

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  
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

HB 439

2012

57 | departmental employees or private agencies; requiring  
58 | the department and commission to adopt rules; creating  
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  
81 | a 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  
 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  
 99 to read:

100 947.148 Elderly Rehabilitated Inmate Supervision Program.—

101 (1) This section may be cited as the "Elderly  
 102 Rehabilitated 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;

HB 439

2012

- 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  
117 participate in the program must contain:
- 118            (a) A proposed release plan;  
119            (b) Documentation of the inmate's relevant medical  
120 history, 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

HB 439

2012

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  
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

HB 439

2012

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  
173 suffering to the victims of his or her offenses; and

174 (d) A renunciation of criminal activity and gang  
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

HB 439

2012

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  
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  
211 a 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  
 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.  
 240 960.17 or pay attorney fees and costs that are owed to the state  
 241 under s. 938.29;

242 (b) Not leave the state or a specified physical area  
 243 within 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

HB 439

2012

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  
261 amount of time the inmate has yet to serve, including  
262 calculations for gain-time credit, as determined by the  
263 department.

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

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

HB 439

2012

281 applies to one-third of the total consecutive sentences imposed.

282 (b) In retaining jurisdiction for purposes of this  
283 subsection, the trial court must state the justification with  
284 individual particularity, and such justification shall be made a  
285 part of the court record. A copy of the justification and the  
286 uniform commitment form issued by the court pursuant to s.  
287 944.17 shall be delivered to the department.

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

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

304 (e) The original sentencing judge or her or his  
305 replacement shall notify the commission within 10 days after  
306 receipt of the notice provided for in paragraph (d) as to  
307 whether the court desires to retain jurisdiction. If the  
308 original sentencing judge or her or his replacement does not so

HB 439

2012

309 notify the commission within the 10-day period or notifies the  
310 commission that the court does not desire to retain  
311 jurisdiction, the commission may dispose of the matter as it  
312 sees fit.

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

319 (g) Within 30 days after receipt of the items listed in  
320 paragraph (f), the original sentencing judge or her or his  
321 replacement shall review the order, findings, and evidence. If  
322 the judge finds that the order of the commission is not based on  
323 competent, substantial evidence or that participation in the  
324 program is not in the best interest of the community or the  
325 inmate, the court may vacate the release order. The judge or her  
326 or his replacement shall notify the commission of the decision  
327 of the court, and, if the release order is vacated, such  
328 notification must contain the evidence relied on and the reasons  
329 for denial. A copy of the notice shall be sent to the inmate.

330 (15) A correctional probation officer as defined in s.  
331 943.10 shall supervise the inmate released under this program.

332 (16) The department and commission shall adopt rules to  
333 administer this section.

334 Section 3. Restorative Justice Pilot Program.—

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

HB 439

2012

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

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

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

356       (5) The department shall adopt rules to administer this  
357 section.

358       Section 4. Section 947.141, Florida Statutes, is amended  
359 to read:

360       947.141 Violations of conditional release, control  
361 release, ~~or~~ conditional medical release, ~~or~~ addiction-recovery  
362 supervision, or elderly rehabilitated inmate supervision.-

363       (1) If a member of the commission or a duly authorized  
364 representative of the commission has reasonable grounds to

HB 439

2012

365 believe that an offender who is on release supervision under s.  
366 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has  
367 violated the terms and conditions of the release in a material  
368 respect, such member or representative may cause a warrant to be  
369 issued for the arrest of the releasee; if the offender was found  
370 to be a sexual predator, the warrant must be issued.

371 (2) Upon the arrest on a felony charge of an offender who  
372 is on release supervision under s. 947.1405, s. 947.146, s.  
373 947.148, s. 947.149, or s. 944.4731, the offender must be  
374 detained without bond until the initial appearance of the  
375 offender at which a judicial determination of probable cause is  
376 made. If the trial court judge determines that there was no  
377 probable cause for the arrest, the offender may be released. If  
378 the trial court judge determines that there was probable cause  
379 for the arrest, such determination also constitutes reasonable  
380 grounds to believe that the offender violated the conditions of  
381 the release. Within 24 hours after the trial court judge's  
382 finding of probable cause, the detention facility administrator  
383 or designee shall notify the commission and the department of  
384 the finding and transmit to each a facsimile copy of the  
385 probable cause affidavit or the sworn offense report upon which  
386 the trial court judge's probable cause determination is based.  
387 The offender must continue to be detained without bond for a  
388 period not exceeding 72 hours excluding weekends and holidays  
389 after the date of the probable cause determination, pending a  
390 decision by the commission whether to issue a warrant charging  
391 the offender with violation of the conditions of release. Upon  
392 the issuance of the commission's warrant, the offender must

393 | continue to be held in custody pending a revocation hearing held  
 394 | in accordance with this section.

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

404 |             (a) The alleged violation with which the releasee is  
 405 | charged.

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

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

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

410 |             (e) The releasee's right to produce documents on the  
 411 | releasee's own behalf.

412 |             (f) The releasee's right of access to all evidence used  
 413 | against the releasee and to confront and cross-examine adverse  
 414 | witnesses.

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

416 |         (4) Within a reasonable time following the hearing, the  
 417 | commissioner or the commissioner's duly authorized  
 418 | representative who conducted the hearing shall make findings of  
 419 | fact in regard to the alleged violation. A panel of no fewer  
 420 | than two commissioners shall enter an order determining whether

HB 439

2012

421 the charge of violation of conditional release, control release,  
422 conditional medical release, ~~or~~ addiction-recovery supervision,  
423 or elderly rehabilitated inmate supervision has been sustained  
424 based upon the findings of fact presented by the hearing  
425 commissioner or authorized representative. By such order, the  
426 panel may revoke conditional release, control release,  
427 conditional medical release, ~~or~~ addiction-recovery supervision,  
428 or elderly rehabilitated inmate supervision and thereby return  
429 the releasee to prison to serve the sentence imposed, reinstate  
430 the original order granting the release, or enter such other  
431 order as it considers proper. Effective for inmates whose  
432 offenses were committed on or after July 1, 1995, the panel may  
433 order the placement of a releasee, upon a finding of violation  
434 pursuant to this subsection, into a local detention facility as  
435 a condition of supervision.

436 (5) Effective for inmates whose offenses were committed on  
437 or after July 1, 1995, notwithstanding the provisions of ss.  
438 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and  
439 951.23, or any other law to the contrary, by such order as  
440 provided in subsection (4), the panel, upon a finding of guilt,  
441 may, as a condition of continued supervision, place the releasee  
442 in a local detention facility for a period of incarceration not  
443 to exceed 22 months. Prior to the expiration of the term of  
444 incarceration, or upon recommendation of the chief correctional  
445 officer of that county, the commission shall cause inquiry into  
446 the inmate's release plan and custody status in the detention  
447 facility and consider whether to restore the inmate to  
448 supervision, modify the conditions of supervision, or enter an



449 | order of revocation, thereby causing the return of the inmate to  
 450 | prison to serve the sentence imposed. The provisions of this  
 451 | section do not prohibit the panel from entering such other order  
 452 | or conducting any investigation that it deems proper. The  
 453 | commission may only place a person in a local detention facility  
 454 | pursuant to this section if there is a contractual agreement  
 455 | between the chief correctional officer of that county and the  
 456 | Department of Corrections. The agreement must provide for a per  
 457 | diem reimbursement for each person placed under this section,  
 458 | which is payable by the Department of Corrections for the  
 459 | duration of the offender's placement in the facility. This  
 460 | section does not limit the commission's ability to place a  
 461 | person in a local detention facility for less than 1 year.

462 |         (6) Whenever a conditional release, control release,  
 463 | conditional medical release, ~~or~~ addiction-recovery supervision,  
 464 | or elderly rehabilitated inmate supervision is revoked by a  
 465 | panel of no fewer than two commissioners and the releasee is  
 466 | ordered to be returned to prison, the releasee, by reason of the  
 467 | misconduct, shall be deemed to have forfeited all gain-time or  
 468 | commutation of time for good conduct, as provided for by law,  
 469 | earned up to the date of release. However, if a conditional  
 470 | medical release is revoked due to the improved medical or  
 471 | physical condition of the releasee, the releasee shall not  
 472 | forfeit gain-time accrued before the date of conditional medical  
 473 | release. This subsection does not deprive the prisoner of the  
 474 | right to gain-time or commutation of time for good conduct, as  
 475 | provided by law, from the date of return to prison.

476 |         (7) If a law enforcement officer has probable cause to

HB 439

2012

477 believe that an offender who is on release supervision under s.  
478 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has  
479 violated the terms and conditions of his or her release by  
480 committing a felony offense, the officer shall arrest the  
481 offender without a warrant, and a warrant need not be issued in  
482 the case.

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

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