

1 A bill to be entitled
2 An act relating to aged prison inmates; amending s.
3 945.6034, F.S.; requiring the Department of
4 Corrections to consider the needs of inmates older
5 than 50 years of age and adopt health care standards
6 for that population; creating s. 947.148, F.S.;
7 providing for a supervised conditional elderly release
8 program; providing criteria for program eligibility;
9 requiring that the petition to participate in the
10 program include certain documents; authorizing certain
11 persons to make a statement regarding an inmate's
12 supervised release under the program; requiring that
13 the commission notify certain persons within a
14 specified period regarding specified matters;
15 requiring an examiner to interview an inmate who has
16 filed a petition for supervised release under the
17 program within a specified time; requiring the
18 examiner to explain and review certain criteria;
19 requiring that the examiner recommend a release date
20 for the inmate; requiring a panel of commissioners to
21 establish terms and conditions of the supervised
22 release under certain circumstances; specifying
23 required conditions for participating in the program;
24 authorizing the commission to impose special
25 conditions of supervision; authorizing the inmate to
26 request a review of the terms and conditions of

27 supervision; providing that participation in the
28 program is voluntary; requiring the commission to
29 specify in writing the terms and conditions of
30 supervision and provide a certified copy to the
31 inmate; authorizing the trial court judge to enter an
32 order to retain jurisdiction over the offender;
33 providing a limitation of the trial court's
34 jurisdiction; providing for accrual of gain-time;
35 providing procedures if the trial court retains
36 jurisdiction of the inmate; requiring a correctional
37 probation officer to supervise an inmate who is
38 released under the program; requiring rulemaking;
39 amending s. 921.002, F.S.; authorizing defendants 65
40 years of age or older who receive favorable
41 determinations from the Florida Commission on Offender
42 Review for certain forms of discretionary and
43 revocable release to serve less than 85 percentage of
44 their sentence; specifying a minimum percentage of
45 their sentence that such defendants must serve;
46 amending s. 947.141, F.S.; conforming provisions to
47 changes made by the act; authorizing arrest of a
48 releasee under certain circumstances who has been
49 released under the supervised conditional elderly
50 release program; amending s. 947.149, F.S.; defining
51 the term "elderly and infirm inmate"; expanding
52 eligibility for conditional medical release to include

53 elderly and infirm inmates; providing an effective
 54 date.

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

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 58 Section 1. Subsection (1) of section 945.6034, Florida
 59 Statutes, is amended to read:

60 945.6034 Minimum health care standards.—

61 (1) The Assistant Secretary for Health Services is
 62 responsible for developing a comprehensive health care delivery
 63 system and promulgating all department health care standards.
 64 Such health care standards shall include, but are not limited
 65 to, rules relating to the management structure of the health
 66 care system and the provision of health care services to
 67 inmates, health care policies, health care plans, quality
 68 management systems and procedures, health service bulletins, and
 69 treatment protocols. In establishing standards of care, the
 70 department shall examine and consider the needs of inmates older
 71 than 50 years of age and adopt health care standards unique to
 72 this population.

73 Section 2. Section 947.148, Florida Statutes, is created
 74 to read:

75 947.148 Supervised conditional elderly release.—

76 (1) The commission shall, in conjunction with the
 77 department, establish a supervised conditional elderly release
 78 program.

79 (2) An inmate is eligible for the commission's
 80 consideration for release under the program when the inmate is
 81 determined by the department to meet all of the following
 82 criteria:

83 (a) Is 65 years of age or older.

84 (b) Has been convicted of a felony and has served at least
 85 50 percent of his or her sentence.

86 (c) Is not eligible for parole or conditional medical
 87 release.

88 (d) Has no more than two prior felony convictions, neither
 89 of which are:

90 1. A violent first degree felony;

91 2. A capital offense;

92 3. A sexual offense; or

93 4. An offense involving a child.

94 (e) Is not currently sentenced for:

95 1. A capital offense;

96 2. A sexual offense; or

97 3. An offense involving a child.

98 (f) Has not received a disciplinary report within the
 99 previous 6 months.

100 (3) A petition filed on behalf of an inmate to participate
 101 in the program must contain the inmate's:

102 (a) Proposed release plan.

103 (b) Any relevant medical history, including current
 104 medical prognosis.

105 (c) Prison experience and criminal history. The criminal
106 history must include:

107 1. A claim of innocence, if any.

108 2. The degree to which the inmate accepts responsibility
109 for his or her acts leading to the conviction of the crime.

110 3. How any claim of responsibility has affected the
111 inmate's feelings of remorse.

112 (d) Any history of substance abuse and mental health.

113 (e) Any disciplinary action taken against the inmate while
114 in prison.

115 (f) Any participation in prison work and other prison
116 programs.

117 (g) Any renunciation of gang affiliation.

118 (4) An inmate may not file a new petition within 1 year
119 after receiving notification of denial of his or her petition to
120 participate in the program. A petition that is filed before the
121 1-year period ends shall be returned to the inmate, along with a
122 notation indicating the date that the petition may be refiled.

123 (5) All matters relating to granting, denying, or revoking
124 an inmate's supervised release in the program shall be decided
125 in a meeting that is open to the public. A victim of the crime
126 committed by the inmate, the victim's parent or guardian if the
127 victim was a minor, or the lawful representative of the victim
128 or of the victim's parent or guardian if the victim was a minor,
129 may make an oral statement or submit a written statement
130 regarding his or her views as to granting, denying, or revoking

131 supervision. A person who is not a member or employee of the
132 commission, the victim of the crime committed by the inmate, the
133 victim's parent or guardian if the victim was a minor, or the
134 lawful representative of the victim or of the victim's parent or
135 guardian if the victim was a minor, may participate in
136 deliberations concerning the granting or revoking of an inmate's
137 supervised release in the program only upon the prior written
138 approval of the chair of the commission. The commission shall
139 notify a victim of the crime committed by the inmate, the
140 victim's parent or guardian if the victim was a minor, or the
141 lawful representative of the victim or of the victim's parent or
142 guardian if the victim was a minor within 30 days after the
143 petition is received by the commission, within 30 days before
144 the commission's meeting, and within 30 days after the
145 commission's decision.

146 (6) The commission may approve an inmate for participation
147 in the program if the inmate demonstrates:

148 (a) Successful participation in programs designed to
149 restore the inmate as a useful and productive person in the
150 community upon release.

151 (b) Genuine reform and changed behavior over a period of
152 years.

153 (c) Remorse for actions that have caused pain and
154 suffering to the victims of his or her offenses.

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

157 (7) In considering an inmate's eligibility for
158 participation in the program, the commission shall review the
159 inmate's:

160 (a) Entire criminal history and record.

161 (b) Complete medical history, including history of
162 substance abuse, mental health, and current medical prognosis.

163 (c) Prison disciplinary record.

164 (d) Work record.

165 (e) Participation in prison programs.

166 (f) Gang affiliation, if any.

167

168 The commission shall consider the inmate's responsibility for
169 the acts leading to the conviction, including prior and
170 continued statements of innocence and the inmate's feelings of
171 remorse.

172 (8) (a) An examiner shall interview an inmate within 90
173 days after a petition is filed on behalf of the inmate. An
174 interview may be postponed for a period not to exceed 90 days.
175 Such postponement must be for good cause, which includes, but is
176 not limited to, the need for the commission to obtain a
177 presentence or postsentence investigation report or a violation
178 report. The reason for postponement shall be noted in writing
179 and included in the official record. A postponement for good
180 cause may not result in an interview being conducted later than
181 90 days after the inmate's initial scheduled interview.

182 (b) During the interview, the examiner shall explain the

183 program to the inmate and review the inmate information
184 described in subsection (7).

185 (c) Within 10 days after the interview, the examiner shall
186 recommend in writing to a panel of at least two commissioners
187 appointed by the chair a release date for the inmate. The
188 commissioners are not bound by the examiner's recommended
189 release date.

190 (9) An inmate may not be placed in the program merely as a
191 reward for good conduct or efficient performance of duties
192 assigned in prison. An inmate may not be placed in the program
193 unless the commission finds that there is reasonable probability
194 that, if the inmate is placed in the program, he or she will
195 live and conduct himself or herself as a respectable and law-
196 abiding person and that the inmate's release will be compatible
197 with his or her own welfare and the welfare of society.

198 (10) If the commission has accepts the petition, approves
199 the proposed release plan, and determines that the inmate is
200 eligible for the program, a panel of at least two commissioners
201 shall establish the terms and conditions of the supervision.
202 When granting supervised release under the program, the
203 commission shall require the inmate to participate in 10 hours
204 of community service for each year served in prison, require the
205 inmate be subject to electronic monitoring for at least 1 year,
206 and require the inmate to pay reparation or restitution to the
207 victim for the damage or loss caused by the offense for which
208 the inmate was imprisoned. The commission may elect not to

209 impose any or all of the conditions if it finds reason that it
210 should not do so. If the commission does not order restitution
211 or orders only partial restitution, the commission must state on
212 the record the reasons for its decision. The amount of such
213 reparation or restitution shall be determined by the commission.

214 (11) The commission may impose special conditions it
215 considers warranted from its review of the release plan and
216 inmate's record, including, but not limited to, a requirement
217 that an inmate:

218 (a) Pay any debt due and owing to the state under s.
219 960.17 or pay attorney fees and costs that are owed to the state
220 under s. 938.29.

221 (b) Not leave the state or a specified area within the
222 state without the consent of the commission.

223 (c) Not associate with persons engaged in criminal
224 activity.

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

227 (12) (a) An inmate may request a review of the terms and
228 conditions of his or her release under the program. A panel of
229 at least two commissioners appointed by the chair shall consider
230 the inmate's request, render a written decision and the reasons
231 for the decision to continue or to modify the terms and
232 conditions of the program supervision, and inform the inmate of
233 the decision in writing within 30 days after the date of receipt
234 of the request for review. During the period of review of the

235 terms and conditions of supervision, the inmate shall be subject
236 to the authorized terms and conditions of supervision until such
237 time that a decision is made to continue or modify the terms and
238 conditions of supervision.

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

243 (c) An inmate's participation in the program is voluntary
244 and the inmate must agree to abide by all conditions of release.
245 The commission, upon authorizing a supervision release date,
246 shall specify in writing the terms and conditions of the program
247 supervision and provide a certified copy of these terms and
248 conditions to the inmate.

249 (13) (a) At the time of sentencing, a trial court judge may
250 enter an order retaining jurisdiction over an offender for
251 review of a release order by the commission under this section.
252 Such jurisdiction of the trial court judge is limited to the
253 first one-third of the maximum sentence imposed. When an
254 offender is convicted of two or more felonies and concurrent
255 sentences are imposed, the jurisdiction of the trial court
256 applies to the first one-third of the maximum sentence imposed
257 for the most severe felony for which the person was convicted.
258 When an offender is convicted of two or more felonies and
259 consecutive sentences are imposed, the jurisdiction of the trial
260 court judge applies to the first one-third of the total

261 consecutive sentences imposed.

262 (b) In retaining jurisdiction for purposes of this
263 subsection, a trial court must state the justification with
264 individual particularity, and such justification shall be made a
265 part of the court record. A copy of the justification and the
266 uniform commitment form issued by the court pursuant to s.
267 944.17 shall be delivered to the department.

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

273 (d) In such a case of retained jurisdiction, the
274 commission, within 30 days after the entry of its release order,
275 shall send notice of its release order to the original
276 sentencing judge and to the appropriate state attorney. The
277 release order shall be made contingent upon entry of an order by
278 the appropriate circuit judge relinquishing jurisdiction as
279 provided for in paragraph (e). If the original sentencing judge
280 is no longer serving, notice shall be sent to the chief judge of
281 the circuit in which the offender was sentenced. The chief judge
282 may designate a circuit judge within the circuit to act in the
283 place of the original sentencing judge.

284 (e) The original sentencing judge or his or her
285 replacement shall notify the commission within 10 days after
286 receipt of the notice required pursuant to paragraph (d) as to

287 whether the court desires to retain jurisdiction. If the
288 original sentencing judge or his or her replacement does not so
289 notify the commission within the 10-day period or notifies the
290 commission that the court does not desire to retain
291 jurisdiction, the commission may dispose of the matter as it
292 sees fit.

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

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

310 (14) A correctional probation officer as defined in s.
311 943.10 shall supervise the inmate released under this program.

312 (15) The department and commission shall adopt rules to

313 administer this section.

314 Section 3. Paragraph (e) of subsection (1) of section
315 921.002, Florida Statutes, is amended to read:

316 921.002 The Criminal Punishment Code.—The Criminal
317 Punishment Code shall apply to all felony offenses, except
318 capital felonies, committed on or after October 1, 1998.

319 (1) The provision of criminal penalties and of limitations
320 upon the application of such penalties is a matter of
321 predominantly substantive law and, as such, is a matter properly
322 addressed by the Legislature. The Legislature, in the exercise
323 of its authority and responsibility to establish sentencing
324 criteria, to provide for the imposition of criminal penalties,
325 and to make the best use of state prisons so that violent
326 criminal offenders are appropriately incarcerated, has
327 determined that it is in the best interest of the state to
328 develop, implement, and revise a sentencing policy. The Criminal
329 Punishment Code embodies the principles that:

330 (e) The sentence imposed by the sentencing judge reflects
331 the length of actual time to be served, shortened only by the
332 application of incentive and meritorious gain-time as provided
333 by law, and may not be shortened if the defendant would
334 consequently serve less than 85 percent of his or her term of
335 imprisonment as provided in s. 944.275(4)(b)3., except
336 defendants 65 years of age or older whose sentence may be
337 reduced by up to 50 percent as a result of a favorable
338 determination made by the Florida Commission on Offender Review

339 for forms of discretionary and revocable release provided in ss.
340 947.148 and 947.149. The provisions of chapter 947, relating to
341 parole, shall not apply to persons sentenced under the Criminal
342 Punishment Code.

343 Section 4. Subsections (1), (2), (3), (4), (6), and (7) of
344 section 947.141, Florida Statutes, are amended, and subsection
345 (8) is added to that section, to read:

346 947.141 Violations of conditional release, control
347 release, ~~or~~ conditional medical release or addiction-recovery
348 supervision, or supervised conditional elderly release.—

349 (1) If a member of the commission or a duly authorized
350 representative of the commission has reasonable grounds to
351 believe that an offender who is on release supervision under s.
352 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
353 violated the terms and conditions of the release in a material
354 respect, such member or representative may cause a warrant to be
355 issued for the arrest of the releasee; if the offender was found
356 to be a sexual predator, the warrant must be issued.

357 (2) Upon the arrest on a felony charge of an offender who
358 is on release supervision under s. 947.1405, s. 947.146, s.
359 947.148, s. 947.149, or s. 944.4731, the offender must be
360 detained without bond until the initial appearance of the
361 offender at which a judicial determination of probable cause is
362 made. If the trial court judge determines that there was no
363 probable cause for the arrest, the offender may be released. If
364 the trial court judge determines that there was probable cause

365 for the arrest, such determination also constitutes reasonable
366 grounds to believe that the offender violated the conditions of
367 the release. Within 24 hours after the trial court judge's
368 finding of probable cause, the detention facility administrator
369 or designee shall notify the commission and the department of
370 the finding and transmit to each a facsimile copy of the
371 probable cause affidavit or the sworn offense report upon which
372 the trial court judge's probable cause determination is based.
373 The offender must continue to be detained without bond for a
374 period not exceeding 72 hours excluding weekends and holidays
375 after the date of the probable cause determination, pending a
376 decision by the commission whether to issue a warrant charging
377 the offender with violation of the conditions of release. Upon
378 the issuance of the commission's warrant, the offender must
379 continue to be held in custody pending a revocation hearing held
380 in accordance with this section.

381 (3) Within 45 days after notice to the Florida Commission
382 on Offender Review of the arrest of a releasee charged with a
383 violation of the terms and conditions of conditional release,
384 control release, conditional medical release, ~~or~~ addiction-
385 recovery supervision, or supervised conditional elderly release,
386 the releasee must be afforded a hearing conducted by a
387 commissioner or a duly authorized representative thereof. If the
388 releasee elects to proceed with a hearing, the releasee must be
389 informed orally and in writing of the following:

390 (a) The alleged violation with which the releasee is

391 | charged.

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

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

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

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

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

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

402 | (4) Within a reasonable time following the hearing, the
403 | commissioner or the commissioner's duly authorized
404 | representative who conducted the hearing shall make findings of
405 | fact in regard to the alleged violation. A panel of no fewer
406 | than two commissioners shall enter an order determining whether
407 | the charge of violation of conditional release, control release,
408 | conditional medical release, ~~or~~ addiction-recovery supervision,
409 | or supervised conditional elderly release has been sustained
410 | based upon the findings of fact presented by the hearing
411 | commissioner or authorized representative. By such order, the
412 | panel may revoke conditional release, control release,
413 | conditional medical release, ~~or~~ addiction-recovery supervision,
414 | or supervised conditional elderly release and thereby return the
415 | releasee to prison to serve the sentence imposed, reinstate the
416 | original order granting the release, or enter such other order

417 as it considers proper. Effective for inmates whose offenses
418 were committed on or after July 1, 1995, the panel may order the
419 placement of a releasee, upon a finding of violation pursuant to
420 this subsection, into a local detention facility as a condition
421 of supervision.

422 (6) Whenever a conditional release, control release,
423 conditional medical release, ~~or~~ addiction-recovery supervision,
424 or supervised conditional elderly release is revoked by a panel
425 of no fewer than two commissioners and the releasee is ordered
426 to be returned to prison, the releasee, by reason of the
427 misconduct, shall be deemed to have forfeited all gain-time or
428 commutation of time for good conduct, as provided for by law,
429 earned up to the date of release. However, if a conditional
430 medical release is revoked due to the improved medical or
431 physical condition of the releasee, the releasee shall not
432 forfeit gain-time accrued before the date of conditional medical
433 release. This subsection does not deprive the prisoner of the
434 right to gain-time or commutation of time for good conduct, as
435 provided by law, from the date of return to prison.

436 (7) If a law enforcement officer has probable cause to
437 believe that an offender who is on release supervision under s.
438 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
439 violated the terms and conditions of his or her release by
440 committing a felony offense, the officer shall arrest the
441 offender without a warrant, and a warrant need not be issued in
442 the case.

443 (8) When a law enforcement officer or a correctional
444 probation officer has reasonable grounds to believe that an
445 offender who is supervised under the supervised conditional
446 elderly release program has violated the terms and conditions of
447 her or his supervision in a material respect, the officer may
448 arrest the offender without warrant and bring her or him before
449 one or more commissioners or a duly authorized representative of
450 the commission. Proceedings shall take place when a warrant has
451 been issued by a member of the commission or a duly authorized
452 representative of the commission.

453 Section 5. Paragraphs (a) and (b) of subsection (1) of
454 section 947.149, Florida Statutes, are redesignated as
455 paragraphs (b) and (c), respectively, and a new paragraph (a) is
456 added to that subsection, to read:

457 947.149 Conditional medical release.—

458 (1) The commission shall, in conjunction with the
459 department, establish the conditional medical release program.
460 An inmate is eligible for consideration for release under the
461 conditional medical release program when the inmate, because of
462 an existing medical or physical condition, is determined by the
463 department to be within one of the following designations:

464 (a) "Elderly and infirm inmate," which means an inmate who
465 has no current or prior convictions for capital or first degree
466 felonies, who has no current or prior convictions for sexual
467 offenses or offenses against children, who is 65 years of age or
468 older, and who has a condition caused by injury, disease, or

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469 illness which, to a reasonable degree of medical certainty,
470 renders the inmate infirm or physically impaired to the extent
471 that the inmate does not constitute a danger to himself or
472 herself or others.

473 Section 6. This act shall take effect July 1, 2015.