 1, 1995.

An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by department probation officers. As of June 30, 2011, 437 offenders were supervised on parole from Florida sentences.<sup>7</sup>

### **Conditional Medical Release**

Section 947.149, F.S., provides for conditional medical release of inmates who are "permanently incapacitated" or "terminally ill." If an inmate's health deteriorates to the point that conditional medical release might be appropriate, the department's institutional health service staff reviews the case and provides medical information to the commission for consideration of release. If the inmate is granted conditional medical release and his or her medical condition improves, or if he/she violates the conditions of the release, the inmate can be returned to prison to resume service of the original sentence. If return is due to improved health, there is no penalty for having been on the program.

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<sup>3</sup> Section 944.804(1), F.S.

<sup>4</sup> Department of Corrections Analysis of Senate Bill 426, p. 1.

<sup>5</sup> House Bill 5305 (2011 Session) repealed all statutes relating to the CMA, and no appropriation was made for it. However, the Governor vetoed HB 5305. Therefore, the CMA exists in statute but is not operational.

<sup>6</sup> Florida Parole Commission Analysis of Senate Bill 426, November 15, 2011, page 2.

<sup>7</sup> Community Supervision Population Monthly Status Report, July 2011, Florida Department of Corrections, p. 2.

### **Extension of the Limits of Confinement**

Section 945.091, F.S., gives the department authority to extend the limits of an inmate's confinement for certain purposes. Some types of extension of the limits of confinement, such as community work release, are integral to the department's reentry programming. The department makes the determination of whether it is appropriate to extend the limits of confinement for a particular inmate. Extension may be granted to:

- Allow a trusted inmate to go to a specifically designated place or places for a specified period of time for the purpose of: (1) visiting a dying relative or attending a relative's funeral; (2) arranging for post-release employment or residence; (3) aiding the inmate's rehabilitation and successful transition back into the community; or (4) another compelling reason in the public interest (s. 945.091(1)(a), F.S.).
- Allow an inmate to work at paid employment, participate in an education or training program, or volunteer with a public or nonprofit agency or faith-based service group in the community while still being confined by the department when not involved in any of the activities (s. 945.091(1)(b), F.S.).
- Allow an inmate to participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based service groups, with which the department has contracted (s. 945.091(1)(c), F.S.).
- Allow an inmate with college-level aptitude to attend classes at a local community college or university (s. 945.091(2), F.S.).

There are three statutory disqualifications from participation in extension of the limits of confinement: (1) an inmate who has been convicted of sexual battery under s. 794.011, F.S., is ineligible for any type of extension of limits of confinement<sup>8</sup>; (2) an inmate who has been convicted of escape under s. 944.40, F.S., is ineligible for any work release program<sup>9</sup>; and (3) an inmate who has been convicted of committing or attempting to commit murder, manslaughter, sexual battery, robbery, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, aircraft piracy, is ineligible to attend classes at any state community college or university that is part of the State University System.<sup>10</sup>

### **III. Effect of Proposed Changes:**

The bill creates the Elderly Rehabilitated Inmate Supervision Program to provide for conditional extension of the limits of confinement for certain inmates. It applies retroactively to inmates who have already been sentenced and prospectively to those who are sentenced in the future. Basic eligibility requirements for the program would be that the inmate:

- (1) is at least 60 years of age;
- (2) has served at least 25 consecutive years of incarceration;
- (3) has not been sentenced for a capital felony;
- (4) is not eligible for parole or conditional medical release;

<sup>8</sup> Section 945.091(3), F.S.

<sup>9</sup> Section 945.092, F.S.

<sup>10</sup> Section 945.091(5), F.S. Florida Senate Interim Project Report 2004-127, January 2004, "A Review of the Department of Corrections' Inmate Work Release Law."

- (5) is not serving a minimum mandatory sentence; and
- (6) has not received a disciplinary report within the previous 6 months.

The department identified 98 inmates who will potentially meet the eligibility criteria over the next 5 years. As indicated by the table below, most of the inmates are incarcerated for a violent offense.<sup>11</sup>

<b>Primary Offense of Potentially Eligible Inmates</b>	<b>Number</b>
Murder	16
Kidnapping	6
Sexual Battery	15
Robbery/Robbery with Deadly Weapon	35
Aggravated Battery	2
Burglary (Armed and Assaults included)	16
Drugs, including Trafficking	6
Possession of Firearm by Felon	1
Trafficking in Stolen Property	1
<b>Total</b>	<b>98</b>

An inmate who meets the basic eligibility requirements can petition the commission to participate in supervised release under the program. If the petition is denied, the inmate can file a new petition one year after being notified of the denial. The petition must include:

- (1) A proposed release plan;
- (2) Documentation of the inmate’s relevant medical history, including current prognosis;
- (3) The inmate’s prison experience and criminal history. The criminal history must include any claim of innocence, the degree to which the inmate accepts responsibility for his or her acts leading to the conviction of the crime, and how the claim of responsibility has affected the inmate’s feelings of remorse;
- (4) Documentation of the inmate’s history of substance abuse and mental health;
- (5) Documentation of any disciplinary action taken against the inmate while in prison;
- (6) Documentation of the inmate’s participation in prison work and programs; and
- (7) Documentation of the inmate’s renunciation of gang activity.

**Consideration of the Petition**

The procedure for considering the inmate’s petition to participate in the program is similar to the process used to consider an application for parole. The commission must notify the victim, a lawful representative of the victim, or the victim’s next of kin if the victim is deceased within 30 days of receipt of the petition. An examiner must meet with the inmate within 90 days after the petition is filed. This meeting may be postponed for up to 90 days from the originally scheduled date for good cause. At the meeting, the examiner explains the program to the inmate and reviews the information contained in the petition. Within 10 days, the examiner must make a written recommendation of a release date to a panel of at least two commissioners.

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<sup>11</sup> Department of Corrections Analysis of Senate Bill 426, p. 6. The data reflects the inmate population as of October, 2011.

The commission's decision as to whether to grant or deny supervised release must be made at a meeting that is open to the public. The victim, the victim's parents or guardian if the victim was a minor, a lawful representative of the victim (or of the parents or guardian if the victim was a minor), or a homicide victim's next of kin may make an oral or written statement regarding his or her views on granting or denying the petition.<sup>12</sup> If the chairman of the commission approves, these persons and any other person who is not a member or employee of the commission can participate in the deliberations as to whether the petition is granted. One of the persons who is authorized to receive notice of filing of the petition must be given at least 30 days notice in advance of the meeting, and must be notified of the commission's decision within 30 days from when it is made.

In making its determination as to whether the inmate will be allowed to participate in the program, the commission must review and consider the inmate's:

- Entire criminal history and record;
- Complete medical history including substance abuse and mental health history, and current medical prognosis;
- Prison disciplinary record;
- Work record;
- Participation in prison programs;
- Gang affiliation, if any; and
- Responsibility for the acts leading to the conviction, including any prior and continued statements of innocence and the inmate's feelings of remorse.

As is the case with parole, an inmate cannot be placed in the program solely as a reward for good conduct or efficient performance of assigned duties. The commission must find that there is a reasonable probability that the inmate would live and conduct himself or herself as a respectable and law-abiding person. It also must find that release would be compatible with the inmate's own welfare and the welfare of society. The inmate must demonstrate:

- Successful participation in programs designed to restore him or her as a useful and productive person in the community upon release;
- Genuine reform and changed behavior over a period of years;
- Remorse for actions that have caused pain or suffering to his or her victims;
- A renunciation of criminal activity and gang affiliation if the inmate was a member of a gang.

If the inmate is approved for release<sup>13</sup>, a panel of at least two commissioners must set the terms and conditions of supervision. The length of supervision would be the remaining time of the inmate's sentence, including gain-time credit as determined by the department. A certified copy

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<sup>12</sup> It is not clear why the bill limits the right to make a statement to the next of kin of a homicide victim rather than the next of kin of a deceased victim, as is the case for the notification requirements.

<sup>13</sup> The bill also creates a process for the sentencing court to retain jurisdiction over the offender to review a release order. This retention of jurisdiction is patterned after the retention of jurisdiction language in s. 947.16, F.S., that is applicable to inmates who are eligible for parole consideration. The court may retain jurisdiction for the first third of the sentence, so the retention provisions would only come into consideration for inmates whose sentence exceeds 75 years.

of these terms and conditions must be provided to the inmate, and the bill provides a process for an inmate to request that the commission review and modify the terms and conditions. Three conditions are required unless the commission finds reasons not to impose them:

- Participation in 10 hours of community service for each year served in prison;
- Electronic monitoring for at least one year; and
- Reparation or restitution to the victim for any damage or loss caused by the offense.

In addition, the commission may impose any special conditions that it considers to be warranted. The bill sets out four specific special conditions that may be considered, although the commission may impose others. The enumerated special conditions require the inmate to:

- Pay any debt due to the state under s. 960.17, F.S., or any attorney's fees and costs owed to the state under s. 938.29, F.S.;
- Not leave the state or a definite area within the state without the commission's consent;
- Not associate with persons engaged in criminal activity; and
- Carry out the instructions of his or her supervising correctional probation officer.

As is the case for all types of community supervision, the released inmate will be supervised by a DOC correctional probation officer. Section 4 of the bill amends s. 947.141, F.S., to include inmates released under the program in the current statutory process for addressing violations of the release conditions. The bill also adds a new subsection that authorizes a law enforcement officer to arrest a program participant without warrant if the officer has reasonable grounds to believe that the releasee has violated the terms and conditions of supervision in a material respect.

#### **Restorative Justice Pilot Program**

Section 3 of the bill requires the department to develop a pilot program patterned after the Neighborhood Restorative Justice Centers established under s. 985.155, F.S. This pilot program must be implemented at one prison for women and two prisons for men and be available to inmates on a voluntary basis. Inmates who are eligible to participate in the Elderly Rehabilitated Inmate Program must be given priority for participation in the restorative justice programs.

The bill requires that any proposed program or strategy must be developed based upon a finding of need for such program in the community after consulting with the public, judges, law enforcement agencies, state attorneys, and defense attorneys.

The department is authorized to either use its own staff or to contract with other public or private agencies to deliver services related to programs created by the bill. It is also authorized to adopt rules to administer the provisions of the bill.

#### **Effective Date**

The bill has an effective date of July 1, 2012.

**Other Potential Implications:**

Although it is not explicitly stated, it appears that the bill would permit discretionary release of some inmates who would otherwise be required to complete 85 percent of their sentence as required by s. 921.002(1)(e), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill applies retroactively to sentences that were imposed for crimes that were committed prior to when it becomes law. Article X, section 9 of the Florida Constitution (the "Savings Clause") provides: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007). There are a number of decisions indicating that the clause prohibits application of a statutory change lessening the punishment for a crime to an offense that was committed before the change. However, it is not clear that a statutory change that expands eligibility for extension of the limits of confinement would be precluded by the Savings Clause.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None, except to the extent that the Restorative Justice Pilot Program may be administered by a private contractor.

**C. Government Sector Impact:****Elderly Rehabilitated Inmate Program**

Due to the Parole Commissions' discretion in release decisions, there is no way to predict in advance how many inmates will actually be released to supervision under the program.

Because the great majority of the inmates are violent offenders, the percentage of eligible inmates who are actually released may be low. Medical costs for inmates tends to rise with age, so inmates released under the program may have higher medical costs than the general inmate population.<sup>14</sup>

Assuming that the bill is intended to apply retroactively, the department estimates that 98 inmates will meet the basic eligibility requirements and be considered for release over the next 5 years:<sup>15</sup>

<b>Projected Inmates Meeting Basic Eligibility Requirements</b>	
First Year	16
Second Year	17
Third Year	27
Fourth Year	23
Fifth Year	15
<b>5 Year Total</b>	<b>98</b>

**Savings from Releases and Costs of Supervision**

- Parole Commission: The commission indicates that its costs for administering the program would be minimal.
- Criminal Justice Impact Conference (CJIC): CJIC has not yet assessed the fiscal impact of this bill, but forecast that last session’s similar SB 144 would have had an insignificant fiscal impact on the state prison population.
- Department of Corrections: Traditionally, the per diem cost of incarcerating an inmate is approximately \$50. As a general rule, this high cost always makes the cost of supervising an individual in the community less than the cost of incarceration. However, the department has noted the following with regard to costs saved from releases of small groups or individual inmates:

While the department uses the full per diem of \$53.34 for estimating cost avoidance for future inmates, two lesser per diems are used for impacts resulting from relatively small releases. If the projected change to the inmate population is less than a full facility but such that one or more dormitories could be closed, the dorm per diem including security staff of \$33.26 is used. If the projected change to the inmate population is small and implementation does not facilitate the closure of at least a dorm, the inmate variable per diem of \$14.01 is used.<sup>16</sup>

The department’s assessment is that the smaller per diem cost of \$14.01 is the most appropriate for estimating the bill’s reduction in incarceration costs. Currently, the basic cost of supervising an average probationer is \$4.84 per day, and the cost with electronic

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<sup>14</sup> However, the department notes that the program excludes inmates who are eligible for conditional medical release and therefore does not target those who are currently the most expensive to care for in the prison population.

<sup>15</sup> Department of Corrections Analysis, p. 6.

<sup>16</sup> Department of Corrections Analysis of SB 426, p. 8.



monitoring is \$13.78 per day.<sup>17</sup> However, in its analysis of the bill the department notes that supervision of inmates released under the program is likely to be particularly labor intensive. Their lengthy incarceration makes it less likely that they will have support from family or friends and they may need significant assistance in readjusting to society. Also, the nature of their offenses is likely to place them in a high risk category that requires supervision by more senior personnel.

**Restorative Justice Pilot Program**

The department indicates that it would require one additional staff member at each of the 3 institutions that would have a Restorative Justice Pilot Program. The cost of this position for Fiscal Year 2012-2013 is \$52,969, and the total cost for 3 positions would be \$158,907. The department also projects that there would be an additional \$23,070 of annual recurring expenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>17</sup>The bill requires electronic monitoring for at least one year after the conditional release. It is anticipated that the cost of electronic monitoring will be significantly lower after completion of the current procurement for a new contract.