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

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

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51 release program; amending s. 947.149, F.S.; defining  
52 the term "elderly and infirm inmate"; expanding  
53 eligibility for conditional medical release to include  
54 elderly and infirm inmates; providing an effective  
55 date.

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

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

61 945.6034 Minimum health care standards.—

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

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

76 | 947.148 Supervised conditional elderly release.-  
 77 | (1) The commission shall, in conjunction with the  
 78 | department, establish a supervised conditional elderly release  
 79 | program.  
 80 | (2) An inmate is eligible for the commission's  
 81 | consideration for release under the program when the inmate is  
 82 | determined by the department to meet all of the following  
 83 | criteria:  
 84 | (a) Is 65 years of age or older.  
 85 | (b) Has been convicted of a felony and has served at least  
 86 | 50 percent of his or her sentence.  
 87 | (c) Is not eligible for parole or conditional medical  
 88 | release.  
 89 | (d) Has no more than two prior felony convictions, neither  
 90 | of which are:  
 91 | 1. A violent first degree felony;  
 92 | 2. A capital offense;  
 93 | 3. A sexual offense; or  
 94 | 4. An offense involving a child.  
 95 | (e) Is not currently sentenced for:  
 96 | 1. A violent first degree felony;  
 97 | 2. A capital offense;  
 98 | 3. A sexual offense; or  
 99 | 4. An offense involving a child.  
 100 | (f) Has not received a disciplinary report within the

101 previous 6 months.

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

104 (a) Proposed release plan, including details of the  
105 inmate's planned residence, employment, and healthcare.

106 (b) Any relevant medical history, including current  
107 medical prognosis.

108 (c) Prison experience and criminal history. The criminal  
109 history must include:

110 1. A claim of innocence, if any.

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

113 3. How any claim of responsibility has affected the  
114 inmate's feelings of remorse.

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

116 (e) Any disciplinary action taken against the inmate while  
117 in prison.

118 (f) Any participation in prison work and other prison  
119 programs.

120 (g) Any renunciation of gang affiliation.

121 (4) An inmate may not file a new petition within 1 year  
122 after receiving notification of denial of his or her petition to  
123 participate in the program. A petition that is filed before the  
124 1-year period ends shall be returned to the inmate, along with a  
125 notation indicating the date that the petition may be refiled.

126        (5) All matters relating to granting, denying, or revoking  
127 an inmate's supervised release in the program shall be decided  
128 in a meeting that is open to the public. A victim of the crime  
129 committed by the inmate, the victim's parent or guardian if the  
130 victim was a minor, or the lawful representative of the victim  
131 or of the victim's parent or guardian if the victim was a minor,  
132 may make an oral statement or submit a written statement  
133 regarding his or her views as to granting, denying, or revoking  
134 supervision. A person who is not a member or employee of the  
135 commission, the victim of the crime committed by the inmate, the  
136 victim's parent or guardian if the victim was a minor, or the  
137 lawful representative of the victim or of the victim's parent or  
138 guardian if the victim was a minor, may participate in  
139 deliberations concerning the granting or revoking of an inmate's  
140 supervised release in the program only upon the prior written  
141 approval of the chair of the commission. The commission shall  
142 notify a victim of the crime committed by the inmate, the  
143 victim's parent or guardian if the victim was a minor, or the  
144 lawful representative of the victim or of the victim's parent or  
145 guardian if the victim was a minor within 30 days after the  
146 petition is received by the commission, within 30 days before  
147 the commission's meeting, and within 30 days after the  
148 commission's decision.

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

151 (a) Successful participation in programs designed to  
152 restore the inmate as a useful and productive person in the  
153 community upon release.

154 (b) Genuine reform and changed behavior over a period of  
155 years.

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

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

160 (7) In considering an inmate's eligibility for  
161 participation in the program, the commission shall review the  
162 inmate's:

163 (a) Entire criminal history and record.

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

166 (c) Prison disciplinary record.

167 (d) Work record.

168 (e) Participation in prison programs.

169 (f) Gang affiliation, if any.

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

175 (8) (a) An examiner shall interview an inmate within 90

176 days after a petition is filed on behalf of the inmate. An  
177 interview may be postponed for a period not to exceed 90 days.  
178 Such postponement must be for good cause, which includes, but is  
179 not limited to, the need for the commission to obtain a  
180 presentence or postsentence investigation report or a violation  
181 report. The reason for postponement shall be noted in writing  
182 and included in the official record. A postponement for good  
183 cause may not result in an interview being conducted later than  
184 90 days after the inmate's initial scheduled interview.

185 (b) During the interview, the examiner shall:

186 1. Explain the program to the inmate and review the  
187 information described in subsections (2), (3), and (7).

188 2. Determine whether the inmate will be eligible for  
189 enrollment in Medicaid or Medicare programs upon release. The  
190 examiner shall include that information in the final  
191 recommendation to the commission.

192 (c) Within 10 days after the interview, the examiner shall  
193 recommend in writing to a panel of at least two commissioners  
194 appointed by the chair a release date for the inmate. The  
195 commissioners are not bound by the examiner's recommended  
196 release date.

197 (9) An inmate may not be placed in the program merely as a  
198 reward for good conduct or efficient performance of duties  
199 assigned in prison. An inmate may not be placed in the program  
200 unless the commission finds that there is reasonable probability



201 that, if the inmate is placed in the program, he or she will  
202 live and conduct himself or herself as a respectable and law-  
203 abiding person and that the inmate's release will be compatible  
204 with his or her own welfare and the welfare of society.

205 (10) If the commission accepts the petition, approves the  
206 proposed release plan, and determines that the inmate is  
207 eligible for the program, a panel of at least two commissioners  
208 shall establish the terms and conditions of the supervision.  
209 When granting supervised release under the program, the  
210 commission shall require the inmate to participate in 10 hours  
211 of community service for each year served in prison, require the  
212 inmate be subject to electronic monitoring for at least 1 year,  
213 and require the inmate to pay reparation or restitution to the  
214 victim for the damage or loss caused by the offense for which  
215 the inmate was imprisoned. The commission may elect not to  
216 impose any or all of the conditions if it finds reason that it  
217 should not do so. If the commission does not order restitution  
218 or orders only partial restitution, the commission must state on  
219 the record the reasons for its decision. The amount of such  
220 reparation or restitution shall be determined by the commission.

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

225 (a) Pay any debt due and owing to the state under s.

226 | 960.17 or pay attorney fees and costs that are owed to the state  
227 | under s. 938.29.

228 | (b) Not leave the state or a specified area within the  
229 | state without the consent of the commission.

230 | (c) Not associate with persons engaged in criminal  
231 | activity.

232 | (d) Carry out the instructions of his or her supervising  
233 | correctional probation officer.

234 | (e) Enroll in Medicaid, Medicare, or other healthcare  
235 | insurance.

236 | (12) (a) An inmate may request a review of the terms and  
237 | conditions of his or her release under the program. A panel of  
238 | at least two commissioners appointed by the chair shall consider  
239 | the inmate's request, render a written decision and the reasons  
240 | for the decision to continue or to modify the terms and  
241 | conditions of the program supervision, and inform the inmate of  
242 | the decision in writing within 30 days after the date of receipt  
243 | of the request for review. During the period of review of the  
244 | terms and conditions of supervision, the inmate shall be subject  
245 | to the authorized terms and conditions of supervision until such  
246 | time that a decision is made to continue or modify the terms and  
247 | conditions of supervision.

248 | (b) The length of supervision shall be the remaining  
249 | amount of time the inmate has yet to serve, including  
250 | calculations for gain-time credit, as determined by the

251 department.

252 (c) An inmate's participation in the program is voluntary  
253 and the inmate must agree to abide by all conditions of release.  
254 The commission, upon authorizing a supervision release date,  
255 shall specify in writing the terms and conditions of the program  
256 supervision and provide a certified copy of these terms and  
257 conditions to the inmate.

258 (13) (a) At the time of sentencing, a trial court judge may  
259 enter an order retaining jurisdiction over an offender for  
260 review of a release order by the commission under this section.  
261 Such jurisdiction of the trial court judge is limited to the  
262 first one-third of the maximum sentence imposed. When an  
263 offender is convicted of two or more felonies and concurrent  
264 sentences are imposed, the jurisdiction of the trial court  
265 applies to the first one-third of the maximum sentence imposed  
266 for the most severe felony for which the person was convicted.  
267 When an offender is convicted of two or more felonies and  
268 consecutive sentences are imposed, the jurisdiction of the trial  
269 court judge applies to the first one-third of the total  
270 consecutive sentences imposed.

271 (b) In retaining jurisdiction for purposes of this  
272 subsection, a trial court must state the justification with  
273 individual particularity, and such justification shall be made a  
274 part of the court record. A copy of the justification and the  
275 uniform commitment form issued by the court pursuant to s.

276 944.17 shall be delivered to the department.

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

282 (d) In such a case of retained jurisdiction, the  
283 commission, within 30 days after the entry of its release order,  
284 shall send notice of its release order to the original  
285 sentencing judge and to the appropriate state attorney. The  
286 release order shall be made contingent upon entry of an order by  
287 the appropriate circuit judge relinquishing jurisdiction as  
288 provided for in paragraph (e). If the original sentencing judge  
289 is no longer serving, notice shall be sent to the chief judge of  
290 the circuit in which the offender was sentenced. The chief judge  
291 may designate a circuit judge within the circuit to act in the  
292 place of the original sentencing judge.

293 (e) The original sentencing judge or his or her  
294 replacement shall notify the commission within 10 days after  
295 receipt of the notice required pursuant to paragraph (d) as to  
296 whether the court desires to retain jurisdiction. If the  
297 original sentencing judge or his or her replacement does not so  
298 notify the commission within the 10-day period or notifies the  
299 commission that the court does not desire to retain  
300 jurisdiction, the commission may dispose of the matter as it

301 sees fit.

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

308 (g) Within 30 days after receipt of the items listed in  
309 paragraph (f), the original sentencing judge or his or her  
310 replacement shall review the order, findings, and evidence. If  
311 the judge finds that the order of the commission is not based on  
312 competent, substantial evidence or that participation in the  
313 program is not in the best interest of the community or the  
314 inmate, the court may vacate the release order. The judge or his  
315 or her replacement shall notify the commission of the decision  
316 of the court and, if the release order is vacated, such  
317 notification must contain the evidence relied on and the reasons  
318 for denial. A copy of the notice shall be sent to the inmate.

319 (14) A correctional probation officer, as defined in s.  
320 943.10, shall supervise the inmate released under this program.

321 (15) The department and commission shall adopt rules to  
322 administer this section.

323 Section 3. Paragraph (e) of subsection (1) of section  
324 921.002, Florida Statutes, is amended to read:

325 921.002 The Criminal Punishment Code.—The Criminal

326 Punishment Code shall apply to all felony offenses, except  
 327 capital felonies, committed on or after October 1, 1998.

328 (1) The provision of criminal penalties and of limitations  
 329 upon the application of such penalties is a matter of  
 330 predominantly substantive law and, as such, is a matter properly  
 331 addressed by the Legislature. The Legislature, in the exercise  
 332 of its authority and responsibility to establish sentencing  
 333 criteria, to provide for the imposition of criminal penalties,  
 334 and to make the best use of state prisons so that violent  
 335 criminal offenders are appropriately incarcerated, has  
 336 determined that it is in the best interest of the state to  
 337 develop, implement, and revise a sentencing policy. The Criminal  
 338 Punishment Code embodies the principles that:

339 (e) The sentence imposed by the sentencing judge reflects  
 340 the length of actual time to be served, shortened only by the  
 341 application of incentive and meritorious gain-time as provided  
 342 by law, and may not be shortened if the defendant would  
 343 consequently serve less than 85 percent of his or her term of  
 344 imprisonment as provided in s. 944.275(4)(b)3., except  
 345 defendants 65 years of age or older whose terms of incarceration  
 346 may be reduced by up to 50 percent as a result of a favorable  
 347 determination made by the Florida Commission on Offender Review  
 348 for forms of discretionary and revocable release provided in ss.  
 349 947.148 and 947.149. The provisions of chapter 947, relating to  
 350 parole, shall not apply to persons sentenced under the Criminal

351 Punishment Code.

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

355 947.141 Violations of conditional release, control  
356 release, ~~or~~ conditional medical release or addiction-recovery  
357 supervision, or supervised conditional elderly release.—

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

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

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

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

399 (a) The alleged violation with which the releasee is  
400 charged.



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

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

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

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

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

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

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

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

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

445 (7) If a law enforcement officer has probable cause to  
446 believe that an offender who is on release supervision under s.  
447 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has  
448 violated the terms and conditions of his or her release by  
449 committing a felony offense, the officer shall arrest the  
450 offender without a warrant, and a warrant need not be issued in

451 the case.

452 (8) When a law enforcement officer or a correctional  
453 probation officer has reasonable grounds to believe that an  
454 offender who is supervised under the supervised conditional  
455 elderly release program has violated the terms and conditions of  
456 her or his supervision in a material respect, the officer may  
457 arrest the offender without warrant and bring her or him before  
458 one or more commissioners or a duly authorized representative of  
459 the commission. Proceedings shall take place when a warrant has  
460 been issued by a member of the commission or a duly authorized  
461 representative of the commission.

462 Section 5. Paragraphs (a) and (b) of subsection (1) of  
463 section 947.149, Florida Statutes, are redesignated as  
464 paragraphs (b) and (c), respectively, and a new paragraph (a) is  
465 added to that subsection, to read:

466 947.149 Conditional medical release.—

467 (1) The commission shall, in conjunction with the  
468 department, establish the conditional medical release program.  
469 An inmate is eligible for consideration for release under the  
470 conditional medical release program when the inmate, because of  
471 an existing medical or physical condition, is determined by the  
472 department to be within one of the following designations:

473 (a) "Elderly and infirm inmate," which means an inmate who  
474 has no current or prior convictions for capital or violent first  
475 degree felonies, who has no current or prior convictions for

476 sexual offenses or offenses against children, who is 65 years of  
477 age or older, and who has a condition caused by age, injury,  
478 disease, or illness which, to a reasonable degree of medical  
479 certainty, renders the inmate infirm or physically impaired to  
480 the extent that the inmate does not constitute a danger to  
481 himself or herself or others.

482 Section 6. This act shall take effect July 1, 2017.