

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

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 484

INTRODUCER: Senator Smith

SUBJECT: Elderly Inmates

DATE: March 16, 2010

REVISED: \_\_\_\_\_

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

**I. Summary:**

This bill creates the Elderly Rehabilitated Inmate Program to provide a means for the release of older inmates who have demonstrated that they have been rehabilitated while incarcerated for at least 25 years. The program would be administered by the Florida Parole Commission (commission). The bill also requires the Department of Corrections (department) to develop a pilot program based upon restorative justice that includes classes on the effect of crime on crime victims.

This bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

**Elderly Inmates**

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

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

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

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

The elderly population has continued to increase since RJCI was opened as a geriatric facility. On June 30, 2009, 15,201 of the 100,894 inmates in the department's custody fit into the elderly or aging classification. This was a 7.5 percent increase in the elderly and aging population from the year before.<sup>4</sup> Due to the continuing increase since s. 944.804, F.S., was enacted, the department has designated other institutions and dorms within institutions to house elderly and aging inmates. River Junction Work Camp, the successor to RJCI, still has the largest concentration of elderly inmates with 292 of its 340 inmates (86% of the population) classified as elderly. However, in three other institutions more than half of the inmate population is elderly.<sup>5</sup>

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

### **Conditional Release**

In 1988, the Florida Legislature created the Conditional Release Program and placed it under the administration of the commission. Conditional release requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, or who are sentenced as a habitual offender, violent habitual offender, violent career criminal, or sexual predator. Unlike parole, conditional release is not discretionary release. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the commission. Supervision can be revoked and the releasee can be returned to prison if the commission finds that a violation of supervision has occurred.

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

The bill creates the Elderly Rehabilitated Inmate Program. Basic eligibility requirements for the program would be that the inmate is at least 50 years of age, has served at least 25 consecutive years of imprisonment in an department institution or facility, and is not serving a death sentence. An inmate who meets the basic eligibility requirements can petition the commission one time to participate in the program. The petition must include:

- (1) Documentation of the inmate's relevant medical history, including current prognosis;
- (2) The inmate's prison experience and criminal history. The criminal history must include any claim of innocence, the degree to which the inmate accepts responsibility for his or her acts

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

<sup>4</sup> Supra, p. 53.

<sup>5</sup> Supra, p. 56.

leading to the conviction of the crime, and how the claim of responsibility has affected the inmate's feelings of remorse.

The department must notify the victim of the crime or the victim's family within thirty days of the filing of the petition. The commission may approve the request to participate in the program if the inmate demonstrates:

- (1) Successful participation in programs designed to restore him or her as a useful and productive person in the community upon release. If no such programs are available, the inmate must have demonstrated an attempt to be a useful and productive person in the community upon release;
- (2) Genuine reform and changed behavior over a period of years;
- (3) Remorse for actions that have caused pain or suffering to his or her victims;
- (4) An ability to socialize with others in an acceptable manner;
- (5) A renunciation of criminal activity and gang affiliation if the inmate was a member of a gang.

The commission sets the terms of release if it determines that the inmate meets requirements and that his or her release would not endanger the public. Two mandatory requirements are set forth in the bill: electronic monitoring for at least one year and participation in 10 hours of community service for each year served in prison.

The bill also requires the department to develop a pilot program based upon restorative justice that includes classes on the effect of crime on crime victims. This pilot program must be implemented at one maximum security prison for women and two maximum security prisons for men. The restorative justice programs must be made available on a voluntary basis to inmates who are eligible to participate in the Elderly Rehabilitated Inmate Program.<sup>6</sup>

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

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

The program must include comprehensive victim services to ensure the safety of victims upon release of an inmate under the program.

The bill has an effective date of July 1, 2010.

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<sup>6</sup> In its analysis of the bill, the department indicates that only 3 institutions house maximum security inmates, who are inmates under a sentence of death. One of these facilities (Florida State Prison) does not have beds that are designated for elderly offenders.

**Other Potential Implications:**

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Assuming that the bill is intended to apply retroactively to inmates who are currently incarcerated, the department estimates that 1,470 inmates currently meet basic eligibility requirements. Of these, 94 percent are already eligible for, but have not been granted, parole. Since approximately 98 percent of these inmates are serving sentences for violent offenses, it is likely that the commission would not allow such inmates to be released under the program created in the bill because of public safety concerns. However, each inmate who is released on the program would result in a cost-avoidance of approximately \$52 per day in housing costs, but a cost of \$13.71 per day for supervision on electronic monitoring.

The department indicates that it would require one additional staff member at each of the 3 institutions that will have restorative justice programs. The recurring costs for these employees is approximately \$184,000 annually.

The commission would also have a cost to administer the Elderly Rehabilitated Inmate Program. The amount is dependent upon the number of eligible inmates who petition to participate.

**VI. Technical Deficiencies:**

Because the bill does not specifically state legislative intent that it be applied retroactively, it could be interpreted to apply only to inmates who are sentenced for offenses that occur after the effective date.

In subsection (2) of the new statute, one of the requirements for participation in the release program is that the inmate have served “25 consecutive years of imprisonment in an institution or facility of the department.” This would potentially make inmates who were briefly out of the department’s custody for a court appearance, or who were incarcerated in a private correctional facility, ineligible for the program.

It is not clear whether the references to “program” or “programs” in subsections (9) through (11) of the new statute are made to the Elderly Rehabilitated Inmate Program, the pilot restorative justice programs, or both.

Subsection (12) of the new statute authorizes the department to adopt rules to administer the new law, but does not authorize the commission to adopt such rules.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.