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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete lines 76 - 311
and insert:

(1) FINDINGS.—The Legislature finds that the number of inmates with terminal medical conditions or who are suffering from severe debilitating or incapacitating medical conditions who are incarcerated in the state's prisons has grown significantly in recent years. Further, the Legislature finds that the condition of inmates who are terminally ill, or



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11 suffering from a debilitating or incapacitating conditions may
12 be exacerbated by imprisonment due to the stress linked to
13 prison life. The Legislature also finds that recidivism rates
14 are greatly reduced with inmates suffering from such medical
15 conditions who are released into the community. Therefore, the
16 Legislature finds that it is of great public importance to find
17 a compassionate solution to the challenges presented by the
18 imprisonment of inmates who are terminally ill or are suffering
19 from a debilitating or incapacitating condition while also
20 ensuring that the public safety of Florida's communities remains
21 protected.

22 (2) CREATION.—There is established a conditional medical
23 release program within the department for the purpose of
24 determining whether release is appropriate for eligible inmates,
25 supervising the released inmates, and conducting revocation
26 hearings as provided for in this section. The establishment of
27 the conditional medical release program must include a panel of
28 at least three people appointed by the secretary or his or her
29 designee for the purpose of determining the appropriateness of
30 conditional medical release and conducting revocation hearings
31 on the inmate releases.

32 (3) DEFINITIONS.—As used in this section, the term:

33 (a) "Inmate with a debilitating illness" means an inmate
34 who is determined to be suffering from a significant terminal or
35 nonterminal condition, disease, or syndrome that has rendered
36 the inmate so physically or cognitively impaired, debilitated,
37 or incapacitated as to create a reasonable probability that the
38 inmate does not constitute a danger to himself or herself to
39 others.



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40 (b) "Permanently incapacitated inmate" means an inmate who
41 has a condition caused by injury, disease, or illness which, to
42 a reasonable degree of medical certainty, renders the inmate
43 permanently and irreversibly physically incapacitated to the
44 extent that the inmate does not constitute a danger to himself
45 or herself or to others.

46 (c) "Terminally ill inmate" means an inmate who has a
47 condition caused by injury, disease, or illness that, to a
48 reasonable degree of medical certainty, renders the inmate
49 terminally ill to the extent that there can be no recovery,
50 death is expected within 12 months, and the inmate does not
51 constitute a danger to himself or herself or to others.

52 (4) ELIGIBILITY.—An inmate is eligible for consideration
53 for release under the conditional medical release program when
54 the inmate, because of an existing medical or physical
55 condition, is determined by the department to be an inmate with
56 a debilitating illness, a permanently incapacitated inmate, or a
57 terminally ill inmate. Notwithstanding any other provision of
58 law, an inmate who meets the above criteria may be released from
59 the custody of the department pursuant to this section prior to
60 satisfying 85 percent of his or her term of imprisonment.

61 (5) REFERRAL FOR CONSIDERATION.—

62 (a)1. Notwithstanding any provision to the contrary, any
63 inmate in the custody of the department who meets one or more of
64 the eligibility requirements under subsection (4) must be
65 considered for conditional medical release.

66 2. The authority to grant conditional medical release rests
67 solely with the department. An inmate does not have a right to
68 release or to a medical evaluation to determine eligibility for



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69 release pursuant to this section.

70 (b) The department must identify inmates who may be
71 eligible for conditional medical release based upon available
72 medical information. In considering an inmate for conditional
73 medical release, the department may require additional medical
74 evidence, including examinations of the inmate, or any other
75 additional investigations the department deems necessary for
76 determining the appropriateness of the eligible inmate's
77 release.

78 (c) The department must refer an inmate to the panel
79 established under subsection (2) for review and determination of
80 conditional medical release upon his or her identification as
81 potentially eligible for release pursuant to this section.

82 (d) If the case that resulted in the inmate's commitment to
83 the department involved a victim, and the victim specifically
84 requested notification pursuant to s. 16, Art. I of the State
85 Constitution, the department must notify the victim of the
86 inmate's referral to the panel immediately upon identification
87 of the inmate as potentially eligible for release under this
88 section. Additionally, the victim must be afforded the right to
89 be heard regarding the release of the inmate.

90 (6) DETERMINATION OF RELEASE.—

91 (a) Within 45 days after receiving the referral, the panel
92 established in subsection (2) must conduct a hearing to
93 determine whether conditional medical release is appropriate for
94 the inmate. Before the hearing, the director of inmate health
95 services or his or her designee must review any relevant
96 information, including, but not limited to, medical evidence,
97 and provide the panel with a recommendation regarding the



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98 appropriateness of releasing the inmate pursuant to this
99 section.

100 (b) A majority of the panel members must agree that the
101 inmate is appropriate for release pursuant to this section. If
102 conditional medical release is approved, the inmate must be
103 released by the department to the community within a reasonable
104 amount of time with necessary release conditions imposed
105 pursuant to subsection (7). An inmate who is granted conditional
106 medical release is considered a medical releasee upon release to
107 the community.

108 (c)1. An inmate who is denied conditional medical release
109 by the panel may have the decision reviewed by the department's
110 general counsel and chief medical officer, who must make a
111 recommendation to the secretary. The secretary must review all
112 relevant information and make a final decision about the
113 appropriateness of conditional medical release pursuant to this
114 section. The decision of the secretary is a final administrative
115 decision not subject to appeal.

116 2. An inmate that requests to have the decision reviewed in
117 accordance with this paragraph must do so in a manner prescribed
118 in rule. An inmate who is denied conditional medical release may
119 be subsequently reconsidered for such release in a manner
120 prescribed by department rule.

121 (7) RELEASE CONDITIONS.—

122 (a) An inmate granted release pursuant to this section is
123 released for a period equal to the length of time remaining on
124 his or her term of imprisonment on the date the release is
125 granted. Such inmate is considered a medical releasee upon
126 release from the department into the community. The medical



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127 releasee must comply with all reasonable conditions of release
128 the department imposes, which must include, at a minimum:

129 1. Periodic medical evaluations at intervals determined by
130 the department at the time of release.

131 2. Supervision by an officer trained to handle special
132 offender caseloads.

133 3. Active electronic monitoring, if such monitoring is
134 determined to be necessary to ensure the safety of the public
135 and the medical releasee's compliance with release conditions.

136 4. Any conditions of community control provided for in s.
137 948.101.

138 5. Any other conditions the department deems appropriate to
139 ensure the safety of the community and compliance by the medical
140 releasee.

141 (b) A medical releasee is considered to be in the custody,
142 supervision, and control of the department, which, for purposes
143 of this section does not create a duty for the department to
144 provide the medical releasee with medical care upon release into
145 the community. The medical releasee remains eligible to earn or
146 lose gain-time in accordance with s. 944.275 and department
147 rule. The medical releasee may not be counted in the prison
148 system population, and the medical releasee's approved
149 community-based housing location may not be counted in the
150 capacity figures for the prison system.

151 (8) REVOCATION HEARING AND RECOMMITMENT.—

152 (a)1. If the medical releasee's supervision officer or a
153 duly authorized representative of the department discovers that
154 the medical or physical condition of the medical releasee has
155 improved to the extent that she or he would no longer be



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156 eligible for release under this section, then the conditional
157 medical release may be revoked. The department may order, as
158 prescribed by department rule, that the medical releasee be
159 returned to the custody of the department for a conditional
160 medical release revocation hearing or may allow the medical
161 releasee to remain in the community pending the revocation
162 hearing. If the department elects to order the medical releasee
163 to be returned to custody pending the revocation hearing, the
164 officer or duly authorized representative may cause a warrant to
165 be issued for the arrest of the medical releasee.

166 2. A medical releasee may admit to the allegation of
167 improved medical or physical condition or may elect to proceed
168 to a revocation hearing. The revocation hearing must be
169 conducted by the panel established in subsection (2). Before a
170 revocation hearing pursuant to this paragraph, the director of
171 inmate health services or his or her designee must review any
172 medical evidence pertaining to the medical releasee and provide
173 the panel with a recommendation regarding the medical releasee's
174 improvement and current medical or physical condition.

175 3. A majority of the panel members must agree that
176 revocation is appropriate for the medical releasee's conditional
177 medical release to be revoked. If conditional medical release is
178 revoked due to improvement in his or her medical or physical
179 condition, the medical releasee must be recommitted to the
180 department to serve the balance of his or her sentence in an
181 institution designated by the department with credit for the
182 time served on conditional medical release and without
183 forfeiture of any gain-time accrued before recommitment. If the
184 medical releasee whose conditional medical release is revoked



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185 due to an improvement in her or his medical or physical
186 condition would otherwise be eligible for parole or any other
187 release program, he or she may be considered for such release
188 program pursuant to law.

189 4. A medical releasee whose conditional medical release is
190 revoked pursuant to this paragraph may have the decision
191 reviewed by the department's general counsel and chief medical
192 officer, who must make a recommendation to the secretary. The
193 secretary must review all relevant information and make a final
194 decision about the appropriateness of the revocation of
195 conditional medical release pursuant to this paragraph. The
196 decision of the secretary is a final administrative decision not
197 subject to appeal.

198 (b)1. The medical releasee's conditional medical release
199 may also be revoked for violation of any release conditions the
200 department establishes, including, but not limited to, a new
201 violation of law. The department may terminate the medical
202 releasee's conditional medical release and return him or her to
203 the same or another institution designated by the department.

204 2. If a duly authorized representative of the department
205 has reasonable grounds to believe that a medical releasee has
206 violated the conditions of his or her release in a material
207 respect, such representative may cause a warrant to be issued
208 for the arrest of the medical releasee. A law enforcement
209 officer or a probation officer may arrest the medical releasee
210 without a warrant in accordance with s. 948.06, if there are
211 reasonable grounds to believe he or she has violated the terms
212 and conditions of his or her conditional medical release. The
213 law enforcement officer must report the medical releasee's



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214 alleged violations to the supervising probation office or the
215 department's emergency action center for initiation of
216 revocation proceedings as prescribed by the department by rule.

217 3. If the basis of the violation of release conditions is
218 related to a new violation of law, the medical releasee must be
219 detained without bond until his or her initial appearance at
220 which a judicial determination of probable cause is made. If the
221 judge determines that there was no probable cause for the
222 arrest, the medical releasee may be released. If the judge
223 determines that there was probable cause for the arrest, the
224 judge's determination also constitutes reasonable grounds to
225 believe that the medical releasee violated the conditions of the
226 conditional medical release.

227 4. The department must order that the medical releasee
228 subject to revocation under this paragraph be returned to
229 department custody for a conditional medical release revocation
230 hearing. A medical releasee may admit to the alleged violation
231 of the conditions of conditional medical release or may elect to
232 proceed to a revocation hearing.

233 5. A majority of the panel members must agree that
234 revocation is appropriate for the medical releasee's conditional
235 medical release to be revoked. If conditional medical release is
236 revoked pursuant to this paragraph, the medical releasee must
237 serve the balance of his or her sentence in an institution
238 designated by the department with credit for the actual time
239 served on conditional medical release. The releasee's gain-time
240 accrued before recommitment may be forfeited pursuant to s.
241 944.28(1). If the medical releasee whose conditional medical
242 release is revoked subject to this paragraph would otherwise be



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243 eligible for parole or any other release program, he or she may
244 be considered for such release program pursuant to law.

245 6. A medical releasee whose conditional medical release has
246 been revoked pursuant to this paragraph may have the revocation
247 reviewed by the department's general counsel, who must make a
248 recommendation to the secretary. The secretary must review all
249 relevant information and make a final decision about the
250 appropriateness of the revocation of conditional medical release
251 pursuant to this paragraph. The decision of the secretary is a
252 final administrative decision not subject to appeal.

253 (c)1. If the medical releasee subject to revocation under
254 paragraph (a) or paragraph (b) elects to proceed with a hearing,
255 the medical releasee must be informed orally and in writing of
256 the following:

257 a. The alleged basis for the pending revocation proceeding
258 against the releasee.

259 b. The releasee's right to be represented by counsel.
260 However, this sub-subparagraph does not create a right to
261 publicly funded legal counsel.

262 c. The releasee's right to be heard in person.

263 d. The releasee's right to secure, present, and compel the
264 attendance of witnesses relevant to the proceeding.

265 e. The releasee's right to produce documents on his or her
266 own behalf.

267 f. The releasee's right of access to all evidence used to
268 support the revocation proceeding against the releasee and to
269 confront and cross-examine adverse witnesses.

270 g. The releasee's right to waive the hearing.

271 2. If the panel approves the revocation of the medical



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272 releasee's conditional medical release, the panel must provide a
273 written statement as to evidence relied on and reasons for
274 revocation.

275 (d) A medical releasee whose conditional medical release is
276 revoked and is recommitted to the department under this
277 subsection must comply with the 85 percent requirement in
278 accordance with ss. 921.002 and 944.275 upon recommitment.

279 (9) SPECIAL REQUIREMENTS UPON AN INMATE'S DIAGNOSIS OF A
280 TERMINAL CONDITION.—

281 (a) If an inmate is diagnosed with a terminal medical
282 condition that makes him or her eligible for consideration for
283 release under paragraph (3) (c) while in the custody of the
284 department, subject to confidentiality requirements, the
285 department must:

286 1. Notify the inmate's family or next of kin, and attorney,
287 if applicable, of such diagnosis within 72 hours of the
288 diagnosis.

289 2. Provide the inmate's family, including extended family,
290 with an opportunity to visit the inmate in person within 7 days
291 upon such diagnosis.

292 3. Initiate a review for conditional medical release as
293 provided for in this section immediately upon such diagnosis.

294 (b) If the inmate has mental and physical capacity, he or
295 she must consent to release of confidential information for the
296 department to comply with the notification requirements required
297 in this subsection.

298 (10) SOVEREIGN IMMUNITY.—Unless otherwise provided by law
299 and in accordance with s. 13, Art. X of the State Constitution,
300 members of the panel established in subsection (2) who are



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301 involved with decisions that grant or revoke conditional medical
302 release are provided immunity from liability for actions that
303 directly relate to such decisions.

304 (11) RULEMAKING AUTHORITY.—The department may adopt rules
305 as

307 ===== T I T L E A M E N D M E N T =====

308 And the title is amended as follows:

309 Delete lines 3 - 63

310 and insert:

311 creating s. 945.0911, F.S.; providing legislative
312 findings; establishing the conditional medical release
313 program within the Department of Corrections;
314 establishing a panel to consider specified matters;
315 defining terms; providing for program eligibility;
316 requiring any inmate who meets certain criteria to be
317 considered for conditional medical release; providing
318 that the inmate does not have a right to release or to
319 a certain medical evaluation; providing for program
320 eligibility; providing that an inmate may be released
321 on conditional medical release prior to serving 85
322 percent of his or her term of imprisonment; requiring
323 the department to identify eligible inmates; requiring
324 the department to refer an inmate to the panel for
325 consideration; providing for victim notification in
326 certain circumstances; requiring the panel to conduct
327 a hearing within a specified timeframe; specifying
328 requirements for the hearing; providing a review
329 process for an inmate who is denied release; providing



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330 conditions for release; providing that an inmate who
331 is approved for conditional medical release must be
332 released from the department in a reasonable amount of
333 time; providing that an inmate is considered a medical
334 releasee upon release from the department into the
335 community; providing that a medical releasee remains
336 in the custody, supervision, and control of the
337 department and provides an exception; providing a
338 medical releasee is eligible to earn or lose gain-
339 time; prohibiting a medical releasee or his or her
340 community-based housing from being counted in the
341 prison system population and the prison capacity
342 figures, respectively; providing for the revocation of
343 a medical releasee's conditional medical release;
344 authorizing the medical releasee to be returned to the
345 department's custody if his or her medical or physical
346 condition improves; requiring a majority of the panel
347 members to agree on the appropriateness of revocation;
348 providing that gain-time is not forfeited for
349 revocation based on improvement in the medical
350 releasee's condition; providing a review process for a
351 medical releasee who has his or her release revoked;
352 authorizing the medical releasee to be recommitted if
353 he or she violates any conditions of the release;
354 requiring that the medical releasee be detained if a
355 violation is based on certain circumstances; requiring
356 that a majority of the panel members agree on the
357 appropriateness of revocation; requiring specified
358 medical releasees to be recommitted to the department



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359 upon the revocation of the conditional medical
360 release; authorizing the forfeiture of gain-time if
361 the revocation is based on certain violations;
362 providing a review process for a medical releasee who
363 has his or her release revoked; requiring that the
364 medical releasee be given specified information in
365 certain instances; requiring the panel to provide a
366 written statement as to evidence relied on and reasons
367 for revocation; requiring the department to notify
368 certain persons within a specified time frame of an
369 inmate's diagnosis of a terminal medical condition;
370 requiring the department to allow a visit between an
371 inmate and certain persons within 7 days of a
372 diagnosis of a terminal medical condition; requiring
373 the department to initiate the conditional medical
374 release review process immediately upon an inmate's
375 diagnosis of a terminal medical condition; requiring
376 the inmate to consent to release of information in
377 certain circumstances; providing members of the panel
378 have sovereign immunity related to specified
379 decisions; providing rulemaking authority;