

<b>Tab 1</b>	<b>CS/SB 556 by CJ, Brandes (CO-INTRODUCERS) Perry, Bracy;</b> (Compare to H 00837) Inmate Conditional Medical Release						
544822	A	S	RCS	ACJ, Brandes	Delete L.76 - 311:	01/29	10:45 AM

<b>Tab 2</b>	<b>CS/SB 574 by CJ, Brandes (CO-INTRODUCERS) Perry;</b> (Compare to H 00837) Conditional Aging Inmate Release						
937440	A	S	RCS	ACJ, Brandes	Delete L.49 - 341:	01/29	10:45 AM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND**  
**CIVIL JUSTICE**  
**Senator Brandes, Chair**  
**Senator Bracy, Vice Chair**

**MEETING DATE:** Wednesday, January 29, 2020  
**TIME:** 9:00—10:30 a.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Building

**MEMBERS:** Senator Brandes, Chair; Senator Bracy, Vice Chair; Senators Gainer, Gruters, Harrell, Perry, Rouson, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 556</b> Criminal Justice / Brandes (Compare H 837, Linked S 1728)	Inmate Conditional Medical Release; Establishing the conditional medical release program within the Department of Corrections; requiring any inmate who meets certain criteria to be considered for conditional medical release; providing for victim notification in certain circumstances; providing that an inmate who is approved for conditional medical release must be released from the department in a reasonable amount of time; providing that a medical releasee remains in the care, custody, supervision, and control of the department and is eligible to earn or lose gain-time, etc.  CJ 11/12/2019 Fav/CS ACJ 01/22/2020 Temporarily Postponed ACJ 01/29/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0
2	<b>CS/SB 574</b> Criminal Justice / Brandes (Compare H 837, Linked S 1718)	Conditional Aging Inmate Release; Establishing the conditional aging inmate release program within the Department of Corrections; requiring that an inmate who meets certain criteria be considered for conditional aging inmate release; providing victim notification requirements under certain circumstances; providing that an inmate who is approved for conditional aging inmate release must be released from the department's custody within a reasonable amount of time; prohibiting an aging releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively, etc.  CJ 12/10/2019 Fav/CS ACJ 01/22/2020 Temporarily Postponed ACJ 01/29/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Criminal and Civil Justice  
Wednesday, January 29, 2020, 9:00—10:30 a.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	Review and Discussion of Fiscal Year 2020-2021 Budget Issues Relating to: Department of Corrections Department of Juvenile Justice Department of Law Enforcement Department of Legal Affairs/Attorney General Florida Commission on Offender Review State Courts Public Defenders State Attorneys Regional Conflict Counsels Statewide Guardian ad Litem Capital Collateral Regional Counsels Justice Administrative Commissions	Presented	

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Other Related Meeting Documents

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**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 556 (906570)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senators Brandes, Perry, and Bracy

SUBJECT: Inmate Conditional Medical Release

DATE: January 31, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 556 repeals section 947.149, Florida Statutes, which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates section 945.0911, Florida Statutes, to establish a CMR program within the Department of Corrections (DOC) with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings.

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an:

- “Inmate with a debilitating illness,” which is defined to mean an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.
- “Permanently incapacitated inmate,” which is defined to mean an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.

- “Terminally ill inmate,” which is defined to mean an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

As with current law, the bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information. However, rather than referring the case to the FCOR upon identification, the bill requires the DOC to conduct the entire determination process by referring the inmate to a three-member panel established in the new program for review and determination of release.

As is required in current law, the bill requires notice to be provided to certain victims immediately upon identification of the inmate as potentially eligible for release on CMR and the inmate’s referral to the panel.

The bill requires the director of inmate health services to review specified evidence and provide a recommendation to the three-member panel, who must conduct a hearing within 45 days of the referral to determine whether CMR is appropriate for the inmate. A majority of the panel members must agree that release on CMR is appropriate for the inmate. An inmate who is approved for release on CMR must be released by the DOC to the community within a reasonable amount of time and is considered to be a medical releasee upon release to the community.

The bill creates a process for an inmate who is denied CMR by the three-member panel to have the decision reviewed. The secretary has the final decision about the appropriateness of the release on CMR. Additionally, an inmate who is denied CMR may be subsequently reconsidered for such release in a manner prescribed by rule.

The bill requires that a medical releasee released on CMR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted and the medical releasee is required to comply with all reasonable conditions of release the DOC imposes. The bill also provides a specific exception to the requirement to serve 85 percent of a term of imprisonment prior to release.

The bill provides that a medical releasee is considered to be in the custody, supervision, and control of the DOC and provides that this does not create a duty for the DOC to provide medical care to the medical releasee upon release to the community. The bill provides that the medical releasee remains eligible to earn or lose gain-time in accordance with section 944.275, Florida Statutes, and department rule. However, the bill clarifies that the medical releasee may not be counted in the prison system population and the medical releasee’s approved community-based housing location may not be counted in the capacity figures for the prison system.

The bill establishes a specific process for the revocation of CMR which closely parallels the current process provided for in section 947.141, Florida Statutes, and provides that revocation may be based on certain circumstances. The bill provides that a medical releasee may admit to the allegations or elect to have a revocation hearing. The bill specifies a hearing process if the medical releasee elects to proceed with a revocation hearing, provides for the recommitment of a medical releasee whose CMR has been revoked, and permits forfeiture of gain-time in certain instances.

As is provided for with the initial determination, the bill authorizes a medical releasee whose CMR is revoked to have the revocation decision reviewed.

The bill also requires the DOC to notify the family of an inmate who is diagnosed with a terminal condition within 72 hours and allow the family to visit the inmate within 7 days of such diagnosis.

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, section 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CMR are provided immunity from liability for actions that directly relate to such decisions.

The bill provides legislative findings for the establishment of the program and authorizes the DOC to adopt rules as necessary to implement the act.

The Criminal Justice Impact Conference (CJIC) reviewed the bill prior to the adoption of the PCS for CS/SB 556 on January 27, 2020. The CJIC determined that the bill will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds). Additionally, to the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a reduction in the associated inmate healthcare costs.

The bill removes certain functions related to CMR from the FCOR and reestablishes the comparable duties within the DOC. As a result, the bill will result in a workload and cost shift from the FCOR to the DOC. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## **II. Present Situation:**

### **Conditional Medical Release**

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,<sup>1</sup> as a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.<sup>2</sup> The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible

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<sup>1</sup> Chapter 92-310, L.O.F.

<sup>2</sup> The FCOR, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited November 6, 2019).

inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.<sup>3</sup> In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

### ***Eligibility Criteria***

Eligible inmates include inmates designated by the DOC as a:

- “Permanently incapacitated inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- “Terminally ill inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.<sup>4</sup>

Inmates sentenced to death are ineligible for CMR.<sup>5</sup>

### ***Referral Process for Eligible Inmates***

The DOC is required to identify inmates who may be eligible for CMR in accordance with the above-mentioned designations. The DOC uses available medical information as a basis for identifying eligible inmates and refers such inmates to the FCOR for consideration. In considering an inmate, the FCOR may require that additional medical evidence be produced or that additional medical examinations be conducted and may require other investigations to be made as it deems necessary.<sup>6</sup>

An inmate does not have a right to CMR or to a medical evaluation to determine eligibility for such release.<sup>7</sup> Additionally, the authority and whether or not to grant CMR and establish additional conditions of release rests solely within the discretion of the FCOR, together with the authority to approve the release plan to include necessary medical care and attention.<sup>8</sup>

Certain information must be provided to the FCOR from the DOC to be considered a referral, including:

- Clinical Report, including complete medical information justifying classification of the inmate as “permanently incapacitated” or “terminally ill;” and
- Verifiable release plan, to include necessary medical care and attention.<sup>9</sup>

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<sup>3</sup> Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

<sup>4</sup> Section 947.149(1), F.S.

<sup>5</sup> Section 947.149(2), F.S.

<sup>6</sup> Section 947.149(3), F.S.

<sup>7</sup> Section 947.149(2), F.S.

<sup>8</sup> Section 947.149(3), F.S.

<sup>9</sup> Rule 23-24.020(1), F.A.C.

The referral must be directed to the Office of the Commission Clerk who may docket the case before the FCOR. A decision will be made by a majority of the quorum present and voting.<sup>10</sup> The FCOR is required to approve or disapprove CMR based upon information submitted in support of the recommendation and review of the DOC file. If additional information is needed, the FCOR must continue the case for verification of the release plan, additional medical examinations, and other investigations as directed. The FCOR is required to instruct staff to conduct the appropriate investigation, which must include a written statement setting forth the specific information being requested.<sup>11</sup>

### ***Victim Input***

If a victim or his or her personal representative requests to be notified, the FCOR must provide victim notification of any hearing where the release of the inmate on CMR is considered prior to the inmate's release.<sup>12</sup> Article I, s. 16 of the Florida Constitution, which was adopted in 2018 by the Florida voters, provides certain rights to victims in the Florida Constitution. In part, Article I, s. 16, of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.<sup>13</sup>

The requirement to notify victims was in place prior to the constitutional amendment passage through administrative rule. Rule 23-24.025, F.A.C., provides that a victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative or victim advocate must receive advance notification any time a CMR case is placed on the docket for determination by the FCOR. Notification must be made to the address found in the police report or other criminal report or at a more current address if such has been provided to the FCOR.<sup>14</sup>

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<sup>10</sup> Rule 23-24.020(2), F.A.C.

<sup>11</sup> Rule 23-24.020(3), F.A.C.

<sup>12</sup> Rule 23-24.020(4), F.A.C., further qualifies that this notification occurs when the name and address of such victim or representative of the victim is known by the FCOR.

<sup>13</sup> Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

<sup>14</sup> Rule 23-24.025(1), F.A.C.

A victim of the crime committed by the inmate, or a victim's representative, must be permitted a reasonable time to make an oral statement or submit a written statement regarding whether the victim supports the granting, denying, or revoking of CMR.<sup>15</sup> Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.<sup>16</sup> A victim can also request that the FCOR provide notification of the action taken if he or she does not choose to appear at meetings or make a written statement.<sup>17</sup>

### ***Release Conditions***

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.<sup>18</sup> An inmate who has been approved for release on CMR is considered a medical releasee when released.

Each medical releasee must be placed on CMR supervision and is subject to the standard conditions of CMR, which include:

- Promptly proceeding to the residence upon being released and immediately reporting by mail, telephone, or personal visit as instructed by the CMR officer or within 72 hours of release if no specific report date and time are given.
- Securing the permission of the CMR officer before:
  - Changing residences;
  - Leaving the county or the state; and
  - Posting bail or accepting pretrial release if arrested for a felony.
- Submitting a full and truthful report to the CMR officer each month in writing and as directed by the CMR supervisor.
- Refraining from:
  - Owning, carrying, possessing, or having in his or her constructive possession a firearm or ammunition;
  - Using or possessing alcohol or intoxicants of any kind;
  - Using or possessing narcotics, drugs, or marijuana unless prescribed by a physician;
  - Entering any business establishment whose primary purpose is the sale or consumption of alcoholic beverages; and
  - Knowingly associating with any person engaging in criminal activity, a criminal gang member, or person associated with criminal gang members.
- Securing the permission of the CMR officer before owning, carrying, or having in his or her constructive possession a knife or any other weapon.
- Obeying all laws, ordinances, and statutory conditions of CMR.
- Submitting to a reasonable search of the medical releasee's person, residence, or automobile by a CMR officer.
- Waiving extradition back to Florida if the medical releasee is alleged to have violated CMR.

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<sup>15</sup> Rule 23-24.025(2) and (3), F.A.C. See Rule 23-24.025(4), F.A.C., regarding specifics about what is allowed to be submitted or utilized during oral testimony. Rule 23-24.025(7), F.A.C., provides that victims who appear and speak must be advised that any information submitted at FCOR meetings becomes public record.

<sup>16</sup> Rule 23-24.025(3), F.A.C.

<sup>17</sup> Rule 23-24.025(5), F.A.C.

<sup>18</sup> Section 947.149(4), F.S.

- Permitting the CMR officer to visit the medical releasee's residence, employment, or elsewhere.
- Promptly and truthfully answering all questions and following all instructions asked or given by the CMR officer or the FCOR.
- Remaining on CMR for the remainder of the sentence without diminution of such sentence for good behavior.
- Agreeing to submit to random drug or alcohol testing, to be paid for and submitted by the medical releasee, as directed by the CMR officer or the professional staff of any treatment center where treatment is being received.
- Executing and providing authorizations to release records to the CMR supervisor and the FCOR for the purpose of monitoring and documenting the medical releasee's progress.
- Agreeing that, in the event there is an improvement in the medical releasee's medical condition to the extent that he or she is no longer "permanently incapacitated," or "terminally ill," that he or she will, if directed to do so, report for a CMR revocation hearing.<sup>19</sup>

Additionally, the FCOR can impose special conditions of CMR.<sup>20</sup>

### ***Revocation and Recommitment***

In part, s. 947.141, F.S., provides for the revocation and recommitment of a medical releasee who appears to be subject to CMR revocation proceedings, including establishing a hearing process and determining whether a medical releasee must be recommitted to the DOC. CMR supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or
- His or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.<sup>21</sup>

### **Revocation Due to Improved Medical or Physical Condition**

If it is discovered during the CMR release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for such release, the FCOR may order that the medical releasee be returned to the custody of the DOC for a revocation hearing, in accordance with s. 947.141, F.S. A medical releasee who has his or her CMR revoked due to improvement in medical or physical condition must serve the balance of the sentence with credit for the time served on CMR, but does not forfeit any gain-time accrued prior to release on CMR.<sup>22</sup>

### **Revocation Due to Violation of CMR Conditions**

When there are reasonable grounds to believe that a medical releasee who is on CMR has violated the conditions of the release in a material respect the FCOR is authorized to have a

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<sup>19</sup> Rule 23-24.030(1), F.A.C.

<sup>20</sup> Rule 23-24.030(2), F.A.C.

<sup>21</sup> Section 947.149(5), F.S.

<sup>22</sup> Section 947.149(5)(a), F.S. Additionally, if the person whose CMR is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

warrant issued for the arrest of the medical releasee. A warrant must be issued if the medical releasee was found to be a sexual predator.<sup>23</sup> Further, if a law enforcement officer has probable cause to believe that a medical release who is on CMR supervision has violated the terms and conditions of his or her release by committing a felony offense then the officer must arrest the medical releasee without a warrant and a warrant need not be issued in the case.<sup>24</sup>

A medical releasee who is arrested for a felony must be detained without bond until the initial appearance of the medical releasee at which a judicial determination of probable cause is made. The medical releasee may be released if the trial court judge does not find probable cause existed for the arrest. However, if the court makes a finding of probable cause, such determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release and the chief county correctional officer must notify the FCOR and the DOC of the finding within 24 hours.<sup>25</sup> The medical releasee must continue to be detained without bond for a period not more than 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the FCOR whether to issue a warrant charging the medical releasee with violation of the conditions of CMR. If the FCOR issues such warrant, the medical releasee must continue to be held in custody pending a revocation hearing.<sup>26</sup>

### Revocation Hearing

The medical releasee must be afforded a hearing which is conducted by a commissioner or a duly authorized representative within 45 days after notice to the FCOR of the arrest of a medical releasee charged with a violation of the terms and conditions of CMR. If the medical releasee elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the medical releasee's:

- Alleged violation; and
- Right to:
  - Be represented by counsel.
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.<sup>27</sup>

The commissioner, who conducts the hearing, is required to make findings of fact in regard to the alleged violation within a reasonable time following the hearing and at least two commissioners must enter an order determining whether the charge of violation of CMR has been sustained based upon the findings of fact presented by the hearing commissioner or

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<sup>23</sup> Section 947.141(1), F.S.

<sup>24</sup> Section 947.141(7), F.S.

<sup>25</sup> Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR and the DOC a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based.

<sup>26</sup> *Id.*

<sup>27</sup> Section 947.141(3), F.S.

authorized representative. The panel may revoke CMR, thereby returning the medical releasee to prison to serve the sentence imposed; reinstate the original order granting the release; or enter such other order as it considers proper.<sup>28</sup>

If CMR is revoked and the medical releasee is ordered to be returned to prison, the medical releasee is deemed to have forfeited all gain-time or commutation of time for good conduct earned up to the date of release. However, if CMR is revoked due to the improved medical or physical condition of the medical releasee, the medical releasee does not forfeit gain-time accrued before the date of CMR.<sup>29</sup> Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

### ***Statistics***

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years, including:

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.<sup>30</sup>

The DOC has recommended 149 inmates for release in the past three fiscal years, including:

- 76 in FY 2018-19;
- 39 in FY 2017-2018; and
- 34 in FY 2016-2017.<sup>31</sup>

Currently, the DOC's only role in the CMR process is to make the initial designation of medical eligibility and to refer the inmate's case to the FCOR for an investigation and final decision.

### **Gain-time**

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>32</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>33</sup>

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<sup>28</sup> Section 947.141(4), F.S.

<sup>29</sup> Section 947.141(6), F.S.

<sup>30</sup> Emails from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Senate Criminal Justice Committee) (December 15, 2017 and November 1, 2019, respectively). *See also* FCOR Annual Report FY 2017-18, p. 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited November 6, 2019).

<sup>31</sup> *Id.*

<sup>32</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>33</sup> Section 944.275(4)(f), F.S.

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>34</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>35</sup>
- Meritorious gain-time;<sup>36</sup> and
- Educational achievement gain-time.<sup>37</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>38</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>39</sup>

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>40</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>41</sup>

The DOC is authorized in certain circumstances, including when a medical releasee has his or her CMR revoked, to declare all gain-time earned by an inmate forfeited.<sup>42</sup>

### **Federal First Step Act**

In December, 2018, the United States Congress passed, and President Trump signed into law, the "Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act" or the "FIRST STEP Act" (First Step Act).<sup>43</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, modifying provisions related to compassionate release to:

- Require inmates be informed of reduction in sentence availability and process;

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<sup>34</sup> Chapter 93-406, L.O.F.

<sup>35</sup> Section 944.275(4)(b), F.S., provides that incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

<sup>36</sup> Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

<sup>37</sup> Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

<sup>38</sup> Section 944.275(3)(c), F.S.

<sup>39</sup> Section 944.275(2)(a), F.S.

<sup>40</sup> Section 944.275(3)(a), F.S.

<sup>41</sup> *Id.* See also s. 944.275(4)(b), F.S.

<sup>42</sup> Section 944.28(1), F.S.

<sup>43</sup> The First Step Act of 2018, Pub. L. No. 115-391 (2018).

- Modify the definition of “terminally ill;”
- Require notice and assistance for terminally ill offenders;
- Require requests from terminally ill offenders to be processed within 14 days.<sup>44</sup>

Specifically, in the case of a diagnosis of a terminal illness, the BOP is required to, subject to confidentiality requirements:

- Notify the defendant’s attorney, partner, and family members, not later than 72 hours after the diagnosis, of the defendant’s diagnosis of a terminal condition and inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction;
- Provide the defendant’s partner and family members, including extended family, with an opportunity to visit the defendant in person not later than 7 days after the date of the diagnosis;
- Upon request from the defendant or his attorney, partner, or a family member, ensure that BOP employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction; and
- Process a request for sentence reduction submitted on the defendant’s behalf by the defendant or the defendant’s attorney, partner, or family member not later than 14 days from receipt of a request.<sup>45</sup>

The statutory time frames mentioned above begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the Warden and the appropriate Unit Manager as soon as possible so as to ensure requirements are met.<sup>46</sup>

### **Sovereign Immunity**

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>47</sup> Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Further, s. 768.28(1), F.S., allows for suits in tort against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment ....”<sup>48</sup>

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<sup>44</sup> Section 603(b) of the First Step Act, codified at 18 USC § 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at [https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf) (last visited November 12, 2019).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Legal Information Institute, *Sovereign immunity*, available at [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited January 23, 2020).

<sup>48</sup> *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

Section 768.28(5), F.S., limits tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident.<sup>49</sup> This limitation does not prevent a judgement in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.<sup>50</sup>

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>51, 52</sup> Thus, the immunity may be pierced only if state employees or agents either act outside the scope of their employment, or act "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."<sup>53</sup>

Courts that have construed the bad faith prong of s. 768.28, F.S., to mean the actual malice standard, which means the conduct must be committed with "ill will, hatred, spite, [or] an evil intent."<sup>54</sup> Conduct meeting the wanton and willful standard is defined as "worse than gross negligence,"<sup>55</sup> and "more reprehensible and unacceptable than mere intentional conduct."<sup>56, 57</sup>

### III. Effect of Proposed Changes:

The bill repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC with the purpose of:

- Determining whether release is appropriate for eligible inmates;
- Supervising the released inmates; and
- Conducting revocation hearings.

The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people. The members of the panel are appointed by the secretary or his or her designee for the purpose of determining the appropriateness of CMR and conducting revocation hearings on the inmate releases.

The bill provides legislative findings for the CMR program.

#### Eligibility Criteria

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the

<sup>49</sup> Section 768.28(5), F.S.

<sup>50</sup> *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

<sup>51</sup> *See Peterson v. Pollack*, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).

<sup>52</sup> Section 768.28(9)(a), F.S.

<sup>53</sup> *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).

<sup>54</sup> *See Parker v. State Bd. of Regents ex rel. Fla. State Univ.*, 724 So.2d 163, 167 (Fla. 1st DCA 1998); *Reed v. State*, 837 So.2d 366, 368–69 (Fla. 2002); and *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).

<sup>55</sup> *Eiras v. Fla.*, 239, *supra* at 50; *Sierra v. Associated Marine Insts., Inc.*, 850 So.2d 582, 593 (Fla. 2d DCA 2003).

<sup>56</sup> *Eiras v. Fla.*, *supra* at 50; *Richardson v. City of Pompano Beach*, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).

<sup>57</sup> *See also Kastritis v. City of Daytona Beach Shores*, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).

DOC to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. The bill provides definitions for such terms, including:

- “Inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.
- “Permanently incapacitated inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.
- “Terminally ill inmate,” which means an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

The bill provides a specific exception to the 85 percent rule that allows an inmate who meets the above criteria to be released from the custody of the DOC pursuant to the CMR program prior to satisfying 85 percent of his or her term of imprisonment.

### **Referral Process**

The bill requires that any inmate in the custody of the DOC who meets one or more of the eligibility requirements must be considered for CMR. However, the authority to grant CMR rests solely with the DOC, as it currently does with the FCOR. Additionally, the bill provides that an inmate does not have a right to release or to a medical evaluation to determine eligibility for release on CMR pursuant to s. 945.0911, F.S.

The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate’s release.

Upon an inmate’s identification as potentially eligible for release on CMR, the DOC must refer such inmate to the three-member panel described above for review and determination of release.

The bill requires the DOC to provide notice to a victim of the inmate’s referral to the panel immediately upon identification of the inmate as potentially eligible for release on CMR if the case that resulted in the inmate’s commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Article I, s. 16 of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

### **Determination of Release**

The bill requires the three-member panel established in s. 945.0911(1), F.S., to conduct a hearing within 45 days after receiving the referral to determine whether CMR is appropriate for the

inmate. Before the hearing, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate on CMR. A majority of the panel members must agree that release on CMR is appropriate for the inmate. If CMR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CMR is considered a medical releasee upon release to the community.

An inmate who is denied CMR by the three-member panel is able to have the decision reviewed. The bill provides that the DOC's general counsel and chief medical officer must review the decision of the three-member panel and make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the release on CMR. The bill provides that the appeal decision of the secretary is a final administrative decision not subject to appeal.

Additionally, an inmate who is denied CMR who requests to have the decision reviewed must do so in a manner prescribed in rule and may be subsequently reconsidered for such release in a manner prescribed by department rule.

### **Release Conditions**

The bill requires that an inmate granted release on CMR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The medical releasee is required to comply with all reasonable conditions of release the DOC imposes, which must include, at a minimum:

- Periodic medical evaluations at intervals determined by the DOC at the time of release.
- Supervision by an officer trained to handle special offender caseloads.
- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.<sup>58</sup>
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee.

The bill provides that a medical releasee is considered to be in the custody, supervision, and control of the DOC. The bill further states that this does not create a duty for the DOC to provide the medical releasee with medical care upon release into the community. The bill provides that the medical releasee remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the medical releasee may not be counted in the prison system population, and the medical releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

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<sup>58</sup> Some examples on community control conditions required under s. 948.101, F.S., include to maintain specified contact with the parole and probation officer; confinement to an agreed-upon residence during hours away from employment and public service activities; mandatory public service; and supervision by the DOC by means of an electronic monitoring device or system.

## **Revocation of CMR Release and Recommitment to the DOC**

The bill establishes a process for the revocation of CMR that very closely parallels current law and for which may be based on two circumstances, including the:

- Discovery that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for release on CMR; or
- Violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law.

### ***Revocation Based on Medical or Physical Improvement***

When the basis of the revocation proceedings are based on an improved medical or physical condition of the medical releasee, the bill authorizes the DOC to:

- Order that the medical releasee be returned to the custody of the DOC for a CMR revocation hearing, as prescribed by rule; or
- Allow the medical releasee to remain in the community pending the revocation hearing.

If the DOC elects to order the medical releasee to be returned to custody pending the revocation hearing, the officer or duly authorized representative may cause a warrant to be issued for the arrest of the medical releasee.

The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional medical release to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

A medical releasee whose CMR was revoked due to improvement in his or her medical or physical condition must be recommitted to the DOC to serve the balance of his or her sentence with credit for the time served on CMR and without forfeiture of any gain-time accrued before recommitment. If the medical releasee whose CMR is revoked due to an improvement in her or his medical or physical condition would otherwise be eligible for parole or any other release program, the medical releasee may be considered for such release program pursuant to law.

### ***Revocation Based on Violation of Conditions***

The bill provides that CMR may also be revoked for violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. The bill provides that if a duly authorized representative of the DOC has reasonable grounds to believe that a medical releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the medical releasee.

Further, a law enforcement officer or a probation officer may arrest the medical releasee without a warrant in accordance with s. 948.06, F.S., if there are reasonable grounds to believe he or she has violated the terms and conditions of his or her CMR. The law enforcement officer must

report the medical releasee's alleged violations to the supervising probation office or the DOC's emergency action center for initiation of revocation proceedings.

In contrast to when a revocation is based on improved medical or physical condition, if the basis of the violation of release conditions is related to a new violation of law, the medical releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the medical releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's probable cause determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR.

The bill requires the DOC to order that the medical releasee subject to revocation for a violation of conditions be returned to the custody of the DOC for a CMR revocation hearing as prescribed by rule. A majority of the panel members must agree that revocation is appropriate for the medical releasee's CMR to be revoked.

The bill provides that a medical releasee who has his or her CMR revoked due to a violation of conditions must serve the balance of his or her sentence in an institution designated by the DOC with credit for the actual time served on CMR. Additionally, the medical releasee's gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1), F.S. If the medical releasee whose CMR is revoked would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

The bill provides that a medical releasee whose CMR is revoked and is recommitted to the DOC must comply with the 85 percent requirement discussed above upon recommitment.

### ***Revocation Hearing Process***

The bill provides that a medical releasee who is subject to revocation for either of the above-mentioned bases may either admit to the alleged violation of the conditions of CMR or may elect to proceed to a revocation hearing. If the medical releasee subject to revocation for either basis elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the releasee's:

- Alleged basis for the pending revocation proceeding against the releasee.
- Right to:
  - Be represented by counsel.<sup>59</sup>
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used to support the revocation proceeding against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

If the panel approves the revocation of the medical releasee's CMR, the panel must provide a written statement as to evidence relied on and reasons for revocation.

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<sup>59</sup> However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

***Review Process of Revocation Determination***

The bill authorizes a medical releasee whose release is revoked based on either basis to have the revocation decision reviewed. The bill requires the DOC's general counsel to review the revocation decision and make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of CMR. In addition to the review by the general counsel, the chief medical officer must also review the revocation decision and make a recommendation to the secretary when the basis is due to an improved medical or physical condition.

The bill provides that any decision of the secretary related to a revocation decision is a final administrative decision not subject to appeal.

**Special Requirements of the DOC Related to Terminal Inmate's**

The bill also implements provisions similar to those provided for in federal law related to compassionate release of inmate's that have been diagnosed with a terminal illness. The bill requires the DOC to, subject to confidentiality requirements, follow the following procedures related to an inmate who is diagnosed with a terminal medical condition that makes him or her eligible for consideration for release under the "terminally ill" definition discussed above while in the custody of the DOC:

- Notify the inmate's family or next of kin, and attorney, if applicable, of such diagnosis within 72 hours of the diagnosis.
- Provide the inmate's family, including extended family, with an opportunity to visit the inmate in person within seven days upon such diagnosis.
- Initiate a review for CMR immediately upon such diagnosis.

Additionally, the bill provides that an inmate who has mental and physical capacity must consent to release of confidential information for the DOC to comply with these notification requirements.

**Sovereign Immunity**

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, s. 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CMR are provided immunity from liability for actions that directly relate to such decisions.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The bill is effective October 1, 2020.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None Identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 27, 2020. The CJIC determined that the bill will likely result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).<sup>60</sup> Additionally, the bill will likely result in a reduction in the associated inmate healthcare costs.

The bill removes any role of determining the appropriateness of an inmate's release on CMR from the FCOR and places such comparable duties within the DOC. In Fiscal Year 2018-2019, FCOR conducted 84 CMR determinations. They report that they spent 804 hours on the investigation/determination, 64 hours on victim assistance, and 433 hours on revocations for CMR. The FCOR reports that this equates to less than 1 FTE.<sup>61</sup>

The DOC reports that when the inmate population is impacted in small increments statewide, the inmate variable per diem of \$20.04 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned

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<sup>60</sup> The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at <https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/> (last visited January 29, 2020).

<sup>61</sup> The FCOR, CS/SB 556 Agency Bill Analysis, p. 5 (October 24, 2019).

with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The DOC’s FY 17-18 average per diem for community supervision was \$5.47.<sup>62</sup>

The DOC revised its’ previous analysis regarding staffing needs and raised the projected need from 2 additional staff for the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the CMR program,<sup>63</sup> to 9 additional staff and costs, as follows.<sup>64</sup>

1	Correctional Program Administrator	\$90,279 (salary and benefits)	
1	Correctional Services Consultant	\$68,931 (salary and benefits)	
1	Correctional Services Asst. Cons.	\$58,732 (salary and benefits)	
1	Government Oper. Consult. I	\$52,324 (salary and benefits)	
1	Senior Attorney	\$79,073 (salary and benefits)	
4	Correctional Probation Senior Ofcr.	\$246,848 (salary and benefits)	
	Professional travel	\$ 13,512 (recurring)	\$17,716 (non-recurring)
	Expense	\$ 42,275 (recurring)	\$29,795 (non-recurring)
	Human Resources	\$ 2,961 (recurring)	
	Salary Incentive (if applicable)	\$ 4,512 (recurring)	
	Information Technology		\$ 17,400 (non-recurring)
	<b>Total All Funds<sup>65</sup></b>	<b>\$659,447 (recurring)</b>	<b>\$64,911(non-recurring)</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates section 945.0911 of the Florida Statutes.

The bill repeals section 947.149 of the Florida Statutes.

The bill amends the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

<sup>62</sup> The DOC SB 574 Analysis, p. 5.

<sup>63</sup> The DOC spreadsheet (January 17, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).

<sup>64</sup> The DOC spreadsheet (January 30, 2020) (on file with the Committee on Criminal and Civil Justice Appropriations).

<sup>65</sup> DOC Spreadsheet (January 30, 2019), (on file with the committee on Criminal and Civil Justice Appropriations).

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on January 29, 2020:**

The committee substitute:

- Provides legislative findings;
- Provides an exception to the 85 percent rule for inmates released to the CMR program;
- Provides that an inmate who is denied release in the CMR program may request the decision to be reviewed as prescribed by rule;
- Clarifies that the DOC does have a duty to provide medical care for medical releasee's released to the community;
- Clarifies that the DOC may terminate the medical releasee's CMR when he or she has violated the conditions of such release and return the former releasee to the same or another institution designated by the DOC;
- Authorizes a duly authorized representative of the DOC to cause a warrant to be issued if there is a reasonable grounds to believe that the medical releasee has violated the conditions of his or her release in a material way;
- Clarifies that the medical releasee may admit the allegations of the violation of CMR conditions or elect to proceed to a revocation hearing;
- If applicable, requires the panel to provide a written statement as to the evidence relied on and reasons for revocation of CMR; and
- Clarifies that the members of the panel have sovereign immunity as it relates to the decision to release an inmate on CMR or to revoke a medical releasee's CMR.

**CS by Criminal Justice on November 12, 2019:**

The committee substitute:

- Requires the DOC to:
  - Notify the family of an inmate who has been diagnosed with a terminal condition of such diagnosis within 72 hours;
  - Allow the family of an inmate who has been diagnosed with a terminal condition to have a visit with the inmate within 7 days of such diagnosis; and
  - Immediately begin the referral process for the conditional medical release review upon an inmate's diagnosis of a terminal condition.
- Ensures that the rights provided to medical releasee's during revocation hearing proceedings are afforded to a medical releasee regardless of the basis for the revocation hearing.
- Makes technical changes, including, in part, ensuring consistency with the terms used to describe an inmate who has been approved for conditional medical release and released into the community.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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**By** the Committee on Criminal Justice; and Senators Brandes,  
Perry, and Bracy

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1                                   A bill to be entitled  
2       An act relating to inmate conditional medical release;  
3       creating s. 945.0911, F.S.; establishing the  
4       conditional medical release program within the  
5       Department of Corrections; establishing a panel to  
6       consider specified matters; defining terms; providing  
7       for program eligibility; requiring any inmate who  
8       meets certain criteria to be considered for  
9       conditional medical release; providing that the inmate  
10      does not have a right to release or to a certain  
11      medical evaluation; requiring the department to  
12      identify eligible inmates; requiring the department to  
13      refer an inmate to the panel for consideration;  
14      providing for victim notification in certain  
15      circumstances; requiring the panel to conduct a  
16      hearing within a specified timeframe; specifying  
17      requirements for the hearing; providing a review  
18      process for an inmate who is denied release; providing  
19      conditions for release; providing that an inmate who  
20      is approved for conditional medical release must be  
21      released from the department in a reasonable amount of  
22      time; providing that an inmate is considered a medical  
23      releasee upon release from the department into the  
24      community; providing that a medical releasee remains  
25      in the care, custody, supervision, and control of the  
26      department and is eligible to earn or lose gain-time;  
27      prohibiting a medical releasee or his or her  
28      community-based housing from being counted in the  
29      prison system population and the prison capacity

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30 figures, respectively; providing for the revocation of  
31 a medical releasee's conditional medical release;  
32 authorizing the medical releasee to be returned to the  
33 department's custody if his or her medical or physical  
34 condition improves; requiring a majority of the panel  
35 members to agree on the appropriateness of revocation;  
36 providing that gain-time is not forfeited for  
37 revocation based on improvement in the medical  
38 releasee's condition; providing a review process for a  
39 medical releasee who has his or her release revoked;  
40 authorizing the medical releasee to be recommitted if  
41 he or she violates any conditions of the release;  
42 requiring that the medical releasee be detained if a  
43 violation is based on certain circumstances; requiring  
44 that a majority of the panel members agree on the  
45 appropriateness of revocation; requiring specified  
46 medical releasees to be recommitted to the department  
47 upon the revocation of the conditional medical  
48 release; authorizing the forfeiture of gain-time if  
49 the revocation is based on certain violations;  
50 providing a review process for a medical releasee who  
51 has his or her release revoked; requiring that the  
52 medical releasee be given specified information in  
53 certain instances; requiring the department to notify  
54 certain persons within a specified time frame of an  
55 inmate's diagnosis of a terminal medical condition;  
56 requiring the department to allow a visit between an  
57 inmate and certain persons within 7 days of a  
58 diagnosis of a terminal medical condition; requiring

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59 the department to initiate the conditional medical  
60 release review process immediately upon an inmate's  
61 diagnosis of a terminal medical condition; requiring  
62 the inmate to consent to release of information in  
63 certain circumstances; providing rulemaking authority;  
64 repealing s. 947.149, F.S., relating to conditional  
65 medical release; amending ss. 316.1935, 775.084,  
66 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024,  
67 944.605, 944.70, 947.13, and 947.141, F.S.; conforming  
68 cross-references to changes made by the act; providing  
69 an effective date.

70  
71 Be It Enacted by the Legislature of the State of Florida:

72  
73 Section 1. Section 945.0911, Florida Statutes, is created  
74 to read:

75 945.0911 Conditional medical release.-

76 (1) CREATION.-There is established a conditional medical  
77 release program within the department for the purpose of  
78 determining whether release is appropriate for eligible inmates,  
79 supervising the released inmates, and conducting revocation  
80 hearings as provided for in this section. The establishment of  
81 the conditional medical release program must include a panel of  
82 at least three people appointed by the secretary or his or her  
83 designee for the purpose of determining the appropriateness of  
84 conditional medical release and conducting revocation hearings  
85 on the inmate releases.

86 (2) DEFINITIONS.-As used in this section, the term:

87 (a) "Inmate with a debilitating illness" means an inmate

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88 who is determined to be suffering from a significant terminal or  
89 nonterminal condition, disease, or syndrome that has rendered  
90 the inmate so physically or cognitively impaired, debilitated,  
91 or incapacitated as to create a reasonable probability that the  
92 inmate does not constitute a danger to himself or herself to  
93 others.

94 (b) "Permanently incapacitated inmate" means an inmate who  
95 has a condition caused by injury, disease, or illness which, to  
96 a reasonable degree of medical certainty, renders the inmate  
97 permanently and irreversibly physically incapacitated to the  
98 extent that the inmate does not constitute a danger to himself  
99 or herself or to others.

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

106 (3) ELIGIBILITY.—An inmate is eligible for consideration  
107 for release under the conditional medical release program when  
108 the inmate, because of an existing medical or physical  
109 condition, is determined by the department to be an inmate with  
110 a debilitating illness, a permanently incapacitated inmate, or a  
111 terminally ill inmate.

112 (4) REFERRAL FOR CONSIDERATION.—

113 (a)1. Notwithstanding any provision to the contrary, any  
114 inmate in the custody of the department who meets one or more of  
115 the eligibility requirements under subsection (3) must be  
116 considered for conditional medical release.

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117 2. The authority to grant conditional medical release rests  
118 solely with the department. An inmate does not have a right to  
119 release or to a medical evaluation to determine eligibility for  
120 release pursuant to this section.

121 (b) The department must identify inmates who may be  
122 eligible for conditional medical release based upon available  
123 medical information. In considering an inmate for conditional  
124 medical release, the department may require additional medical  
125 evidence, including examinations of the inmate, or any other  
126 additional investigations the department deems necessary for  
127 determining the appropriateness of the eligible inmate's  
128 release.

129 (c) The department must refer an inmate to the panel  
130 established under subsection (1) for review and determination of  
131 conditional medical release upon his or her identification as  
132 potentially eligible for release pursuant to this section.

133 (d) If the case that resulted in the inmate's commitment to  
134 the department involved a victim, and the victim specifically  
135 requested notification pursuant to s. 16, Art. I of the State  
136 Constitution, the department must notify the victim of the  
137 inmate's referral to the panel immediately upon identification  
138 of the inmate as potentially eligible for release under this  
139 section. Additionally, the victim must be afforded the right to  
140 be heard regarding the release of the inmate.

141 (5) DETERMINATION OF RELEASE.—

142 (a) Within 45 days after receiving the referral, the panel  
143 established in subsection (1) must conduct a hearing to  
144 determine whether conditional medical release is appropriate for  
145 the inmate. Before the hearing, the director of inmate health

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146 services or his or her designee must review any relevant  
147 information, including, but not limited to, medical evidence,  
148 and provide the panel with a recommendation regarding the  
149 appropriateness of releasing the inmate pursuant to this  
150 section.

151 (b) A majority of the panel members must agree that release  
152 pursuant to this section is appropriate for the inmate. If  
153 conditional medical release is approved, the inmate must be  
154 released by the department to the community within a reasonable  
155 amount of time with necessary release conditions imposed  
156 pursuant to subsection (6). An inmate who is granted conditional  
157 medical release is considered a medical releasee upon release to  
158 the community.

159 (c) An inmate who is denied conditional medical release by  
160 the panel may have the decision reviewed by the department's  
161 general counsel and chief medical officer, who must make a  
162 recommendation to the secretary. The secretary must review all  
163 relevant information and make a final decision about the  
164 appropriateness of conditional medical release pursuant to this  
165 section. The decision of the secretary is a final administrative  
166 decision not subject to appeal. An inmate who is denied  
167 conditional medical release may be subsequently reconsidered for  
168 such release in a manner prescribed by department rule.

169 (6) RELEASE CONDITIONS.—

170 (a) An inmate granted release pursuant to this section is  
171 released for a period equal to the length of time remaining on  
172 his or her term of imprisonment on the date the release is  
173 granted. Such inmate is considered a medical releasee upon  
174 release from the department into the community. The medical

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

177 1. Periodic medical evaluations at intervals determined by  
178 the department at the time of release.

179 2. Supervision by an officer trained to handle special  
180 offender caseloads.

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

184 4. Any conditions of community control provided for in s.  
185 948.101.

186 5. Any other conditions the department deems appropriate to  
187 ensure the safety of the community and compliance by the medical  
188 releasee.

189 (b) A medical releasee is considered to be in the care,  
190 custody, supervision, and control of the department and remains  
191 eligible to earn or lose gain-time in accordance with s. 944.275  
192 and department rule. The medical releasee may not be counted in  
193 the prison system population, and the medical releasee's  
194 approved community-based housing location may not be counted in  
195 the capacity figures for the prison system.

196 (7) REVOCATION HEARING AND RECOMMITMENT.—

197 (a)1. If the medical releasee's supervision officer  
198 discovers that the medical or physical condition of the medical  
199 releasee has improved to the extent that she or he would no  
200 longer be eligible for release under this section, then the  
201 conditional medical release may be revoked. The department may  
202 order, as prescribed by department rule, that the medical  
203 releasee be returned to the custody of the department for a

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204 conditional medical release revocation hearing or may allow the  
205 medical releasee to remain in the community pending the  
206 revocation hearing.

207 2. The revocation hearing must be conducted by the panel  
208 established in subsection (1). Before a revocation hearing  
209 pursuant to this paragraph, the director of inmate health  
210 services or his or her designee must review any medical evidence  
211 pertaining to the medical releasee and provide the panel with a  
212 recommendation regarding the medical releasee's improvement and  
213 current medical or physical condition.

214 3. A majority of the panel members must agree that  
215 revocation is appropriate for the medical releasee's conditional  
216 medical release to be revoked. If conditional medical release is  
217 revoked due to improvement in his or her medical or physical  
218 condition, the medical releasee must be recommitted to the  
219 department to serve the balance of his or her sentence with  
220 credit for the time served on conditional medical release and  
221 without forfeiture of any gain-time accrued before recommitment.  
222 If the medical releasee whose conditional medical release is  
223 revoked due to an improvement in her or his medical or physical  
224 condition would otherwise be eligible for parole or any other  
225 release program, he or she may be considered for such release  
226 program pursuant to law.

227 4. A medical releasee whose conditional medical release is  
228 revoked pursuant to this paragraph may have the decision  
229 reviewed by the department's general counsel and chief medical  
230 officer, who must make a recommendation to the secretary. The  
231 secretary must review all relevant information and make a final  
232 decision about the appropriateness of the revocation of

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233 conditional medical release pursuant to this paragraph. The  
234 decision of the secretary is a final administrative decision not  
235 subject to appeal.

236 (b)1. The medical releasee's conditional medical release  
237 may also be revoked for violation of any release conditions the  
238 department establishes, including, but not limited to, a new  
239 violation of law.

240 2. If the basis of the violation of release conditions is  
241 related to a new violation of law, the medical releasee must be  
242 detained without bond until his or her initial appearance at  
243 which a judicial determination of probable cause is made. If the  
244 judge determines that there was no probable cause for the  
245 arrest, the medical releasee may be released. If the judge  
246 determines that there was probable cause for the arrest, the  
247 judge's determination also constitutes reasonable grounds to  
248 believe that the medical releasee violated the conditions of the  
249 conditional medical release.

250 3. The department must order that the medical releasee  
251 subject to revocation under this paragraph be returned to  
252 department custody for a conditional medical release revocation  
253 hearing.

254 4. A majority of the panel members must agree that  
255 revocation is appropriate for the medical releasee's conditional  
256 medical release to be revoked. If conditional medical release is  
257 revoked pursuant to this paragraph, the medical releasee must  
258 serve the balance of his or her sentence with credit for the  
259 actual time served on conditional medical release. The  
260 releasee's gain-time accrued before recommitment may be  
261 forfeited pursuant to s. 944.28(1). If the medical releasee

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262 whose conditional medical release is revoked subject to this  
263 paragraph would otherwise be eligible for parole or any other  
264 release program, he or she may be considered for such release  
265 program pursuant to law.

266 5. A medical releasee whose conditional medical release has  
267 been revoked pursuant to this paragraph may have the revocation  
268 reviewed by the department's general counsel, who must make a  
269 recommendation to the secretary. The secretary must review all  
270 relevant information and make a final decision about the  
271 appropriateness of the revocation of conditional medical release  
272 pursuant to this paragraph. The decision of the secretary is a  
273 final administrative decision not subject to appeal.

274 (c) If the medical releasee subject to revocation under  
275 paragraph (a) or paragraph (b) elects to proceed with a hearing,  
276 the medical releasee must be informed orally and in writing of  
277 the following:

278 1. The alleged basis for the pending revocation proceeding  
279 against the releasee.

280 2. The releasee's right to be represented by counsel.  
281 However, this subparagraph does not create a right to publicly  
282 funded legal counsel.

283 3. The releasee's right to be heard in person.

284 4. The releasee's right to secure, present, and compel the  
285 attendance of witnesses relevant to the proceeding.

286 5. The releasee's right to produce documents on his or her  
287 own behalf.

288 6. The releasee's right of access to all evidence used to  
289 support the revocation proceeding against the releasee and to  
290 confront and cross-examine adverse witnesses.

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291 7. The releasee's right to waive the hearing.

292 (8) SPECIAL REQUIREMENTS UPON AN INMATE'S DIAGNOSIS OF A  
293 TERMINAL CONDITION.—

294 (a) If an inmate is diagnosed with a terminal medical  
295 condition that makes him or her eligible for consideration for  
296 release under paragraph (2) (c) while in the custody of the  
297 department, subject to confidentiality requirements, the  
298 department must:

299 1. Notify the inmate's family or next of kin, and attorney,  
300 if applicable, of such diagnosis within 72 hours of the  
301 diagnosis.

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

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

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

311 (9) RULEMAKING AUTHORITY.—The department may adopt rules as  
312 necessary to implement this section.

313 Section 2. Section 947.149, Florida Statutes, is repealed.

314 Section 3. Subsection (6) of section 316.1935, Florida  
315 Statutes, is amended to read:

316 316.1935 Fleeing or attempting to elude a law enforcement  
317 officer; aggravated fleeing or eluding.—

318 (6) Notwithstanding s. 948.01, no court may suspend, defer,  
319 or withhold adjudication of guilt or imposition of sentence for

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320 any violation of this section. A person convicted and sentenced  
321 to a mandatory minimum term of incarceration under paragraph  
322 (3) (b) or paragraph (4) (b) is not eligible for statutory gain-  
323 time under s. 944.275 or any form of discretionary early  
324 release, other than pardon or executive clemency or conditional  
325 medical release under s. 945.0911 ~~s. 947.149~~, prior to serving  
326 the mandatory minimum sentence.

327 Section 4. Paragraph (k) of subsection (4) of section  
328 775.084, Florida Statutes, is amended to read:

329 775.084 Violent career criminals; habitual felony offenders  
330 and habitual violent felony offenders; three-time violent felony  
331 offenders; definitions; procedure; enhanced penalties or  
332 mandatory minimum prison terms.—

333 (4)

334 (k)1. A defendant sentenced under this section as a  
335 habitual felony offender, a habitual violent felony offender, or  
336 a violent career criminal is eligible for gain-time granted by  
337 the Department of Corrections as provided in s. 944.275(4) (b).

338 2. For an offense committed on or after October 1, 1995, a  
339 defendant sentenced under this section as a violent career  
340 criminal is not eligible for any form of discretionary early  
341 release, other than pardon or executive clemency, or conditional  
342 medical release granted pursuant to s. 945.0911 ~~s. 947.149~~.

343 3. For an offense committed on or after July 1, 1999, a  
344 defendant sentenced under this section as a three-time violent  
345 felony offender shall be released only by expiration of sentence  
346 and shall not be eligible for parole, control release, or any  
347 form of early release.

348 Section 5. Paragraph (b) of subsection (2) and paragraph

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349 (b) of subsection (3) of section 775.087, Florida Statutes, are  
350 amended to read:

351 775.087 Possession or use of weapon; aggravated battery;  
352 felony reclassification; minimum sentence.-

353 (2)

354 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph  
355 (a)3. does not prevent a court from imposing a longer sentence  
356 of incarceration as authorized by law in addition to the minimum  
357 mandatory sentence, or from imposing a sentence of death  
358 pursuant to other applicable law. Subparagraph (a)1.,  
359 subparagraph (a)2., or subparagraph (a)3. does not authorize a  
360 court to impose a lesser sentence than otherwise required by  
361 law.

362

363 Notwithstanding s. 948.01, adjudication of guilt or imposition  
364 of sentence shall not be suspended, deferred, or withheld, and  
365 the defendant is not eligible for statutory gain-time under s.  
366 944.275 or any form of discretionary early release, other than  
367 pardon or executive clemency, or conditional medical release  
368 under s. 945.0911 ~~s. 947.149~~, prior to serving the minimum  
369 sentence.

370 (3)

371 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph  
372 (a)3. does not prevent a court from imposing a longer sentence  
373 of incarceration as authorized by law in addition to the minimum  
374 mandatory sentence, or from imposing a sentence of death  
375 pursuant to other applicable law. Subparagraph (a)1.,  
376 subparagraph (a)2., or subparagraph (a)3. does not authorize a  
377 court to impose a lesser sentence than otherwise required by

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378 law.

379

380 Notwithstanding s. 948.01, adjudication of guilt or imposition  
381 of sentence shall not be suspended, deferred, or withheld, and  
382 the defendant is not eligible for statutory gain-time under s.  
383 944.275 or any form of discretionary early release, other than  
384 pardon or executive clemency, or conditional medical release  
385 under s. 945.0911 ~~s. 947.149~~, prior to serving the minimum  
386 sentence.

387 Section 6. Subsection (3) of section 784.07, Florida  
388 Statutes, is amended to read:

389 784.07 Assault or battery of law enforcement officers,  
390 firefighters, emergency medical care providers, public transit  
391 employees or agents, or other specified officers;  
392 reclassification of offenses; minimum sentences.-

393 (3) Any person who is convicted of a battery under  
394 paragraph (2)(b) and, during the commission of the offense, such  
395 person possessed:

396 (a) A "firearm" or "destructive device" as those terms are  
397 defined in s. 790.001, shall be sentenced to a minimum term of  
398 imprisonment of 3 years.

399 (b) A semiautomatic firearm and its high-capacity  
400 detachable box magazine, as defined in s. 775.087(3), or a  
401 machine gun as defined in s. 790.001, shall be sentenced to a  
402 minimum term of imprisonment of 8 years.

403

404 Notwithstanding s. 948.01, adjudication of guilt or imposition  
405 of sentence shall not be suspended, deferred, or withheld, and  
406 the defendant is not eligible for statutory gain-time under s.

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407 944.275 or any form of discretionary early release, other than  
408 pardon or executive clemency, or conditional medical release  
409 under s. 945.0911 ~~s. 947.149~~, prior to serving the minimum  
410 sentence.

411 Section 7. Subsection (1) of section 790.235, Florida  
412 Statutes, is amended to read:

413 790.235 Possession of firearm or ammunition by violent  
414 career criminal unlawful; penalty.—

415 (1) Any person who meets the violent career criminal  
416 criteria under s. 775.084(1)(d), regardless of whether such  
417 person is or has previously been sentenced as a violent career  
418 criminal, who owns or has in his or her care, custody,  
419 possession, or control any firearm, ammunition, or electric  
420 weapon or device, or carries a concealed weapon, including a  
421 tear gas gun or chemical weapon or device, commits a felony of  
422 the first degree, punishable as provided in s. 775.082, s.  
423 775.083, or s. 775.084. A person convicted of a violation of  
424 this section shall be sentenced to a mandatory minimum of 15  
425 years' imprisonment; however, if the person would be sentenced  
426 to a longer term of imprisonment under s. 775.084(4)(d), the  
427 person must be sentenced under that provision. A person  
428 convicted of a violation of this section is not eligible for any  
429 form of discretionary early release, other than pardon,  
430 executive clemency, or conditional medical release under s.  
431 945.0911 ~~s. 947.149~~.

432 Section 8. Subsection (7) of section 794.0115, Florida  
433 Statutes, is amended to read:

434 794.0115 Dangerous sexual felony offender; mandatory  
435 sentencing.—

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436 (7) A defendant sentenced to a mandatory minimum term of  
437 imprisonment under this section is not eligible for statutory  
438 gain-time under s. 944.275 or any form of discretionary early  
439 release, other than pardon or executive clemency, or conditional  
440 medical release under s. 945.0911 ~~s. 947.149~~, before serving the  
441 minimum sentence.

442 Section 9. Paragraphs (b), (c), and (g) of subsection (1)  
443 and subsection (3) of section 893.135, Florida Statutes, are  
444 amended to read:

445 893.135 Trafficking; mandatory sentences; suspension or  
446 reduction of sentences; conspiracy to engage in trafficking.—

447 (1) Except as authorized in this chapter or in chapter 499  
448 and notwithstanding the provisions of s. 893.13:

449 (b)1. Any person who knowingly sells, purchases,  
450 manufactures, delivers, or brings into this state, or who is  
451 knowingly in actual or constructive possession of, 28 grams or  
452 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
453 mixture containing cocaine, but less than 150 kilograms of  
454 cocaine or any such mixture, commits a felony of the first  
455 degree, which felony shall be known as "trafficking in cocaine,"  
456 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
457 If the quantity involved:

458 a. Is 28 grams or more, but less than 200 grams, such  
459 person shall be sentenced to a mandatory minimum term of  
460 imprisonment of 3 years, and the defendant shall be ordered to  
461 pay a fine of \$50,000.

462 b. Is 200 grams or more, but less than 400 grams, such  
463 person shall be sentenced to a mandatory minimum term of  
464 imprisonment of 7 years, and the defendant shall be ordered to

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465 pay a fine of \$100,000.

466 c. Is 400 grams or more, but less than 150 kilograms, such  
467 person shall be sentenced to a mandatory minimum term of  
468 imprisonment of 15 calendar years and pay a fine of \$250,000.

469 2. Any person who knowingly sells, purchases, manufactures,  
470 delivers, or brings into this state, or who is knowingly in  
471 actual or constructive possession of, 150 kilograms or more of  
472 cocaine, as described in s. 893.03(2)(a)4., commits the first  
473 degree felony of trafficking in cocaine. A person who has been  
474 convicted of the first degree felony of trafficking in cocaine  
475 under this subparagraph shall be punished by life imprisonment  
476 and is ineligible for any form of discretionary early release  
477 except pardon or executive clemency or conditional medical  
478 release under s. 945.0911 ~~s. 947.149~~. However, if the court  
479 determines that, in addition to committing any act specified in  
480 this paragraph:

481 a. The person intentionally killed an individual or  
482 counseled, commanded, induced, procured, or caused the  
483 intentional killing of an individual and such killing was the  
484 result; or

485 b. The person's conduct in committing that act led to a  
486 natural, though not inevitable, lethal result,  
487  
488 such person commits the capital felony of trafficking in  
489 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
490 person sentenced for a capital felony under this paragraph shall  
491 also be sentenced to pay the maximum fine provided under  
492 subparagraph 1.

493 3. Any person who knowingly brings into this state 300

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494 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
495 and who knows that the probable result of such importation would  
496 be the death of any person, commits capital importation of  
497 cocaine, a capital felony punishable as provided in ss. 775.082  
498 and 921.142. Any person sentenced for a capital felony under  
499 this paragraph shall also be sentenced to pay the maximum fine  
500 provided under subparagraph 1.

501 (c)1. A person who knowingly sells, purchases,  
502 manufactures, delivers, or brings into this state, or who is  
503 knowingly in actual or constructive possession of, 4 grams or  
504 more of any morphine, opium, hydromorphone, or any salt,  
505 derivative, isomer, or salt of an isomer thereof, including  
506 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
507 (3)(c)4., or 4 grams or more of any mixture containing any such  
508 substance, but less than 30 kilograms of such substance or  
509 mixture, commits a felony of the first degree, which felony  
510 shall be known as "trafficking in illegal drugs," punishable as  
511 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
512 quantity involved:

513 a. Is 4 grams or more, but less than 14 grams, such person  
514 shall be sentenced to a mandatory minimum term of imprisonment  
515 of 3 years and shall be ordered to pay a fine of \$50,000.

516 b. Is 14 grams or more, but less than 28 grams, such person  
517 shall be sentenced to a mandatory minimum term of imprisonment  
518 of 15 years and shall be ordered to pay a fine of \$100,000.

519 c. Is 28 grams or more, but less than 30 kilograms, such  
520 person shall be sentenced to a mandatory minimum term of  
521 imprisonment of 25 years and shall be ordered to pay a fine of  
522 \$500,000.

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523           2. A person who knowingly sells, purchases, manufactures,  
524 delivers, or brings into this state, or who is knowingly in  
525 actual or constructive possession of, 28 grams or more of  
526 hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as  
527 described in s. 893.03(2)(a)1.g., or any salt thereof, or 28  
528 grams or more of any mixture containing any such substance,  
529 commits a felony of the first degree, which felony shall be  
530 known as "trafficking in hydrocodone," punishable as provided in  
531 s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

532           a. Is 28 grams or more, but less than 50 grams, such person  
533 shall be sentenced to a mandatory minimum term of imprisonment  
534 of 3 years and shall be ordered to pay a fine of \$50,000.

535           b. Is 50 grams or more, but less than 100 grams, such  
536 person shall be sentenced to a mandatory minimum term of  
537 imprisonment of 7 years and shall be ordered to pay a fine of  
538 \$100,000.

539           c. Is 100 grams or more, but less than 300 grams, such  
540 person shall be sentenced to a mandatory minimum term of  
541 imprisonment of 15 years and shall be ordered to pay a fine of  
542 \$500,000.

543           d. Is 300 grams or more, but less than 30 kilograms, such  
544 person shall be sentenced to a mandatory minimum term of  
545 imprisonment of 25 years and shall be ordered to pay a fine of  
546 \$750,000.

547           3. A person who knowingly sells, purchases, manufactures,  
548 delivers, or brings into this state, or who is knowingly in  
549 actual or constructive possession of, 7 grams or more of  
550 oxycodone, as described in s. 893.03(2)(a)1.q., or any salt  
551 thereof, or 7 grams or more of any mixture containing any such

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552 substance, commits a felony of the first degree, which felony  
553 shall be known as "trafficking in oxycodone," punishable as  
554 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
555 quantity involved:

556 a. Is 7 grams or more, but less than 14 grams, such person  
557 shall be sentenced to a mandatory minimum term of imprisonment  
558 of 3 years and shall be ordered to pay a fine of \$50,000.

559 b. Is 14 grams or more, but less than 25 grams, such person  
560 shall be sentenced to a mandatory minimum term of imprisonment  
561 of 7 years and shall be ordered to pay a fine of \$100,000.

562 c. Is 25 grams or more, but less than 100 grams, such  
563 person shall be sentenced to a mandatory minimum term of  
564 imprisonment of 15 years and shall be ordered to pay a fine of  
565 \$500,000.

566 d. Is 100 grams or more, but less than 30 kilograms, such  
567 person shall be sentenced to a mandatory minimum term of  
568 imprisonment of 25 years and shall be ordered to pay a fine of  
569 \$750,000.

570 4.a. A person who knowingly sells, purchases, manufactures,  
571 delivers, or brings into this state, or who is knowingly in  
572 actual or constructive possession of, 4 grams or more of:

573 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

574 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

575 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

576 (IV) Sufentanil, as described in s. 893.03(2)(b)30.;

577 (V) A fentanyl derivative, as described in s.

578 893.03(1)(a)62.;

579 (VI) A controlled substance analog, as described in s.

580 893.0356, of any substance described in sub-sub-subparagraphs

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581 (I)-(V); or

582 (VII) A mixture containing any substance described in sub-  
583 sub-subparagraphs (I)-(VI),

584  
585 commits a felony of the first degree, which felony shall be  
586 known as "trafficking in fentanyl," punishable as provided in s.  
587 775.082, s. 775.083, or s. 775.084.

588 b. If the quantity involved under sub-subparagraph a.:

589 (I) Is 4 grams or more, but less than 14 grams, such person  
590 shall be sentenced to a mandatory minimum term of imprisonment  
591 of 3 years, and shall be ordered to pay a fine of \$50,000.

592 (II) Is 14 grams or more, but less than 28 grams, such  
593 person shall be sentenced to a mandatory minimum term of  
594 imprisonment of 15 years, and shall be ordered to pay a fine of  
595 \$100,000.

596 (III) Is 28 grams or more, such person shall be sentenced  
597 to a mandatory minimum term of imprisonment of 25 years, and  
598 shall be ordered to pay a fine of \$500,000.

599 5. A person who knowingly sells, purchases, manufactures,  
600 delivers, or brings into this state, or who is knowingly in  
601 actual or constructive possession of, 30 kilograms or more of  
602 any morphine, opium, oxycodone, hydrocodone, codeine,  
603 hydromorphone, or any salt, derivative, isomer, or salt of an  
604 isomer thereof, including heroin, as described in s.  
605 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
606 more of any mixture containing any such substance, commits the  
607 first degree felony of trafficking in illegal drugs. A person  
608 who has been convicted of the first degree felony of trafficking  
609 in illegal drugs under this subparagraph shall be punished by

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610 life imprisonment and is ineligible for any form of  
611 discretionary early release except pardon or executive clemency  
612 or conditional medical release under s. 945.0911 ~~s. 947.149~~.  
613 However, if the court determines that, in addition to committing  
614 any act specified in this paragraph:

615 a. The person intentionally killed an individual or  
616 counseled, commanded, induced, procured, or caused the  
617 intentional killing of an individual and such killing was the  
618 result; or

619 b. The person's conduct in committing that act led to a  
620 natural, though not inevitable, lethal result,  
621  
622 such person commits the capital felony of trafficking in illegal  
623 drugs, punishable as provided in ss. 775.082 and 921.142. A  
624 person sentenced for a capital felony under this paragraph shall  
625 also be sentenced to pay the maximum fine provided under  
626 subparagraph 1.

627 6. A person who knowingly brings into this state 60  
628 kilograms or more of any morphine, opium, oxycodone,  
629 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
630 isomer, or salt of an isomer thereof, including heroin, as  
631 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
632 60 kilograms or more of any mixture containing any such  
633 substance, and who knows that the probable result of such  
634 importation would be the death of a person, commits capital  
635 importation of illegal drugs, a capital felony punishable as  
636 provided in ss. 775.082 and 921.142. A person sentenced for a  
637 capital felony under this paragraph shall also be sentenced to  
638 pay the maximum fine provided under subparagraph 1.

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639 (g)1. Any person who knowingly sells, purchases,  
640 manufactures, delivers, or brings into this state, or who is  
641 knowingly in actual or constructive possession of, 4 grams or  
642 more of flunitrazepam or any mixture containing flunitrazepam as  
643 described in s. 893.03(1)(a) commits a felony of the first  
644 degree, which felony shall be known as "trafficking in  
645 flunitrazepam," punishable as provided in s. 775.082, s.  
646 775.083, or s. 775.084. If the quantity involved:

647 a. Is 4 grams or more but less than 14 grams, such person  
648 shall be sentenced to a mandatory minimum term of imprisonment  
649 of 3 years, and the defendant shall be ordered to pay a fine of  
650 \$50,000.

651 b. Is 14 grams or more but less than 28 grams, such person  
652 shall be sentenced to a mandatory minimum term of imprisonment  
653 of 7 years, and the defendant shall be ordered to pay a fine of  
654 \$100,000.

655 c. Is 28 grams or more but less than 30 kilograms, such  
656 person shall be sentenced to a mandatory minimum term of  
657 imprisonment of 25 calendar years and pay a fine of \$500,000.

658 2. Any person who knowingly sells, purchases, manufactures,  
659 delivers, or brings into this state or who is knowingly in  
660 actual or constructive possession of 30 kilograms or more of  
661 flunitrazepam or any mixture containing flunitrazepam as  
662 described in s. 893.03(1)(a) commits the first degree felony of  
663 trafficking in flunitrazepam. A person who has been convicted of  
664 the first degree felony of trafficking in flunitrazepam under  
665 this subparagraph shall be punished by life imprisonment and is  
666 ineligible for any form of discretionary early release except  
667 pardon or executive clemency or conditional medical release

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668 under s. 945.0911 ~~s. 947.149~~. However, if the court determines  
669 that, in addition to committing any act specified in this  
670 paragraph:

671 a. The person intentionally killed an individual or  
672 counseled, commanded, induced, procured, or caused the  
673 intentional killing of an individual and such killing was the  
674 result; or

675 b. The person's conduct in committing that act led to a  
676 natural, though not inevitable, lethal result,

677  
678 such person commits the capital felony of trafficking in  
679 flunitrazepam, punishable as provided in ss. 775.082 and  
680 921.142. Any person sentenced for a capital felony under this  
681 paragraph shall also be sentenced to pay the maximum fine  
682 provided under subparagraph 1.

683 (3) Notwithstanding the provisions of s. 948.01, with  
684 respect to any person who is found to have violated this  
685 section, adjudication of guilt or imposition of sentence shall  
686 not be suspended, deferred, or withheld, nor shall such person  
687 be eligible for parole prior to serving the mandatory minimum  
688 term of imprisonment prescribed by this section. A person  
689 sentenced to a mandatory minimum term of imprisonment under this  
690 section is not eligible for any form of discretionary early  
691 release, except pardon or executive clemency or conditional  
692 medical release under s. 945.0911 ~~s. 947.149~~, prior to serving  
693 the mandatory minimum term of imprisonment.

694 Section 10. Subsection (2) of section 921.0024, Florida  
695 Statutes, is amended to read:

696 921.0024 Criminal Punishment Code; worksheet computations;

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697 scoresheets.—

698 (2) The lowest permissible sentence is the minimum sentence  
699 that may be imposed by the trial court, absent a valid reason  
700 for departure. The lowest permissible sentence is any nonstate  
701 prison sanction in which the total sentence points equals or is  
702 less than 44 points, unless the court determines within its  
703 discretion that a prison sentence, which may be up to the  
704 statutory maximums for the offenses committed, is appropriate.  
705 When the total sentence points exceeds 44 points, the lowest  
706 permissible sentence in prison months shall be calculated by  
707 subtracting 28 points from the total sentence points and  
708 decreasing the remaining total by 25 percent. The total sentence  
709 points shall be calculated only as a means of determining the  
710 lowest permissible sentence. The permissible range for  
711 sentencing shall be the lowest permissible sentence up to and  
712 including the statutory maximum, as defined in s. 775.082, for  
713 the primary offense and any additional offenses before the court  
714 for sentencing. The sentencing court may impose such sentences  
715 concurrently or consecutively. However, any sentence to state  
716 prison must exceed 1 year. If the lowest permissible sentence  
717 under the code exceeds the statutory maximum sentence as  
718 provided in s. 775.082, the sentence required by the code must  
719 be imposed. If the total sentence points are greater than or  
720 equal to 363, the court may sentence the offender to life  
721 imprisonment. An offender sentenced to life imprisonment under  
722 this section is not eligible for any form of discretionary early  
723 release, except executive clemency or conditional medical  
724 release under s. 945.0911 ~~s. 947.149~~.

725 Section 11. Paragraph (b) of subsection (7) of section

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726 944.605, Florida Statutes, is amended to read:

727 944.605 Inmate release; notification; identification card.-

728 (7)

729 (b) Paragraph (a) does not apply to inmates who:

730 1. The department determines have a valid driver license or  
731 state identification card, except that the department shall  
732 provide these inmates with a replacement state identification  
733 card or replacement driver license, if necessary.

734 2. Have an active detainer, unless the department  
735 determines that cancellation of the detainer is likely or that  
736 the incarceration for which the detainer was issued will be less  
737 than 12 months in duration.

738 3. Are released due to an emergency release or a  
739 conditional medical release under s. 945.0911 ~~s. 947.149~~.

740 4. Are not in the physical custody of the department at or  
741 within 180 days before release.

742 5. Are subject to sex offender residency restrictions, and  
743 who, upon release under such restrictions, do not have a  
744 qualifying address.

745 Section 12. Subsection (1) of section 944.70, Florida  
746 Statutes, is amended to read:

747 944.70 Conditions for release from incarceration.-

748 (1) (a) A person who is convicted of a crime committed on or  
749 after October 1, 1983, but before January 1, 1994, may be  
750 released from incarceration only:

751 1. Upon expiration of the person's sentence;

752 2. Upon expiration of the person's sentence as reduced by  
753 accumulated gain-time;

754 3. As directed by an executive order granting clemency;

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- 755 4. Upon attaining the provisional release date;
- 756 5. Upon placement in a conditional release program pursuant
- 757 to s. 947.1405; or
- 758 6. Upon the granting of control release pursuant to s.
- 759 947.146.

760 (b) A person who is convicted of a crime committed on or

761 after January 1, 1994, may be released from incarceration only:

- 762 1. Upon expiration of the person's sentence;
- 763 2. Upon expiration of the person's sentence as reduced by
- 764 accumulated meritorious or incentive gain-time;
- 765 3. As directed by an executive order granting clemency;
- 766 4. Upon placement in a conditional release program pursuant
- 767 to s. 947.1405 or a conditional medical release program pursuant
- 768 to s. 945.0911 ~~s. 947.149~~; or
- 769 5. Upon the granting of control release, including
- 770 emergency control release, pursuant to s. 947.146.

771 Section 13. Paragraph (h) of subsection (1) of section

772 947.13, Florida Statutes, is amended to read:

773 947.13 Powers and duties of commission.—

774 (1) The commission shall have the powers and perform the

775 duties of:

776 ~~(h) Determining what persons will be released on~~

777 ~~conditional medical release under s. 947.149, establishing the~~

778 ~~conditions of conditional medical release, and determining~~

779 ~~whether a person has violated the conditions of conditional~~

780 ~~medical release and taking action with respect to such a~~

781 ~~violation.~~

782 Section 14. Section 947.141, Florida Statutes, is amended

783 to read:

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784 947.141 Violations of conditional release, control release,  
785 ~~or conditional medical release~~ or addiction-recovery  
786 supervision.-

787 (1) If a member of the commission or a duly authorized  
788 representative of the commission has reasonable grounds to  
789 believe that an offender who is on release supervision under s.  
790 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731 has violated  
791 the terms and conditions of the release in a material respect,  
792 such member or representative may cause a warrant to be issued  
793 for the arrest of the releasee; if the offender was found to be  
794 a sexual predator, the warrant must be issued.

795 (2) Upon the arrest on a felony charge of an offender who  
796 is on release supervision under s. 947.1405, s. 947.146, ~~s.~~  
797 ~~947.149~~, or s. 944.4731, the offender must be detained without  
798 bond until the initial appearance of the offender at which a  
799 judicial determination of probable cause is made. If the trial  
800 court judge determines that there was no probable cause for the  
801 arrest, the offender may be released. If the trial court judge  
802 determines that there was probable cause for the arrest, such  
803 determination also constitutes reasonable grounds to believe  
804 that the offender violated the conditions of the release. Within  
805 24 hours after the trial court judge's finding of probable  
806 cause, the detention facility administrator or designee shall  
807 notify the commission and the department of the finding and  
808 transmit to each a facsimile copy of the probable cause  
809 affidavit or the sworn offense report upon which the trial court  
810 judge's probable cause determination is based. The offender must  
811 continue to be detained without bond for a period not exceeding  
812 72 hours excluding weekends and holidays after the date of the

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813 probable cause determination, pending a decision by the  
814 commission whether to issue a warrant charging the offender with  
815 violation of the conditions of release. Upon the issuance of the  
816 commission's warrant, the offender must continue to be held in  
817 custody pending a revocation hearing held in accordance with  
818 this section.

819 (3) Within 45 days after notice to the Florida Commission  
820 on Offender Review of the arrest of a releasee charged with a  
821 violation of the terms and conditions of conditional release,  
822 control release, ~~conditional medical release~~, or addiction-  
823 recovery supervision, the releasee must be afforded a hearing  
824 conducted by a commissioner or a duly authorized representative  
825 thereof. If the releasee elects to proceed with a hearing, the  
826 releasee must be informed orally and in writing of the  
827 following:

828 (a) The alleged violation with which the releasee is  
829 charged.

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

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

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

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

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

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

840 (4) Within a reasonable time following the hearing, the  
841 commissioner or the commissioner's duly authorized

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842 representative who conducted the hearing shall make findings of  
843 fact in regard to the alleged violation. A panel of no fewer  
844 than two commissioners shall enter an order determining whether  
845 the charge of violation of conditional release, control release,  
846 ~~conditional medical release,~~ or addiction-recovery supervision  
847 has been sustained based upon the findings of fact presented by  
848 the hearing commissioner or authorized representative. By such  
849 order, the panel may revoke conditional release, control  
850 release, ~~conditional medical release,~~ or addiction-recovery  
851 supervision and thereby return the releasee to prison to serve  
852 the sentence imposed, reinstate the original order granting the  
853 release, or enter such other order as it considers proper.  
854 Effective for inmates whose offenses were committed on or after  
855 July 1, 1995, the panel may order the placement of a releasee,  
856 upon a finding of violation pursuant to this subsection, into a  
857 local detention facility as a condition of supervision.

858 (5) Effective for inmates whose offenses were committed on  
859 or after July 1, 1995, notwithstanding the provisions of ss.  
860 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and  
861 951.23, or any other law to the contrary, by such order as  
862 provided in subsection (4), the panel, upon a finding of guilt,  
863 may, as a condition of continued supervision, place the releasee  
864 in a local detention facility for a period of incarceration not  
865 to exceed 22 months. Prior to the expiration of the term of  
866 incarceration, or upon recommendation of the chief correctional  
867 officer of that county, the commission shall cause inquiry into  
868 the inmate's release plan and custody status in the detention  
869 facility and consider whether to restore the inmate to  
870 supervision, modify the conditions of supervision, or enter an

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871 order of revocation, thereby causing the return of the inmate to  
872 prison to serve the sentence imposed. The provisions of this  
873 section do not prohibit the panel from entering such other order  
874 or conducting any investigation that it deems proper. The  
875 commission may only place a person in a local detention facility  
876 pursuant to this section if there is a contractual agreement  
877 between the chief correctional officer of that county and the  
878 Department of Corrections. The agreement must provide for a per  
879 diem reimbursement for each person placed under this section,  
880 which is payable by the Department of Corrections for the  
881 duration of the offender's placement in the facility. This  
882 section does not limit the commission's ability to place a  
883 person in a local detention facility for less than 1 year.

884 (6) Whenever a conditional release, control release,  
885 ~~conditional medical release,~~ or addiction-recovery supervision  
886 is revoked by a panel of no fewer than two commissioners and the  
887 releasee is ordered to be returned to prison, the releasee, by  
888 reason of the misconduct, shall be deemed to have forfeited all  
889 gain-time or commutation of time for good conduct, as provided  
890 for by law, earned up to the date of release. However, if a  
891 conditional medical release is revoked due to the improved  
892 medical or physical condition of the releasee, the releasee  
893 shall not forfeit gain-time accrued before the date of  
894 conditional medical release. This subsection does not deprive  
895 the prisoner of the right to gain-time or commutation of time  
896 for good conduct, as provided by law, from the date of return to  
897 prison.

898 (7) If a law enforcement officer has probable cause to  
899 believe that an offender who is on release supervision under s.

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900 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731 has violated  
901 the terms and conditions of his or her release by committing a  
902 felony offense, the officer shall arrest the offender without a  
903 warrant, and a warrant need not be issued in the case.

904 Section 15. This act shall take effect October 1, 2020.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/20  
Meeting Date

556  
Bill Number (if applicable)

Topic Conditional Release

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St

Phone 850-488-6850

Tallahassee FL 32308  
City State Zip

Email ndaniels@fpda.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/2020  
Meeting Date

556  
Bill Number (if applicable)

Topic Conditional Release

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy

Address Street

Phone

City

State

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Organize Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-2020

Meeting Date

SB 556

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Brenda Spitzbarth

Job Title Retired

Address 2450 SE ISSAC Rd.

Phone 772-834-8124

Street

Port St. Lucie, FL 34952

City

State

Zip

Email BKaySpitz@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

1.29.2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

0556  
Bill Number (if applicable)

Topic Inmate conditional medical release

Amendment Barcode (if applicable)

Name Robert Weissert ("Why-cert")

Job Title EVP + General Counsel

Address 106 N. Brunwayh St.  
Street

Phone 850-222-5052

Tallahassee FL 32301  
City State Zip

Email roburt@floridataxwatch.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Tax Watch

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

29 Jun 2020

Meeting Date

SB 356

Bill Number (if applicable)

Topic Innate Medical Release

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College Ave

Phone \_\_\_\_\_

Street

TLH

FL

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Americans For Prosperity

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 574

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senators Brandes and Perry

SUBJECT: Conditional Aging Inmate Release

DATE: January 31, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Jameson</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 574 creates section 945.0912, Florida Statutes, to establish a conditional aging inmate release (CAIR) program within the Department of Corrections (DOC) with the purpose of determining whether such release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings.

The bill provides that an inmate is eligible for consideration for release under the CAIR program when the inmate has reached 65 years of age and has served at least 10 years on his or her term of imprisonment. The bill prohibits an inmate from being considered for release through the CAIR program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing specified offenses.

The DOC must identify inmates who may be eligible for CAIR and, upon such identification, the DOC must refer such inmate to a panel, appointed by the Secretary for review and determination of release.

The panel must conduct a hearing to determine, by a majority, whether CAIR is appropriate for the inmate within 45 days after receiving the referral. The bill creates a process for an inmate who is denied CAIR by the panel to have the decision reviewed. The Secretary has the final decision about the appropriateness of the release on CAIR. If CAIR is approved, the inmate must

be released by the DOC to the community within a reasonable amount of time and is considered an aging releasee upon release to the community.

The bill requires that an inmate granted CAIR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted and to comply with all conditions of release the DOC imposes. The bill also provides a specific exception to the requirement to serve 85 percent of a term of imprisonment prior to release.

The bill provides that an aging releasee is considered to be in the custody, supervision, and control of the DOC and provides that this does not create a duty for the DOC to provide medical care to the aging releasee upon release to the community. The bill provides that the aging releasee remains eligible to earn or lose gain-time in accordance with section 944.275, Florida Statutes, and department rule. However, the bill clarifies that the aging releasee may not be counted in the prison system population and the aging releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

The bill establishes a specific process for the revocation of an aging releasee and provides that revocation may be based on the violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. Additionally, the bill authorizes the aging releasee to be detained when it is alleged that he or she has violated the conditions of the release. The bill provides that an aging releasee may admit to the allegations or elect to have a revocation hearing. The bill specifies a hearing process if the aging releasee elects to proceed with a revocation hearing, provides for the recommitment of an aging releasee whose CAIR has been revoked, and permits forfeiture of gain-time in certain instances.

As is provided for with the initial determination, the bill authorizes an aging releasee whose CAIR is revoked to have the revocation decision reviewed.

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, section 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CAIR are provided immunity from liability for actions that directly relate to such decisions.

The bill provides legislative findings for the establishment of the program and authorizes the DOC to adopt rules as necessary to implement the act.

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 27, 2020. The CJIC determined that the bill will likely result in a negative insignificant prison bed impact (i.e. a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## II. Present Situation:

### Aging Population Statistics

In 2016, 49 million adults in the United States, or 15 percent of the population, were 65 or older.<sup>1</sup> It is estimated that the number will rise to approximately 98 million by 2060, which corresponds to approximately 25 percent of residents of the United States. The “baby boomers” generation<sup>2</sup> and post baby-boom generations will all be of advanced age by 2029, which is often defined as 55 years of age or older. A report published by the Institutes of Medicine in 2012 asserted that, by 2030, the population of adults over the age of 65 will reach 72.1 million. The report also estimated that approximately one in five persons in the elder population has a mental health or substance abuse disorder, such as depression, dementia, or related psychiatric and behavioral symptoms. Incarcerated men and women typically have physiological and mental health conditions that are associated with people at least a decade older, a phenomenon known as “accelerated aging.” Therefore, an incarcerated person who is 50 or 55 years of age would exhibit health conditions comparable to a person who is 60 or 65 in the community. The occurrence of accelerated aging in the prison system is a result of many factors, including inadequate access to medical care before incarceration, substance abuse, the stress of incarceration, and a lack of appropriate health care during incarceration.<sup>3</sup>

### Special Health Considerations for Aging Inmates

Similarly to aging persons in the community, aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.<sup>4</sup> However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.<sup>5</sup> Such aging inmates can also require structural accessibility adaptations, such as special housing and wheelchair ramps. For example, in

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<sup>1</sup> The Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, *Promoting Health for Older Adults*, September 13, 2019, available at <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/promoting-health-for-older-adults.htm> (last visited December 5, 2019).

<sup>2</sup> The “baby boomer” generation is generally defined as persons born from 1946 through 1964. See Senior Living, *The Baby Boomer Generation*, available at <https://www.seniorliving.org/life/baby-boomers/> (last visited December 5, 2019).

<sup>3</sup> Yarnell, S., MD, PhD, Kirwin, P. MD, and Zonana, H. MD, *Geriatrics and the Legal System*, Journal of the American Academy of Psychiatry and the Law, November 2, 2017, p. 208-209, available at <http://jaapl.org/content/jaapl/45/2/208.full.pdf> (last visited December 5, 2019).

<sup>4</sup> McKillop, M. and McGaffey, F., The PEW Charitable Trusts, *Number of Older Prisoners Grows Rapidly, Threatening to Drive Up Prison Health Costs*, October 7, 2015, available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/10/07/number-of-older-prisoners-grows-rapidly-threatening-to-drive-up-prison-health-costs> (hereinafter cited as “PEW Trusts Older Prisoners Report”); See also Jaul, E. and Barron, J., *Frontiers in Public Health, Age-Related Diseases and Clinical and Public Health Implications for the 85 Years Old and Over Population*, December 11, 2017, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5732407/>; HealthinAging.org, *A Guide to Geriatric Syndromes: Common and Often Related Medical Conditions in Older Adults*, available at <https://www.healthinaging.org/tools-and-tips/guide-geriatric-syndromes-common-and-often-related-medical-conditions-older-adults> (all sites last visited December 5, 2019).

<sup>5</sup> The PEW Charitable Trusts Older Prisoners Report.

Florida, four facilities serve relatively large populations of older inmates, which help meet special needs such as palliative and long-term care.<sup>6</sup>

### **Aging Inmate Statistics in Florida**

The DOC reports that the elderly inmate<sup>7</sup> population has increased by 353 inmates or 1.5 percent from June 30, 2017 to June 30, 2018 and that this trend has been steadily increasing over the last five years for an overall increase of 2,585 inmates or 12.5 percent.<sup>8</sup>

The DOC further reports that during Fiscal Year 2017-18, there were 3,594 aging inmates admitted to Florida prisons, which was a 2.8 percent decrease from Fiscal Year 2016-17. The majority of such inmates were admitted for violent offenses, property crimes, and drug offenses. The oldest male inmate admitted was 92 years of age with a conviction of manslaughter and the oldest female inmate admitted was 77 years of age with a conviction of drug trafficking.<sup>9</sup>

As the population of aging inmates continues to increase, the cost to house and treat such inmates also substantially increases. The DOC reports that the episodes of outside care for aging inmates increased from 10,553 in Fiscal Year 2008-09 to 21,469 in Fiscal Year 2017-18 and further provided that outside care is generally more expensive than treatment provided within a prison facility.<sup>10</sup> The DOC reports that the cost of health care for the aging inmate population is very high compared to other inmates for many reasons, including, in part that aging inmates:

- Account for a majority of inpatient hospital days; and
- Have a longer length for an inpatient hospital stay than seen with younger inmate patients.<sup>11</sup>

### **Constitutional Requirement to Provide Healthcare to Inmates**

The United States Supreme Court has established that prisoners have a constitutional right to adequate medical care. The Court determined that it is a violation of the Eighth Amendment prohibition against cruel and unusual punishment for the state to deny a prisoner necessary medical care, or to display “deliberate indifference” to an inmate’s serious medical needs.<sup>12</sup>

Before the 1970s, prison health care operated without “standards of decency” and was frequently delivered by unqualified or overwhelmed providers, resulting in negligence and poor quality.<sup>13</sup> By January 1996, only three states had never been involved in major litigation challenging conditions in their prisons. A majority were under court order or consent decree to make

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<sup>6</sup> *Id.*

<sup>7</sup> Section 944.02(4), F.S., defines “elderly offender” to mean prisoners age 50 or older in a state correctional institution or facility operated by the DOC or the Department of Management Services.

<sup>8</sup> The DOC, *2017-18 Annual Report*, p. 19, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited December 5, 2019).

<sup>9</sup> *Id.*, at p. 20.

<sup>10</sup> *Id.*, at p. 21.

<sup>11</sup> *Id.*

<sup>12</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

<sup>13</sup> The PEW Charitable Trusts, Urahn, S. and Thompson, M., *Prison Health Care: Costs and Quality*, October 2017, p. 4, available at [https://www.pewtrusts.org/-/media/assets/2017/10/sfh\\_prison\\_health\\_care\\_costs\\_and\\_quality\\_final.pdf](https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf) (last visited December 5, 2019) (hereinafter cited as “The PEW Trusts Prison Health Care Cost Report”).

improvements in some or all facilities.<sup>14</sup> The development of the correctional health care in Florida has been influenced by a class action lawsuit filed by inmates in 1972. The plaintiffs in *Costello v. Wainwright*<sup>15</sup> alleged that prison overcrowding and inadequate medical care were so severe that the resulting conditions amounted to cruel and unusual punishment. The overcrowding aspect of the case was settled in 1979, but the medical care issue continued to be litigated for years.<sup>16</sup>

The legal standard today for inmate medical care must be at “a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards” and “designed to meet routine and emergency medical, dental, and psychological or psychiatric care.”<sup>17</sup> Prisoners are entitled to access to care for diagnosis and treatment, a professional medical opinion, and administration of the prescribed treatment and such obligation persists even if some or all of the medical services are provided through the use of contractors. This is also the standard for state prisoners who are under the custody of private prisons or local jails. Recent cases have reinforced states’ constitutional obligations.<sup>18</sup>

### ***The DOC’s Duty to Provide Health Care***

The DOC is responsible for the inmates of the state correctional system and has supervisory and protective care, custody, and control of the inmates within its facilities.<sup>19</sup> The DOC has the constitutional and statutory imperative to provide adequate health services to state prison inmates directly related to this responsibility.<sup>20</sup> This medical care includes comprehensive medical, mental health, and dental services, and all associated ancillary services.<sup>21</sup> The DOC’s Office of Health Service (OHS) oversees the delivery of health care services and handles statewide functions for such delivery. The OHS is led by the Director of Health Services, who reports to the Secretary.<sup>22</sup>

The DOC contracts with the Centurion of Florida, LLC (Centurion) to provide comprehensive statewide medical, mental health, dental services, and operates the department’s reception medical center. The care provided is under a cost plus model. All inmates are screened at a DOC reception center upon arrival from the county jail. The purpose of this intake process is to determine the inmate’s current medical, dental, and mental health care needs, which is achieved

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<sup>14</sup>*Id.* See also McDonald, D., *Medical Care in Prisons*, Crime and Justice, Vol. 26, 1999, p. 431, available at <https://www.journals.uchicago.edu/doi/abs/10.1086/449301> (last visited December 5, 2019); See also *Newman et al. v. Alabama et al.*, 349 F. Supp. 278 (M.D. Ala. 1972).

<sup>15</sup> 430 U.S. 325 (1977).

<sup>16</sup> *Id.* The Correctional Medical Authority, FY 2017-18 Annual Report and Update on the Status of Elderly Offender’s in Florida’s Prisons, p. 1 (on file with the Senate Criminal Justice Committee). The Correctional Medical Authority was created in response to such federal litigation.

<sup>17</sup> The PEW Trusts Prison Health Care Cost Report, p. 4.

<sup>18</sup> *Id.*

<sup>19</sup> Sections 945.04(1) and 945.025(1), F.S.

<sup>20</sup> *Crews v. Florida Public Employers Council 79, AFSCME*, 113 So. 3d 1063 (Fla. 1st DCA 2013); See also s. 945.025(2), F.S.

<sup>21</sup> The DOC, Office of Health Services, available at <http://www.dc.state.fl.us/org/health.html> (last visited December 5, 2019).

<sup>22</sup> *Id.*

through assessments, in part, for auditory, mobility and vision disabilities, and the need for specialized mental health treatment.<sup>23</sup>

After the intake process is completed, inmates are assigned to an institution based on their medical and mental health needs and security requirements. The Centurion provides primary care using a staff of clinicians, nurses, mental health, and dental professionals and administrators within each major correctional institution. The health services team provides health care services in the dorms for inmates who are in confinement.<sup>24</sup>

### **Aging Inmate Discretionary Release**

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate's age without regard to the medical condition of the inmate.<sup>25</sup> The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.<sup>26</sup> The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have served either a specified number of years or a specified percentage of his or her sentence. The NCSL reports that Alabama has the lowest age for aging inmate discretionary release, which is 55 years of age, whereas most other states set the limit somewhere between 60 and 65. Additionally, some states do not set a specific age.<sup>27</sup>

Most states require a minimum of 10 years of an inmate's sentence to be served before being eligible for consideration for aging inmate discretionary release, but some states, such as California, set the minimum length of time served at 25 years.<sup>28</sup> Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.<sup>29</sup>

Inmates who are sentenced to death or serving a life sentence are typically ineligible for release. Some states specify that inmates must be sentenced for a non-violent offense or specify offenses which are not eligible for release consideration.

Florida does not currently address discretionary release based on an inmate's age alone.

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<sup>23</sup> *Id.* See also The DOC Annual Report, p. 19.

<sup>24</sup> *Id.*

<sup>25</sup> The National Conference of State Legislatures (NCSL), *State Medical and Geriatric Parole Laws*, August 27, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx> (hereinafter cited as "The NCSL Aging Inmate Statistics"); Code of the District of Columbia, *Section 24-465 Conditions for Geriatric Release*, available at <https://code.dccouncil.us/dc/council/code/sections/24-465.html>; Section 603(b) of the First Step Act, codified at 18 USC s. 3582. See also U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 6-7, available at [https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf) (all sites last visited December 5, 2019).

<sup>26</sup> The NCSL Aging Inmate Statistics. Also, the NCSL states that at least 16 states have established both medical and aging inmate discretionary release programs legislatively and that Virginia is the only state that has aging inmate discretionary release but not medical discretionary release.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> The NCSL Aging Inmate Statistics.

### ***Federal First Step Act***

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act.”<sup>30</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons, including, in part, modifying provisions related to compassionate release, which applies to the conditional release of medical inmates and aging inmates, to require inmates be informed of reduction in sentence availability and process.<sup>31</sup>

### **Gain-time**

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>32</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>33</sup>

Basic gain-time, which automatically reduced an inmate’s sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>34</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>35</sup>
- Meritorious gain-time;<sup>36</sup> and
- Educational achievement gain-time.<sup>37</sup>

The procedure for applying gain-time awards to an inmate’s sentence is dependent upon the calculation of a “maximum sentence expiration date” and a “tentative release date.” The tentative

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<sup>30</sup> The First Step Act of 2018, Pub. L. No. 115-391 (2018).

<sup>31</sup> Section 603(b) of the First Step Act, codified at 18 USC s. 3582. *See also* U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at [https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf) (last visited December 5, 2019).

<sup>32</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>33</sup> Section 944.275(4)(f), F.S.

<sup>34</sup> Chapter 93-406, L.O.F.

<sup>35</sup> Section 944.275(4)(b), F.S., provides that incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

<sup>36</sup> Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

<sup>37</sup> Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

release date may not be later than the maximum sentence expiration date.<sup>38</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>39</sup>

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>40</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>41</sup>

The DOC is authorized in certain circumstances to declare all gain-time earned by an inmate forfeited.<sup>42</sup>

### **Victim Input**

In 2018, the Florida voters approved Amendment 6 on the ballot, which provided certain rights to victims in the Florida Constitution. In part, Article I, s. 16 of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.<sup>43</sup>

### **Sovereign Immunity**

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>44</sup> Article X, s. 13 of the Florida Constitution allows the Legislature to waive this immunity. Further, s. 768.28(1), F.S., allows for suits in tort against the State and its agencies

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<sup>38</sup> Section 944.275(3)(c), F.S.

<sup>39</sup> Section 944.275(2)(a), F.S.

<sup>40</sup> Section 944.275(3)(a), F.S.

<sup>41</sup> *Id.* See also s. 944.275(4)(b), F.S.

<sup>42</sup> Section 944.28(1), F.S.

<sup>43</sup> Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

<sup>44</sup> Legal Information Institute, *Sovereign immunity*, available at [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited January 23, 2020).

and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment ....”<sup>45</sup>

Section 768.28(5), F.S., limits tort recovery from a governmental entity to \$200,000 per person and \$300,000 per accident.<sup>46</sup> This limitation does not prevent a judgment in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.<sup>47</sup>

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>48, 49</sup> Thus, the immunity may be pierced only if state employees or agents either act outside the scope of their employment, or act “in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”<sup>50</sup>

Courts that have construed the bad faith prong of s. 768.28, F.S., to mean the actual malice standard, which means the conduct must be committed with “ill will, hatred, spite, [or] an evil intent.”<sup>51</sup> Conduct meeting the wanton and willful standard is defined as “worse than gross negligence,”<sup>52</sup> and “more reprehensible and unacceptable than mere intentional conduct.”<sup>53, 54</sup>

### III. Effect of Proposed Changes:

The bill creates s. 945.0912, F.S., which establishes a conditional aging inmate release (CAIR) program within the DOC for the purpose of:

- Determining whether release is appropriate for eligible inmates;
- Supervising the released inmates; and
- Conducting revocation hearings.

The CAIR program must include a panel of at least three people appointed by the Secretary for the purpose of determining the appropriateness of CAIR and conducting revocation hearings on the inmate releases.

<sup>45</sup> *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

<sup>46</sup> Section 768.28(5), F.S.

<sup>47</sup> *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

<sup>48</sup> *See Peterson v. Pollack*, 2019 WL 6884887 (Fla. 4th DCA December 18, 2019).

<sup>49</sup> Section 768.28(9)(a), F.S.

<sup>50</sup> *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).

<sup>51</sup> *See Parker v. State Bd. of Regents ex rel. Fla. State Univ.*, 724 So.2d 163, 167 (Fla. 1st DCA 1998); *Reed v. State*, 837 So.2d 366, 368–69 (Fla. 2002); and *Eiras v. Fla.*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017).

<sup>52</sup> *Eiras v. Fla.*, 239, *supra* at 50; *Sierra v. Associated Marine Insts., Inc.*, 850 So.2d 582, 593 (Fla. 2d DCA 2003).

<sup>53</sup> *Eiras v. Fla.*, *supra* at 50; *Richardson v. City of Pompano Beach*, 511 So.2d 1121, 1123 (Fla. 4th DCA 1987).

<sup>54</sup> *See also Kastritis v. City of Daytona Beach Shores*, 835 F.Supp.2d 1200, 1225 (M.D. Fla. 2011) (defining these standards).

The bill provides legislative findings for the CAIR program.

### **Eligibility Criteria**

An inmate is eligible for consideration for release under the CAIR program when the inmate has reached 65 years of age and has served at least 10 years on his or her term of imprisonment.

An inmate may not be considered for release through the CAIR program if he or she has ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent for committing:

- Any offense classified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment;
- Any violation of law that results in the killing of a human being;
- An offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S; or
- Any similar offense committed in another jurisdiction which would be an offense included in this list if it had been committed in violation of the laws of Florida.

The bill also prohibits an inmate who has previously been released on any form of conditional or discretionary release and who was recommitted to the DOC as a result of a finding that he or she subsequently violated the terms of such conditional or discretionary release to be considered for release through the CAIR program.

The bill provides a specific exception to the 85 percent rule that allows an inmate who meets the above criteria to be released from the custody of the DOC pursuant to the CAIR program prior to satisfying 85 percent of his or her term of imprisonment.

### **Referral Process**

The bill requires that any inmate in the custody of the DOC who is eligible must be considered for the CAIR program. However, the authority to grant CAIR rests solely with the DOC and an inmate does not have a right to release on CAIR pursuant to s. 945.0912, F.S.

The DOC must identify inmates who may be eligible for CAIR. In considering an inmate for the CAIR program, the DOC may require the production of additional evidence or any other additional investigations that the DOC deems necessary for determining the appropriateness of the eligible inmate's release.

Upon an inmate's identification as potentially eligible for release on CAIR, the DOC must refer such inmate to the panel described above for review and determination of release.

The bill requires the DOC to provide notice to a victim of the inmate's referral to the panel immediately upon identification of the inmate as potentially eligible for release on CAIR if the case that resulted in the inmate's commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Article I, s. 16 of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

### **Determination of Release**

The bill requires the panel to conduct a hearing within 45 days after receiving the referral to determine whether CAIR is appropriate for the inmate. A majority of the panel members must agree that release on CAIR is appropriate for the inmate. If CAIR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CAIR is considered an aging releasee upon release to the community.

An inmate who is denied CAIR by the panel may have the decision reviewed by the DOC's general counsel, who must make a recommendation to the Secretary. The Secretary must review all relevant information and make a final decision about the appropriateness of release on CAIR. The decision of the Secretary is a final administrative decision not subject to appeal.

Additionally, an inmate who is denied CAIR that requests to have the decision reviewed must do so in a manner prescribed in rule and may be subsequently reconsidered for such release in a manner prescribed by department rule.

### **Release Conditions**

The bill requires that an inmate granted release on CAIR must be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The aging releasee must comply with all reasonable conditions of release the DOC imposes, which must include, at a minimum:

- Supervision by an officer trained to handle special offender caseloads.
- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the aging releasee.

The bill provides that an aging releasee is considered to be in the custody, supervision, and control of the DOC. The bill further states that this does not create a duty for the DOC to provide the aging releasee with medical care upon release into the community. The bill provides that the aging releasee remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the aging releasee may not be counted in the prison system population, and the aging releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

### **Revocation Based on Violation of Conditions**

The bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. The DOC may terminate the

aging releasee's CAIR and return him or her to the same or another institution designated by the DOC.

The bill provides that if a duly authorized representative of the DOC has reasonable grounds to believe that an aging releasee has violated the conditions of his or her release in a material respect, such representative may cause a warrant to be issued for the arrest of the aging releasee. Further, a law enforcement officer or a probation officer may arrest the aging releasee without a warrant in accordance with s. 948.06, F.S., if there are reasonable grounds to believe he or she has violated the terms and conditions of his or her CAIR. The law enforcement officer must report the aging releasee's alleged violations to the supervising probation office or the DOC's emergency action center for initiation of revocation proceedings.

If the basis of the violation of release conditions is related to a new violation of law, the aging releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the aging releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's probable cause determination constitutes reasonable grounds to believe that the aging releasee violated the conditions of the CAIR.

The bill requires the DOC to order that the aging releasee subject to revocation for a violation of conditions be returned to the custody of the DOC for a CAIR revocation hearing as prescribed by rule. An aging releasee may admit to the alleged violation of the conditions of CAIR or may elect to proceed to a revocation hearing. A majority of the panel must agree that revocation is appropriate for the aging releasee's CAIR to be revoked.

The bill provides that an aging releasee who has his or her CAIR revoked due to a violation of conditions must serve the balance of his or her sentence with credit for the actual time served on CAIR. Additionally, any gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1), F.S. If the aging releasee whose CAIR is revoked would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

### **Revocation Hearing Process**

If the aging releasee is subject to revocation and elects to proceed with a hearing, the aging releasee must be informed orally and in writing of certain rights, including the releasee's:

- Alleged violation with which he or she is charged.
- Right to:
  - Be represented by counsel.<sup>55</sup>
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

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<sup>55</sup> However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

If the panel approves the revocation of the aging releasee's CAIR, the panel must provide a written statement as to evidence relied on and reasons for revocation.

### **Review Process of Revocation Determination**

The bill authorizes an aging releasee whose CAIR is revoked based on either basis to have the revocation decision reviewed. The bill requires the DOC's general counsel to review the revocation decision and make a recommendation to the Secretary. The Secretary must review all relevant information and make a final decision about the appropriateness of the revocation of CAIR.

The bill provides that any decision of the Secretary related to a revocation decision is a final administrative decision not subject to appeal.

### **Sovereign Immunity**

The bill includes language providing that unless otherwise provided by law and in accordance with Article X, s. 13 of the Florida Constitution, members of the panel who are involved with decisions that grant or revoke CAIR are provided immunity from liability for actions that directly relate to such decisions.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 893.135, 921.0024, 944.605, and 944.70, F.S., conforming these provisions to changes made by the Act.

The bill is effective October 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 27, 2020. The CJIC determined that the bill will likely result in a negative insignificant prison bed impact (i.e. a decrease of 10 or fewer prison beds).<sup>56</sup> However, this was prior to the bill being amended to lower the age criteria from 70 to 65. Accordingly, the change in the age criteria will increase the pool of potential inmates who could be considered for the program.

The DOC reports that the overall fiscal impact of the bill is indeterminate because release will be at the discretion of the DOC.<sup>57</sup> The DOC reports that as of October 18, 2019, there were a total of 1,849 inmates age 70 or older in its custody, and, based on the criteria set forth in the bill, only 168 of these inmates would meet the eligibility criteria for consideration for CAIR. The DOC reported that an additional 291 inmates were projected to become eligible based on the 70 years of age threshold over the next five years.<sup>58</sup> This data was provided based on the age threshold contained in CS/SB 574. However, PCS/CS/SB 574 lowers the age threshold for eligibility to 65 years of age and also expands the offenses which preclude eligibility for release under the program. Therefore, PCS/CS/SB 574 may expand the pool of inmates who are eligible for consideration of CAIR release.

The DOC reports that when the inmate population is impacted in small increments statewide, the inmate variable per diem of \$20.04 is the most appropriate to use to determine the fiscal impact. The variable per diem includes costs more directly aligned

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<sup>56</sup> The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at <https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/> (last visited January 29, 2020).

<sup>57</sup> The five highest occurring offenses of incarceration for these inmates are first or second degree murder (s. 782.04, F.S.), sexual battery on a victim under 12 (s. 794.011, F.S.), lewd or lascivious molestation on a victim under 12 (s. 800.04, F.S.), and robbery with a gun or deadly weapon (s. 812.13, F.S.). The DOC, *SB 574 Agency Analysis*, p. 1 and 4 (December 6, 2019)(on file with the Senate Criminal Justice Committee) [hereinafter cited as “The DOC SB 574 Analysis”].

<sup>58</sup> The DOC, *SB 574 Agency Analysis Updated*, p. 2 and 4 (January 29, 2020)(on file with the Senate Appropriations Subcommittee on Civil and Criminal Justice) [hereinafter cited as “The DOC SB 574 Updated Analysis”].



**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on January 29, 2020:**

The committee substitute:

- Provides legislative findings;
- Modifies the age of eligible inmates from 70 years of age to 65;
- Expands the list of enumerated offenses that precludes an inmate from consideration to include:
  - Any offense classified as a capital felony, life felony, or first degree felony punishable by a term of years not exceeding life imprisonment;
  - Any violation of law that results in the killing of a human being;
  - An offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S; or
  - Any similar offense committed in another jurisdiction which would be an offense included in this list if it had been committed in violation of the laws of Florida;
- Prohibits an inmate whose previous conditional release status was subsequently revoked from being considered for the CAIR program;
- Provides an exception to the 85 percent rule for inmates released to the CAIR program;
- Provides that an inmate who is denied release in the CAIR program may request the decision to be reviewed as prescribed by rule;
- Clarifies that the DOC does not have a duty to provide medical care for aging releasee's released to the community;
- Clarifies that the DOC may terminate the aging releasee's CAIR release when he or she violates the conditions of such release and return him or her to the same or another institution designated by the DOC;
- Authorizes a duly authorized representative of the DOC to cause a warrant to be issued if there is a reasonable grounds to believe that the aging releasee has violated the conditions of his or her release in a material way;
- Clarifies that the aging releasee may admit the allegations of the violation of CAIR or elect to proceed to a revocation hearing;
- If applicable, requires the panel to provide written statement as to the evidence relied on and reasons for revocation; and
- Clarifies that the members of the panel have sovereign immunity as it relates to the decision to release an inmate on CAIR or to revoke an aging releasee's CAIR.

**CS by Criminal Justice on December 10, 2019:**

The committee substitute:

- Ensures that an inmate granted CAIR is released into the community within a reasonable amount of time;
- Makes some technical changes, including, in part, ensuring consistency with the terms used to describe an inmate who has been approved for CAIR and released into the community;

- Amends a number of relevant sections to ensure the changes made by the act are incorporated; and
- Makes the effective date October 1, 2020.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By the Committee on Criminal Justice; and Senators Brandes and Perry

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1                                   A bill to be entitled  
2       An act relating to conditional aging inmate release;  
3       creating s. 945.0912, F.S.; establishing the  
4       conditional aging inmate release program within the  
5       Department of Corrections; establishing a panel to  
6       consider specified matters; providing for program  
7       eligibility; requiring that an inmate who meets  
8       certain criteria be considered for conditional aging  
9       inmate release; providing that the inmate does not  
10      have a right to release; requiring the department to  
11      identify eligible inmates; requiring the department to  
12      refer an inmate to the panel for consideration;  
13      providing victim notification requirements under  
14      certain circumstances; requiring the panel to conduct  
15      a hearing within a specified timeframe; providing  
16      requirements for the hearing; providing that an inmate  
17      who is approved for conditional aging inmate release  
18      must be released from the department's custody within  
19      a reasonable amount of time; providing that an inmate  
20      is considered an aging releasee upon release from the  
21      department into the community; providing a review  
22      process for an inmate who is denied release; providing  
23      conditions for release; prohibiting an aging releasee  
24      or his or her community-based housing from being  
25      counted in the prison system population and the prison  
26      capacity figures, respectively; providing for the  
27      revocation of conditional aging inmate release;  
28      requiring the aging releasee to be detained if a  
29      violation is based on certain circumstances;

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30 authorizing the aging releasee to be returned to the  
31 department if he or she violates any conditions of the  
32 release; requiring a majority of the panel to agree on  
33 the appropriateness of revocation; authorizing the  
34 forfeiture of gain-time if the revocation is based on  
35 certain violations; providing a review process for an  
36 aging releasee who has his or her released revoked;  
37 requiring the aging releasee to be given specified  
38 information in certain instances; providing rulemaking  
39 authority; amending ss. 316.1935, 775.084, 775.087,  
40 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605,  
41 and 944.70, F.S.; conforming cross-references;  
42 providing an effective date.

43  
44 Be It Enacted by the Legislature of the State of Florida:

45  
46 Section 1. Section 945.0912, Florida Statutes, is created  
47 to read:

48 945.0912 Conditional aging inmate release.-

49 (1) CREATION.-There is established a conditional aging  
50 inmate release program within the department for the purpose of  
51 determining eligible inmates who are appropriate for such  
52 release, supervising the released inmates, and conducting  
53 revocation hearings as provided for in this section. The program  
54 must include a panel of at least three people appointed by the  
55 secretary or his or her designee for the purpose of determining  
56 the appropriateness of conditional aging inmate release and  
57 conducting revocation hearings on the inmate releases.

58 (2) ELIGIBILITY.-

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59 (a) An inmate is eligible for consideration for release  
60 under the conditional aging inmate release program when the  
61 inmate has reached 70 years of age and has served at least 10  
62 years on his or her term of imprisonment.

63 (b) An inmate may not be considered for release through the  
64 program if he or she has ever been found guilty of, regardless  
65 of adjudication, or entered a plea of nolo contendere or guilty  
66 to, or has been adjudicated delinquent for committing:

67 1. A violation of any of the following sections which  
68 results in the actual killing of a human being:

69 a. Section 775.33(4).

70 b. Section 782.04(1) or (2).

71 c. Section 782.09.

72 2. Any felony offense that serves as a predicate to  
73 registration as a sexual offender in accordance with s.  
74 943.0435; or

75 3. Any similar offense committed in another jurisdiction  
76 which would be an offense listed in this paragraph if it had  
77 been committed in violation of the laws of this state.

78 (3) REFERRAL FOR CONSIDERATION.—

79 (a)1. Notwithstanding any provision to the contrary, an  
80 inmate in the custody of the department who is eligible for  
81 consideration pursuant to subsection (2) must be considered for  
82 the conditional aging inmate release program.

83 2. The authority to grant conditional aging inmate release  
84 rests solely with the department. An inmate does not have a  
85 right to such release.

86 (b) The department must identify inmates who may be  
87 eligible for the conditional aging inmate release program. In

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88 considering an inmate for conditional aging inmate release, the  
89 department may require the production of additional evidence or  
90 any other additional investigations that the department deems  
91 are necessary for determining the appropriateness of the  
92 eligible inmate's release.

93 (c) The department must refer an inmate to the panel  
94 established under subsection (1) for review and determination of  
95 conditional aging inmate release upon his or her identification  
96 as potentially eligible for release pursuant to this section.

97 (d) If the case that resulted in the inmate's commitment to  
98 the department involved a victim, and the victim specifically  
99 requested notification pursuant to s. 16, Art. I of the State  
100 Constitution, the department must notify the victim of the  
101 inmate's referral to the panel immediately upon identification  
102 of the inmate as potentially eligible for release under this  
103 section. Additionally, the victim must be afforded the right to  
104 be heard regarding the release of the inmate.

105 (4) DETERMINATION OF RELEASE.—

106 (a) Within 45 days after receiving the referral, the panel  
107 established in subsection (1) must conduct a hearing to  
108 determine whether the inmate is appropriate for conditional  
109 aging inmate release.

110 (b) A majority of the panel members must agree that the  
111 inmate is appropriate for release pursuant to this section. If  
112 conditional aging inmate release is approved, the inmate must be  
113 released by the department to the community within a reasonable  
114 amount of time with necessary release conditions imposed  
115 pursuant to subsection (5). An inmate who is granted conditional  
116 aging inmate release is considered an aging releasee upon

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117 release to the community.

118 (c) An inmate who is denied conditional aging inmate  
119 release by the panel may have the decision reviewed by the  
120 department's general counsel, who must make a recommendation to  
121 the secretary. The secretary must review all relevant  
122 information and make a final decision about the appropriateness  
123 of conditional aging inmate release pursuant to this section.  
124 The decision of the secretary is a final administrative decision  
125 not subject to appeal. An inmate who is denied conditional aging  
126 inmate release may be subsequently reconsidered for such release  
127 in a manner prescribed by rule.

128 (5) RELEASE CONDITIONS.—

129 (a) An inmate granted release pursuant to this section is  
130 released for a period equal to the length of time remaining on  
131 his or her term of imprisonment on the date the release is  
132 granted. Such inmate is considered an aging releasee upon  
133 release from the department into the community. The aging  
134 releasee must comply with all reasonable conditions of release  
135 the department imposes, which must include, at a minimum:

136 1. Supervision by an officer trained to handle special  
137 offender caseloads.

138 2. Active electronic monitoring, if such monitoring is  
139 determined to be necessary to ensure the safety of the public  
140 and the aging releasee's compliance with release conditions.

141 3. Any conditions of community control provided for in s.  
142 948.101.

143 4. Any other conditions the department deems appropriate to  
144 ensure the safety of the community and compliance by the aging  
145 releasee.

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146 (b) An aging releasee is considered to be in the care,  
147 custody, supervision, and control of the department and remains  
148 eligible to earn or lose gain-time in accordance with s. 944.275  
149 and department rule. The aging releasee may not be counted in  
150 the prison system population, and the aging releasee's approved  
151 community-based housing location may not be counted in the  
152 capacity figures for the prison system.

153 (6) REVOCATION HEARING AND RECOMMITMENT.—

154 (a)1. An aging releasee's conditional aging inmate release  
155 may be revoked for a violation of any condition of the release  
156 established by the department, including, but not limited to, a  
157 new violation of law.

158 2. If the basis of the violation of release conditions is  
159 related to a new violation of law, the aging releasee must be  
160 detained without bond until his or her initial appearance, at  
161 which a judicial determination of probable cause is made. If the  
162 judge determines that there was no probable cause for the  
163 arrest, the aging releasee may be released. If the judge  
164 determines that there was probable cause for the arrest, the  
165 judge's determination also constitutes reasonable grounds to  
166 believe that the aging releasee violated the conditions of the  
167 release.

168 3. The department must order that the aging releasee  
169 subject to revocation under this paragraph be returned to  
170 department custody for a conditional aging inmate release  
171 revocation hearing as prescribed by rule.

172 4. A majority of the panel members must agree that  
173 revocation is appropriate for the aging releasee's conditional  
174 aging inmate release to be revoked. If conditional aging inmate

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175 release is revoked pursuant to this paragraph, the aging  
176 releasee must serve the balance of his or her sentence with  
177 credit for the actual time served on conditional aging inmate  
178 release. The aging releasee's gain-time accrued before  
179 recommitment may be forfeited pursuant to s. 944.28(1). If the  
180 aging releasee whose conditional aging inmate release is revoked  
181 subject to this paragraph would otherwise be eligible for parole  
182 or any other release program, he or she may be considered for  
183 such release program pursuant to law.

184 5. An aging releasee whose release has been revoked  
185 pursuant to this paragraph may have the revocation reviewed by  
186 the department's general counsel, who must make a recommendation  
187 to the secretary. The secretary must review all relevant  
188 information and make a final decision about the appropriateness  
189 of the revocation of conditional aging inmate release pursuant  
190 to this paragraph. The decision of the secretary is a final  
191 administrative decision not subject to appeal.

192 (b) If the aging releasee subject to revocation under  
193 paragraph (a) elects to proceed with a hearing, the aging  
194 releasee must be informed orally and in writing of the  
195 following:

196 1. The alleged violation with which the releasee is  
197 charged.

198 2. The releasee's right to be represented by counsel.  
199 However, this subparagraph does not create a right to publicly  
200 funded legal counsel.

201 3. The releasee's right to be heard in person.

202 4. The releasee's right to secure, present, and compel the  
203 attendance of witnesses relevant to the proceeding.

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204       5. The releasee's right to produce documents on his or her  
205 own behalf.

206       6. The releasee's right of access to all evidence used  
207 against the releasee and to confront and cross-examine adverse  
208 witnesses.

209       7. The releasee's right to waive the hearing.

210       (7) RULEMAKING AUTHORITY.—The department may adopt rules as  
211 necessary to implement this section.

212       Section 2. Subsection (6) of section 316.1935, Florida  
213 Statutes, is amended to read:

214       316.1935 Fleeing or attempting to elude a law enforcement  
215 officer; aggravated fleeing or eluding.—

216       (6) Notwithstanding s. 948.01, no court may suspend, defer,  
217 or withhold adjudication of guilt or imposition of sentence for  
218 any violation of this section. A person convicted and sentenced  
219 to a mandatory minimum term of incarceration under paragraph  
220 (3) (b) or paragraph (4) (b) is not eligible for statutory gain-  
221 time under s. 944.275 or any form of discretionary early  
222 release, other than pardon or executive clemency, ~~or~~ conditional  
223 medical release under s. 947.149, or conditional aging inmate  
224 release under s. 945.0912, prior to serving the mandatory  
225 minimum sentence.

226       Section 3. Paragraph (k) of subsection (4) of section  
227 775.084, Florida Statutes, is amended to read:

228       775.084 Violent career criminals; habitual felony offenders  
229 and habitual violent felony offenders; three-time violent felony  
230 offenders; definitions; procedure; enhanced penalties or  
231 mandatory minimum prison terms.—

232       (4)

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233 (k)1. A defendant sentenced under this section as a  
234 habitual felony offender, a habitual violent felony offender, or  
235 a violent career criminal is eligible for gain-time granted by  
236 the Department of Corrections as provided in s. 944.275(4)(b).

237 2. For an offense committed on or after October 1, 1995, a  
238 defendant sentenced under this section as a violent career  
239 criminal is not eligible for any form of discretionary early  
240 release, other than pardon or executive clemency, ~~or~~ conditional  
241 medical release under ~~granted pursuant to~~ s. 947.149, or  
242 conditional aging inmate release under s. 945.0912.

243 3. For an offense committed on or after July 1, 1999, a  
244 defendant sentenced under this section as a three-time violent  
245 felony offender shall be released only by expiration of sentence  
246 and shall not be eligible for parole, control release, or any  
247 form of early release.

248 Section 4. Paragraph (b) of subsection (2) and paragraph  
249 (b) of subsection (3) of section 775.087, Florida Statutes, are  
250 amended to read:

251 775.087 Possession or use of weapon; aggravated battery;  
252 felony reclassification; minimum sentence.-

253 (2)

254 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph  
255 (a)3. does not prevent a court from imposing a longer sentence  
256 of incarceration as authorized by law in addition to the minimum  
257 mandatory sentence, or from imposing a sentence of death  
258 pursuant to other applicable law. Subparagraph (a)1.,  
259 subparagraph (a)2., or subparagraph (a)3. does not authorize a  
260 court to impose a lesser sentence than otherwise required by  
261 law.

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262  
263 Notwithstanding s. 948.01, adjudication of guilt or imposition  
264 of sentence shall not be suspended, deferred, or withheld, and  
265 the defendant is not eligible for statutory gain-time under s.  
266 944.275 or any form of discretionary early release, other than  
267 pardon or executive clemency, ~~or~~ conditional medical release  
268 under s. 947.149, or conditional aging inmate release under s.  
269 945.0912, prior to serving the minimum sentence.

270 (3)

271 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph  
272 (a)3. does not prevent a court from imposing a longer sentence  
273 of incarceration as authorized by law in addition to the minimum  
274 mandatory sentence, or from imposing a sentence of death  
275 pursuant to other applicable law. Subparagraph (a)1.,  
276 subparagraph (a)2., or subparagraph (a)3. does not authorize a  
277 court to impose a lesser sentence than otherwise required by  
278 law.

279  
280 Notwithstanding s. 948.01, adjudication of guilt or imposition  
281 of sentence shall not be suspended, deferred, or withheld, and  
282 the defendant is not eligible for statutory gain-time under s.  
283 944.275 or any form of discretionary early release, other than  
284 pardon or executive clemency, ~~or~~ conditional medical release  
285 under s. 947.149, or conditional aging inmate release under s.  
286 945.0912, prior to serving the minimum sentence.

287 Section 5. Subsection (3) of section 784.07, Florida  
288 Statutes, is amended to read:

289 784.07 Assault or battery of law enforcement officers,  
290 firefighters, emergency medical care providers, public transit

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291 employees or agents, or other specified officers;  
292 reclassification of offenses; minimum sentences.-

293 (3) Any person who is convicted of a battery under  
294 paragraph (2)(b) and, during the commission of the offense, such  
295 person possessed:

296 (a) A "firearm" or "destructive device" as those terms are  
297 defined in s. 790.001, shall be sentenced to a minimum term of  
298 imprisonment of 3 years.

299 (b) A semiautomatic firearm and its high-capacity  
300 detachable box magazine, as defined in s. 775.087(3), or a  
301 machine gun as defined in s. 790.001, shall be sentenced to a  
302 minimum term of imprisonment of 8 years.

303  
304 Notwithstanding s. 948.01, adjudication of guilt or imposition  
305 of sentence shall not be suspended, deferred, or withheld, and  
306 the defendant is not eligible for statutory gain-time under s.  
307 944.275 or any form of discretionary early release, other than  
308 pardon or executive clemency, ~~or~~ conditional medical release  
309 under s. 947.149, or conditional aging inmate release under s.  
310 945.0912, prior to serving the minimum sentence.

311 Section 6. Subsection (1) of section 790.235, Florida  
312 Statutes, is amended to read:

313 790.235 Possession of firearm or ammunition by violent  
314 career criminal unlawful; penalty.-

315 (1) Any person who meets the violent career criminal  
316 criteria under s. 775.084(1)(d), regardless of whether such  
317 person is or has previously been sentenced as a violent career  
318 criminal, who owns or has in his or her care, custody,  
319 possession, or control any firearm, ammunition, or electric

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320 weapon or device, or carries a concealed weapon, including a  
321 tear gas gun or chemical weapon or device, commits a felony of  
322 the first degree, punishable as provided in s. 775.082, s.  
323 775.083, or s. 775.084. A person convicted of a violation of  
324 this section shall be sentenced to a mandatory minimum of 15  
325 years' imprisonment; however, if the person would be sentenced  
326 to a longer term of imprisonment under s. 775.084(4)(d), the  
327 person must be sentenced under that provision. A person  
328 convicted of a violation of this section is not eligible for any  
329 form of discretionary early release, other than pardon,  
330 executive clemency, ~~or~~ conditional medical release under s.  
331 947.149, or conditional aging inmate release under s. 945.0912.

332 Section 7. Subsection (7) of section 794.0115, Florida  
333 Statutes, is amended to read:

334 794.0115 Dangerous sexual felony offender; mandatory  
335 sentencing.—

336 (7) A defendant sentenced to a mandatory minimum term of  
337 imprisonment under this section is not eligible for statutory  
338 gain-time under s. 944.275 or any form of discretionary early  
339 release, other than pardon or executive clemency, ~~or~~ conditional  
340 medical release under s. 947.149, or conditional aging inmate  
341 release under s. 945.0912, before serving the minimum sentence.

342 Section 8. Paragraphs (b), (c), and (g) of subsection (1)  
343 and subsection (3) of section 893.135, Florida Statutes, are  
344 amended to read:

345 893.135 Trafficking; mandatory sentences; suspension or  
346 reduction of sentences; conspiracy to engage in trafficking.—

347 (1) Except as authorized in this chapter or in chapter 499  
348 and notwithstanding the provisions of s. 893.13:

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349 (b)1. Any person who knowingly sells, purchases,  
350 manufactures, delivers, or brings into this state, or who is  
351 knowingly in actual or constructive possession of, 28 grams or  
352 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
353 mixture containing cocaine, but less than 150 kilograms of  
354 cocaine or any such mixture, commits a felony of the first  
355 degree, which felony shall be known as "trafficking in cocaine,"  
356 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
357 If the quantity involved:

358 a. Is 28 grams or more, but less than 200 grams, such  
359 person shall be sentenced to a mandatory minimum term of  
360 imprisonment of 3 years, and the defendant shall be ordered to  
361 pay a fine of \$50,000.

362 b. Is 200 grams or more, but less than 400 grams, such  
363 person shall be sentenced to a mandatory minimum term of  
364 imprisonment of 7 years, and the defendant shall be ordered to  
365 pay a fine of \$100,000.

366 c. Is 400 grams or more, but less than 150 kilograms, such  
367 person shall be sentenced to a mandatory minimum term of  
368 imprisonment of 15 calendar years and pay a fine of \$250,000.

369 2. Any person who knowingly sells, purchases, manufactures,  
370 delivers, or brings into this state, or who is knowingly in  
371 actual or constructive possession of, 150 kilograms or more of  
372 cocaine, as described in s. 893.03(2)(a)4., commits the first  
373 degree felony of trafficking in cocaine. A person who has been  
374 convicted of the first degree felony of trafficking in cocaine  
375 under this subparagraph shall be punished by life imprisonment  
376 and is ineligible for any form of discretionary early release  
377 except pardon or executive clemency, or ~~or~~ conditional medical

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378 release under s. 947.149, or conditional aging inmate release  
379 under s. 945.0912. However, if the court determines that, in  
380 addition to committing any act specified in this paragraph:

381 a. The person intentionally killed an individual or  
382 counseled, commanded, induced, procured, or caused the  
383 intentional killing of an individual and such killing was the  
384 result; or

385 b. The person's conduct in committing that act led to a  
386 natural, though not inevitable, lethal result,

387  
388 such person commits the capital felony of trafficking in  
389 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
390 person sentenced for a capital felony under this paragraph shall  
391 also be sentenced to pay the maximum fine provided under  
392 subparagraph 1.

393 3. Any person who knowingly brings into this state 300  
394 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
395 and who knows that the probable result of such importation would  
396 be the death of any person, commits capital importation of  
397 cocaine, a capital felony punishable as provided in ss. 775.082  
398 and 921.142. Any person sentenced for a capital felony under  
399 this paragraph shall also be sentenced to pay the maximum fine  
400 provided under subparagraph 1.

401 (c)1. A person who knowingly sells, purchases,  
402 manufactures, delivers, or brings into this state, or who is  
403 knowingly in actual or constructive possession of, 4 grams or  
404 more of any morphine, opium, hydromorphone, or any salt,  
405 derivative, isomer, or salt of an isomer thereof, including  
406 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or

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407 (3)(c)4., or 4 grams or more of any mixture containing any such  
408 substance, but less than 30 kilograms of such substance or  
409 mixture, commits a felony of the first degree, which felony  
410 shall be known as "trafficking in illegal drugs," punishable as  
411 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
412 quantity involved:

413 a. Is 4 grams or more, but less than 14 grams, such person  
414 shall be sentenced to a mandatory minimum term of imprisonment  
415 of 3 years and shall be ordered to pay a fine of \$50,000.

416 b. Is 14 grams or more, but less than 28 grams, such person  
417 shall be sentenced to a mandatory minimum term of imprisonment  
418 of 15 years and shall be ordered to pay a fine of \$100,000.

419 c. Is 28 grams or more, but less than 30 kilograms, such  
420 person shall be sentenced to a mandatory minimum term of  
421 imprisonment of 25 years and shall be ordered to pay a fine of  
422 \$500,000.

423 2. A person who knowingly sells, purchases, manufactures,  
424 delivers, or brings into this state, or who is knowingly in  
425 actual or constructive possession of, 28 grams or more of  
426 hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as  
427 described in s. 893.03(2)(a)1.g., or any salt thereof, or 28  
428 grams or more of any mixture containing any such substance,  
429 commits a felony of the first degree, which felony shall be  
430 known as "trafficking in hydrocodone," punishable as provided in  
431 s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

432 a. Is 28 grams or more, but less than 50 grams, such person  
433 shall be sentenced to a mandatory minimum term of imprisonment  
434 of 3 years and shall be ordered to pay a fine of \$50,000.

435 b. Is 50 grams or more, but less than 100 grams, such

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436 person shall be sentenced to a mandatory minimum term of  
437 imprisonment of 7 years and shall be ordered to pay a fine of  
438 \$100,000.

439 c. Is 100 grams or more, but less than 300 grams, such  
440 person shall be sentenced to a mandatory minimum term of  
441 imprisonment of 15 years and shall be ordered to pay a fine of  
442 \$500,000.

443 d. Is 300 grams or more, but less than 30 kilograms, such  
444 person shall be sentenced to a mandatory minimum term of  
445 imprisonment of 25 years and shall be ordered to pay a fine of  
446 \$750,000.

447 3. A person who knowingly sells, purchases, manufactures,  
448 delivers, or brings into this state, or who is knowingly in  
449 actual or constructive possession of, 7 grams or more of  
450 oxycodone, as described in s. 893.03(2)(a)1.q., or any salt  
451 thereof, or 7 grams or more of any mixture containing any such  
452 substance, commits a felony of the first degree, which felony  
453 shall be known as "trafficking in oxycodone," punishable as  
454 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
455 quantity involved:

456 a. Is 7 grams or more, but less than 14 grams, such person  
457 shall be sentenced to a mandatory minimum term of imprisonment  
458 of 3 years and shall be ordered to pay a fine of \$50,000.

459 b. Is 14 grams or more, but less than 25 grams, such person  
460 shall be sentenced to a mandatory minimum term of imprisonment  
461 of 7 years and shall be ordered to pay a fine of \$100,000.

462 c. Is 25 grams or more, but less than 100 grams, such  
463 person shall be sentenced to a mandatory minimum term of  
464 imprisonment of 15 years and shall be ordered to pay a fine of

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465 \$500,000.

466 d. Is 100 grams or more, but less than 30 kilograms, such  
467 person shall be sentenced to a mandatory minimum term of  
468 imprisonment of 25 years and shall be ordered to pay a fine of  
469 \$750,000.

470 4.a. A person who knowingly sells, purchases, manufactures,  
471 delivers, or brings into this state, or who is knowingly in  
472 actual or constructive possession of, 4 grams or more of:

473 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

474 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

475 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

476 (IV) Sufentanil, as described in s. 893.03(2)(b)30.;

477 (V) A fentanyl derivative, as described in s.

478 893.03(1)(a)62.;

479 (VI) A controlled substance analog, as described in s.

480 893.0356, of any substance described in sub-sub-subparagraphs

481 (I)-(V); or

482 (VII) A mixture containing any substance described in sub-  
483 sub-subparagraphs (I)-(VI),

484

485 commits a felony of the first degree, which felony shall be  
486 known as "trafficking in fentanyl," punishable as provided in s.  
487 775.082, s. 775.083, or s. 775.084.

488 b. If the quantity involved under sub-subparagraph a.:

489 (I) Is 4 grams or more, but less than 14 grams, such person  
490 shall be sentenced to a mandatory minimum term of imprisonment  
491 of 3 years, and shall be ordered to pay a fine of \$50,000.

492 (II) Is 14 grams or more, but less than 28 grams, such  
493 person shall be sentenced to a mandatory minimum term of

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494 imprisonment of 15 years, and shall be ordered to pay a fine of  
495 \$100,000.

496 (III) Is 28 grams or more, such person shall be sentenced  
497 to a mandatory minimum term of imprisonment of 25 years, and  
498 shall be ordered to pay a fine of \$500,000.

499 5. A person who knowingly sells, purchases, manufactures,  
500 delivers, or brings into this state, or who is knowingly in  
501 actual or constructive possession of, 30 kilograms or more of  
502 any morphine, opium, oxycodone, hydrocodone, codeine,  
503 hydromorphone, or any salt, derivative, isomer, or salt of an  
504 isomer thereof, including heroin, as described in s.  
505 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
506 more of any mixture containing any such substance, commits the  
507 first degree felony of trafficking in illegal drugs. A person  
508 who has been convicted of the first degree felony of trafficking  
509 in illegal drugs under this subparagraph shall be punished by  
510 life imprisonment and is ineligible for any form of  
511 discretionary early release except pardon or executive clemency,  
512 ~~or~~ conditional medical release under s. 947.149, or conditional  
513 aging inmate release under s. 945.0912. However, if the court  
514 determines that, in addition to committing any act specified in  
515 this paragraph:

516 a. The person intentionally killed an individual or  
517 counseled, commanded, induced, procured, or caused the  
518 intentional killing of an individual and such killing was the  
519 result; or

520 b. The person's conduct in committing that act led to a  
521 natural, though not inevitable, lethal result,  
522

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523 such person commits the capital felony of trafficking in illegal  
524 drugs, punishable as provided in ss. 775.082 and 921.142. A  
525 person sentenced for a capital felony under this paragraph shall  
526 also be sentenced to pay the maximum fine provided under  
527 subparagraph 1.

528 6. A person who knowingly brings into this state 60  
529 kilograms or more of any morphine, opium, oxycodone,  
530 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
531 isomer, or salt of an isomer thereof, including heroin, as  
532 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
533 60 kilograms or more of any mixture containing any such  
534 substance, and who knows that the probable result of such  
535 importation would be the death of a person, commits capital  
536 importation of illegal drugs, a capital felony punishable as  
537 provided in ss. 775.082 and 921.142. A person sentenced for a  
538 capital felony under this paragraph shall also be sentenced to  
539 pay the maximum fine provided under subparagraph 1.

540 (g)1. Any person who knowingly sells, purchases,  
541 manufactures, delivers, or brings into this state, or who is  
542 knowingly in actual or constructive possession of, 4 grams or  
543 more of flunitrazepam or any mixture containing flunitrazepam as  
544 described in s. 893.03(1)(a) commits a felony of the first  
545 degree, which felony shall be known as "trafficking in  
546 flunitrazepam," punishable as provided in s. 775.082, s.  
547 775.083, or s. 775.084. If the quantity involved:

548 a. Is 4 grams or more but less than 14 grams, such person  
549 shall be sentenced to a mandatory minimum term of imprisonment  
550 of 3 years, and the defendant shall be ordered to pay a fine of  
551 \$50,000.

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552           b. Is 14 grams or more but less than 28 grams, such person  
553 shall be sentenced to a mandatory minimum term of imprisonment  
554 of 7 years, and the defendant shall be ordered to pay a fine of  
555 \$100,000.

556           c. Is 28 grams or more but less than 30 kilograms, such  
557 person shall be sentenced to a mandatory minimum term of  
558 imprisonment of 25 calendar years and pay a fine of \$500,000.

559           2. Any person who knowingly sells, purchases, manufactures,  
560 delivers, or brings into this state or who is knowingly in  
561 actual or constructive possession of 30 kilograms or more of  
562 flunitrazepam or any mixture containing flunitrazepam as  
563 described in s. 893.03(1)(a) commits the first degree felony of  
564 trafficking in flunitrazepam. A person who has been convicted of  
565 the first degree felony of trafficking in flunitrazepam under  
566 this subparagraph shall be punished by life imprisonment and is  
567 ineligible for any form of discretionary early release except  
568 pardon or executive clemency, ~~or~~ conditional medical release  
569 under s. 947.149, or conditional aging inmate release under s.  
570 945.0912. However, if the court determines that, in addition to  
571 committing any act specified in this paragraph:

572           a. The person intentionally killed an individual or  
573 counseled, commanded, induced, procured, or caused the  
574 intentional killing of an individual and such killing was the  
575 result; or

576           b. The person's conduct in committing that act led to a  
577 natural, though not inevitable, lethal result,

578

579 such person commits the capital felony of trafficking in  
580 flunitrazepam, punishable as provided in ss. 775.082 and

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581 921.142. Any person sentenced for a capital felony under this  
582 paragraph shall also be sentenced to pay the maximum fine  
583 provided under subparagraph 1.

584 (3) Notwithstanding the provisions of s. 948.01, with  
585 respect to any person who is found to have violated this  
586 section, adjudication of guilt or imposition of sentence shall  
587 not be suspended, deferred, or withheld, nor shall such person  
588 be eligible for parole prior to serving the mandatory minimum  
589 term of imprisonment prescribed by this section. A person  
590 sentenced to a mandatory minimum term of imprisonment under this  
591 section is not eligible for any form of discretionary early  
592 release, except pardon or executive clemency, ~~or~~ conditional  
593 medical release under s. 947.149, or conditional aging inmate  
594 release under s. 945.0912, prior to serving the mandatory  
595 minimum term of imprisonment.

596 Section 9. Subsection (2) of section 921.0024, Florida  
597 Statutes, is amended to read:

598 921.0024 Criminal Punishment Code; worksheet computations;  
599 scoresheets.—

600 (2) The lowest permissible sentence is the minimum sentence  
601 that may be imposed by the trial court, absent a valid reason  
602 for departure. The lowest permissible sentence is any nonstate  
603 prison sanction in which the total sentence points equals or is  
604 less than 44 points, unless the court determines within its  
605 discretion that a prison sentence, which may be up to the  
606 statutory maximums for the offenses committed, is appropriate.  
607 When the total sentence points exceeds 44 points, the lowest  
608 permissible sentence in prison months shall be calculated by  
609 subtracting 28 points from the total sentence points and

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610 decreasing the remaining total by 25 percent. The total sentence  
611 points shall be calculated only as a means of determining the  
612 lowest permissible sentence. The permissible range for  
613 sentencing shall be the lowest permissible sentence up to and  
614 including the statutory maximum, as defined in s. 775.082, for  
615 the primary offense and any additional offenses before the court  
616 for sentencing. The sentencing court may impose such sentences  
617 concurrently or consecutively. However, any sentence to state  
618 prison must exceed 1 year. If the lowest permissible sentence  
619 under the code exceeds the statutory maximum sentence as  
620 provided in s. 775.082, the sentence required by the code must  
621 be imposed. If the total sentence points are greater than or  
622 equal to 363, the court may sentence the offender to life  
623 imprisonment. An offender sentenced to life imprisonment under  
624 this section is not eligible for any form of discretionary early  
625 release, except executive clemency, or conditional medical  
626 release under s. 947.149, or conditional aging inmate release  
627 under s. 945.0912.

628 Section 10. Paragraph (b) of subsection (7) of section  
629 944.605, Florida Statutes, is amended to read:

630 944.605 Inmate release; notification; identification card.-  
631 (7)

632 (b) Paragraph (a) does not apply to inmates who:

633 1. The department determines have a valid driver license or  
634 state identification card, except that the department shall  
635 provide these inmates with a replacement state identification  
636 card or replacement driver license, if necessary.

637 2. Have an active detainer, unless the department  
638 determines that cancellation of the detainer is likely or that

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639 the incarceration for which the detainer was issued will be less  
640 than 12 months in duration.

641 3. Are released due to an emergency release, ~~or~~ a  
642 conditional medical release under s. 947.149, or conditional  
643 aging inmate release under s. 945.0912.

644 4. Are not in the physical custody of the department at or  
645 within 180 days before release.

646 5. Are subject to sex offender residency restrictions, and  
647 who, upon release under such restrictions, do not have a  
648 qualifying address.

649 Section 11. Subsection (1) of section 944.70, Florida  
650 Statutes, is amended to read:

651 944.70 Conditions for release from incarceration.—

652 (1) (a) A person who is convicted of a crime committed on or  
653 after October 1, 1983, but before January 1, 1994, may be  
654 released from incarceration only:

- 655 1. Upon expiration of the person's sentence;
- 656 2. Upon expiration of the person's sentence as reduced by  
657 accumulated gain-time;
- 658 3. As directed by an executive order granting clemency;
- 659 4. Upon attaining the provisional release date;
- 660 5. Upon placement in a conditional release program pursuant  
661 to s. 947.1405; or
- 662 6. Upon the granting of control release pursuant to s.  
663 947.146.

664 (b) A person who is convicted of a crime committed on or  
665 after January 1, 1994, may be released from incarceration only:

- 666 1. Upon expiration of the person's sentence;
- 667 2. Upon expiration of the person's sentence as reduced by

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668 accumulated meritorious or incentive gain-time;

669 3. As directed by an executive order granting clemency;

670 4. Upon placement in a conditional release program pursuant

671 to s. 947.1405, ~~or~~ a conditional medical release program

672 pursuant to s. 947.149, or a conditional aging inmate release

673 program pursuant to s. 945.0912; or

674 5. Upon the granting of control release, including

675 emergency control release, pursuant to s. 947.146.

676 Section 12. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-2020  
Meeting Date

SB 574  
Bill Number (if applicable)

Topic Conditional Aging Inmate Release

Amendment Barcode (if applicable)

Name Brenda Spitzbarth Spitzbarth

Job Title Retired

Address 2450 SE Issac Rd.  
Street

Phone 772-834-8124

PSL, FL 34952  
City State Zip

Email bkayspitz@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.2020

Meeting Date

0574

Bill Number (if applicable)

Topic Conditional Aging Inmate Release

Amendment Barcode (if applicable)

Name Robert Weissert (\*Why-cert\*)

Job Title EVP + General Counsel

Address 106 N. Brunnage St.  
Street

Phone 850-222-5052

Tallahassee, Florida 32301  
City State Zip

Email robert@floridatamwatch.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Tax Watch

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/20

Meeting Date

574

Bill Number (if applicable)

Topic Conditional Release

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St

Phone 850 488-6850

Tallahassee FL 32301

Street

City

State

Zip

Email ndaniels@flda.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/2020  
Meeting Date

574  
Bill Number (if applicable)

Topic Conditional Release

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Organize Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

## Appropriations Subcommittee on Criminal and Civil Justice Proposed Budget

		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
1		<b>DEPT OF CORRECTIONS</b>								1
2	1100001	Startup (OPERATING)	24,856.00	1,042,135,530	2,598,654,666		2,598,654,666	64,527,944	2,663,182,610	2
3	1100002	Startup Recurring Fixed Capital Outlay (DEBT SERVICE/OTHER)			40,976,376		40,976,376		40,976,376	3
4	1800800	Transfer Funds to New Budget Entity Structure - Security and Institutional Operations	(3,614.00)	(128,193,373)	(232,607,177)		(232,607,177)	(3,140)	(232,610,317)	4
5	1800810	Transfer Funds from Current Budget Entity Structure - Security and Institutional Operations	3,614.00	128,193,373	232,607,177		232,607,177	3,140	232,610,317	5
6	2300040	Leases			2,997,241		2,997,241		2,997,241	6
7	2401300	Security Enhancement Equipment			1,500,000		1,500,000		1,500,000	7
8	2401500	Replacement of Motor Vehicles			700,000	1,903,500	2,603,500		2,603,500	8
9	2503080	Direct Billing for Administrative Hearings			5,759		5,759		5,759	9
10	3000770	Inspector General - Inspectors	20.00	751,520	1,384,378	88,580	1,472,958		1,472,958	10
11	3306000	Reduce Excess Budget Authority			-			(14,567,219)	(14,567,219)	11
12	36306C0	Electronic Health Record			-	2,250,000	2,500,000		2,250,000	12
13	4300140	8.5 Hour Shift	292.00	9,994,055	28,407,015	649,700	29,056,715		29,056,715	13
14	4300150	Security Threat Group	34.00	1,114,656	2,064,831	152,150	2,216,981		2,216,981	14
15	4700050	Brevard County Reentry Portal (Senate Form 1497)			-	500,000	500,000		500,000	15
16	4700370	Enhanced Offender Rehabilitation Program (Senate Form 1275)			-	2,961,680	2,961,680		2,961,680	16
17	4700770	Wellness Specialists	34.00	1,057,572	1,753,924	123,726	1,877,650		1,877,650	17
18	4700780	Academic Education Expansion	17.00	557,991	1,264,765	109,293	1,374,058		1,374,058	18
19	4700790	Career and Technical Education Expansion			4,000,000		4,000,000		4,000,000	19
20	4700810	University Medical School Inmate Health Care Plan			-	500,000	500,000		500,000	20
21	4800110	Infectious Disease Drug Treatment			21,000,000	7,000,000	28,000,000		28,000,000	21
22	4700335	Building Careers for Inmates and Returning Citizens (Senate Form 1348)			-	250,000	250,000		250,000	22
23	5100179	Operation New Hope Re-Entry Initiative Program (Senate Form 2386)			-	1,000,000	1,000,000		1,000,000	23
24	54R0010	Casualty Insurance Premium Readjustment			(1,629,304)		(1,629,304)	(36,853)	(1,666,157)	24
25	54R0020	Casualty Insurance Premium Distribution Modification			3,958,615		3,958,615	89,540	4,048,155	25
26	080027	Correctional Facilities - Lease Purchase			10,540,750		10,540,750		10,540,750	26
27	083258	Major Repairs, Renovations and Improvements to Major Institutions			-	8,065,883	8,065,883		8,065,883	27
28	088189	Repair - Renovation and Improvement of Mental Health Facilities Statewide			-	5,960,690	5,960,690		5,960,690	28

## Appropriations Subcommittee on Criminal and Civil Justice Proposed Budget

		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
29	088190	Mental Health Facility			-	1,400,000	1,400,000		1,400,000	29
30	<b>Total</b>	<b>DEPT OF CORRECTIONS</b>	<b>25,253.00</b>	<b>1,055,611,324</b>	<b>2,717,579,016</b>	<b>32,915,202</b>	<b>2,750,744,218</b>	<b>50,013,412</b>	<b>2,800,507,630</b>	30
31										31
32		<b>FL COMMISSION ON OFFENDER REVIEW</b>								32
33	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>132.00</b>	<b>6,110,752</b>	<b>11,355,208</b>		<b>11,355,208</b>	<b>120,234</b>	<b>11,475,442</b>	33
34	2401500	Replacement of Motor Vehicles			-	24,821	24,821		24,821	34
35	36201C0	Information Technology (IT) Services Provided by Department of Corrections			76,500	299,750	376,250		376,250	35
36	54R0010	Casualty Insurance Premium Readjustment			(7,347)		(7,347)		(7,347)	36
37	54R0020	Casualty Insurance Premium Distribution Modification			11,691		11,691		11,691	37
38	<b>Total</b>	<b>FL COMMISSION ON OFFENDER REVIEW</b>	<b>132.00</b>	<b>6,110,752</b>	<b>11,436,052</b>	<b>324,571</b>	<b>11,760,623</b>	<b>120,234</b>	<b>11,880,857</b>	38
39										39
40		<b>DEPT OF JUVENILE JUSTICE</b>								40
41	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>3,279.50</b>	<b>134,187,594</b>	<b>414,081,243</b>		<b>414,081,243</b>	<b>161,714,283</b>	<b>575,795,526</b>	41
42	160F400	Transfer General Revenue Budget Between Budget Entities - Add			115,000		115,000		115,000	42
43	160F410	Transfer General Revenue Budget Between Budget Entities - Deduct			(115,000)		(115,000)		(115,000)	43
44	1600250	Transfer Positions and Rate Between Budget Entities - Add	1.00	77,768	-				-	44
45	1600260	Transfer Positions and Rate Between Budget Entities - Deduct	(1.00)	(77,768)	-				-	45
46	1801300	Creation of New Program: Accountability and Program Support - Add	123.50	5,589,666	8,657,424		8,657,424		8,657,424	46
47	1801400	Creation of New Program: Accountability and Program Support - Deduct	(123.50)	(5,589,666)	(8,657,424)		(8,657,424)		(8,657,424)	47
48	2000130	Realignment of Expenditures Between Appropriation Categories - Add			3,143,455		3,143,455	3,143,455	6,286,910	48
49	2000140	Realignment of Expenditures Between Appropriation Categories - Deduct			(3,143,455)		(3,143,455)	(3,143,455)	(6,286,910)	49
50	2300080	Price Level Increase Residential Programs			-	2,000,000	2,000,000		2,000,000	50
51	24040C0	Information Technology Security Enhancements			53,783	162,736	216,519		216,519	51
52	2503080	Direct Billing for Administrative Hearings			27,429		27,429		27,429	52
53	3300401	Reduce Trust Fund Authority			-			(15,994,348)	(15,994,348)	53
54	3400240	Fund Shift from Trust Funds to General Revenue - Add General Revenue			13,858,650		13,858,650		13,858,650	54

## Appropriations Subcommittee on Criminal and Civil Justice Proposed Budget

		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
55	3400350	Fund Shift from Trust Funds to General Revenue - Deduct Trust Fund Authority			-			(13,858,650)	(13,858,650)	55
56	4A03000	Enhance Oversight of Medical Services In Residential Programs	6.00	319,198	584,625	23,370	607,995		607,995	56
57	5000010	Children of Inmates (Senate Form 2334)			-			250,000	250,000	57
58	5000020	Filter Family Solutions (Senate Form 1413) (See Line 74)			-			50,000	50,000	58
59	5001110	Provide Evidence Based Services - Residential Contracts			4,237,019		4,237,019		4,237,019	59
60	5001473	Clay County Youth Alternative to Secured Detention (SWEAT PROGRAM) (Senate Form 2455)			-	250,000	250,000		250,000	60
61	5001475	New Horizons - After School and Weekend Rehabilitation Program (Senate Form 1388)			-			250,000	250,000	61
62	5001483	One More Child - Hope Street Project (Senate Form 1997)			-			250,000	250,000	62
63	5001506	Florida Children 's Initiative (Senate Form 1301)			-	250,000	250,000		250,000	63
64	5001886	Pace Center for Girls - Citrus County (Senate Form 1902)			-			250,000	250,000	64
65	5010010	Integrated Care and Coordination for Youth (Senate Form 1123)			-			250,000	250,000	65
66	5010163	Expansion of Pace Centers for Girls (Senate Form 1776)			-			250,000	250,000	66
67	5103750	Comprehensive Evaluations			222,421		222,421		222,421	67
68	5202110	Continuation and Expansion of Prevention and Early Intervention Programs			2,346,983		2,346,983		2,346,983	68
69	54R0010	Casualty Insurance Premium Readjustment			123,826		123,826	94,381	218,207	69
70	54R0020	Casualty Insurance Premium Distribution Modification			31,779		31,779	29,013	60,792	70
71	080410	Department of Juvenile Justice Maintenance and Repair - State Owned Buildings			-			1,300,000	1,300,000	71
72	080410	Department of Juvenile Justice Maintenance and Repair - State Owned Buildings			-			5,000,000	5,000,000	72
73	140085	PACE Building (Senate Form 1875)			-	2,500,000	2,500,000	-	2,500,000	73
74	140085	Camp Deep Pond (Senate Form 1696)			-	500,000	500,000	-	500,000	74
75	140085	Filter Family Solutions (Senate Form 1413) (See Line 57)			-	-	-	200,000	200,000	75
76	140110	Alachua County CINS/FINS Youth Shelter Replacement (Senate Form 1107)			-			250,000	250,000	76
77	<b>Total</b>	<b>DEPT OF JUVENILE JUSTICE</b>	<b>3,285.50</b>	<b>134,506,792</b>	<b>435,567,758</b>	<b>5,686,106</b>	<b>441,253,864</b>	<b>140,284,679</b>	<b>581,538,543</b>	77
78										78
79		<b>DEPT OF LEGAL AFFAIRS</b>								79
80	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>1,365.50</b>	<b>69,765,278</b>	<b>57,429,479</b>		<b>57,429,479</b>	<b>228,048,515</b>	<b>285,477,994</b>	80
81	2503080	Direct Billing for Administrative Hearings			-			(6,411)	(6,411)	81
82	3000900	Statewide Prosecution - Workload			400,000		400,000		400,000	82

## Appropriations Subcommittee on Criminal and Civil Justice Proposed Budget

Agency / Department			CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
83	3005900	Criminal Justice Programs Workload Increase			-			103,800	103,800	83
84	33V0020	Reduce Task Force Funding			(93,251)		(93,251)		(93,251)	84
85	3306000	Reduce Excess Budget Authority			-			(5,197,892)	(5,197,892)	85
86	36209C0	Agency Wide Information Technology Modernization Program			-	5,580,979	5,580,979	1,000,000	6,580,979	86
87	4000330	Increased Operating Costs			1,245,015		1,245,015	969,869	2,214,884	87
88	4000387	Legal Center of Florida P.A. (Senate Form 2503)			-	985,000	985,000		985,000	88
89	4000388	Floridians for Puerto Rico Inc. (Senate Form 2502)			-	750,000	750,000		750,000	89
90	4000389	Legal Services Clinic of the Puerto Rican Community, Inc. (Senate Form 2510)			-	1,200,000	1,200,000		1,200,000	90
91	4000391	Virgil Hawkins Florida Chapter Bar Association (Senate Form 1104)			-	150,000	150,000		150,000	91
92	4000398	Spanish American League Against Discrimination (SALAD) Pro Bono Legal Assistance Project (Senate Form 1163)			-	150,000	150,000		150,000	92
93	4000530	Crime Victims Compensation Payments			-	2,000,000	2,000,000		2,000,000	93
94	4100560	End Human Trafficking, Inc. (Senate Form 1408)			-	250,000	250,000		250,000	94
95	51R2000	Solicitor General Criminal Appellate Attorney Rate		250,000	-				-	95
96	54R0010	Casualty Insurance Premium Readjustment			34,781		34,781	66,823	101,604	96
97	54R0020	Casualty Insurance Premium Distribution Modification			(25,186)		(25,186)	(43,595)	(68,781)	97
98	<b>Total</b>	<b>DEPT OF LEGAL AFFAIRS</b>	<b>1,365.50</b>	<b>70,015,278</b>	<b>58,990,838</b>	<b>11,065,979</b>	<b>70,056,817</b>	<b>224,941,109</b>	<b>294,997,926</b>	98
99										99
100		<b>DEPT OF LAW ENFORCEMENT</b>								100
101	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>1,933.00</b>	<b>107,181,492</b>	<b>116,043,451</b>		<b>116,043,451</b>	<b>159,719,231</b>	<b>275,762,682</b>	101
102	2000020	Realignment of Expenditures - Add	4.50	168,599	-			988,856	988,856	102
103	2000100	Realignment of Expenditures - Deduct	(4.50)	(168,599)	-			(988,856)	(988,856)	103
104	2503080	Direct Billing for Administrative Hearings			-			41,854	41,854	104
105	3000810	Increase Capitol Complex Security Staffing	5.00	186,860	-			862,722	862,722	105
106	3400270	Fund Shift Operating Trust Fund to General Revenue - Deduct			-			(2,000,000)	(2,000,000)	106
107	3400280	Fund Shift Operating Trust Fund to General Revenue - Add			2,000,000		2,000,000		2,000,000	107
108	3400330	Fund Shift Human Resources Service Charge - Deduct			-			(14,728)	(14,728)	108
109	3400340	Fund Shift Human Resources Service Charge - Add			-			14,728	14,728	109
110	3400410	Transfer Criminal Justice Standards and Training Trust Fund to General Revenue - Deduct			-			(3,915,619)	(3,915,619)	110
111	3400420	Transfer Criminal Justice Standards and Training Trust Fund to General Revenue - Add			3,915,619		3,915,619		3,915,619	111
112	36119C0	Computerized Criminal History Record System Maintenance			1,900,000		1,900,000		1,900,000	112

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Agency / Department			CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
113	36120C0	Florida Incident Based Reporting System (FIBRS)			-	2,574,489	2,574,489		2,574,489	113
114	36122C0	Modernize to Counter 21St Century Threats			100,000		100,000		100,000	114
115	4100430	Increase Federal Grants Trust Fund Authority for Project Safe Neighborhood Grant Program			-			1,500,000	1,500,000	115
116	4100600	Increase Trust Fund Authority for Tenant Broker Commissions			-			200,000	200,000	116
117	4500600	Genetic Genealogy Program	6.00	286,343	768,689	23,370	792,059		792,059	117
118	4500800	Statewide Behavioral Threat Assessment Management Strategy			1,000,000		1,000,000		1,000,000	118
119	5010030	Project Cold Case (Senate Form 1670)			-	150,000	150,000		150,000	119
120	5010255	City of Cape Coral - Real-Time Crime Center (Senate Form 1615)			-	250,000	250,000		250,000	120
121	5100217	Pinellas County Sheriff 's Office Eckerd College Search and Rescue (EC-SAR) Program (Senate Form 2346)			-	250,000	250,000		250,000	121
122	5100221	Tampa Police Department Bomb Response Vehicle (Senate Form 1152)			-	250,000	250,000		250,000	122
123	54R0010	Casualty Insurance Premium Readjustment			-			(263,331)	(263,331)	123
124	54R0020	Casualty Insurance Premium Distribution Modification			103,351		103,351	232,864	336,215	124
125	080956	Facilities Repairs and Maintenance			-	2,712,119	2,712,119		2,712,119	125
126	<b>Total</b>	<b>DEPT OF LAW ENFORCEMENT</b>	<b>1,944.00</b>	<b>107,654,695</b>	<b>125,831,110</b>	<b>6,209,978</b>	<b>132,041,088</b>	<b>156,377,721</b>	<b>288,418,809</b>	126
127										127
128		<b>JUSTICE ADMIN COMMISSION (JAC)</b>								128
129	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>106.00</b>	<b>4,150,824</b>	<b>117,540,993</b>		<b>117,540,993</b>	<b>1,022,036</b>	<b>118,563,029</b>	129
130	1806050	Realign Grants and Donations Trust Fund Expenses Appropriation Between Program Components - Deduct			-			(15,900)	(15,900)	130
131	1806060	Realign Grants and Donations Trust Fund Expenses Appropriation Between Program Components - Add			-			15,900	15,900	131
132	2000100	Realignment of Administrative Expenditures - Add			659,252		659,252		659,252	132
133	2000200	Realignment of Administrative Expenditures - Deduct			(659,252)		(659,252)		(659,252)	133
134	3002340	Staffing Increase for Court- Appointed Section	1.00	35,000	61,149	2,267	63,416		63,416	134
135	36201C0	Information Technology Critical Needs			32,000	285,000	317,000		317,000	135
136	4A00020	Establish Internal Audit Section at the Justice Administrative Commission	2.00	125,000	195,735	5,784	201,519		201,519	136
137	51R0100	Increase Current Authorized Rate		100,000	-				-	137
138	54R0010	Casualty Insurance Premium Readjustment			(302)		(302)		(302)	138
139	54R0020	Casualty Insurance Premium Distribution Modification			1,119		1,119		1,119	139
140	<b>Total</b>	<b>JUSTICE ADMIN COMMISSION (JAC)</b>	<b>109.00</b>	<b>4,410,824</b>	<b>117,830,694</b>	<b>293,051</b>	<b>118,123,745</b>	<b>1,022,036</b>	<b>119,145,781</b>	140

## Appropriations Subcommittee on Criminal and Civil Justice Proposed Budget

		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
141										141
142		<b>GUARDIAN AD LITEM (GAL)</b>								142
143	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>747.50</b>	<b>32,437,146</b>	<b>52,685,854</b>		<b>52,685,854</b>	<b>458,004</b>	<b>53,143,858</b>	143
144	2000100	Realignment of Administrative Expenditures - Add			4,483,408		4,483,408	220,249	4,703,657	144
145	2000200	Realignment of Administrative Expenditures - Deduct			(4,483,408)		(4,483,408)	(220,249)	(4,703,657)	145
146	54R0010	Casualty Insurance Premium Readjustment			20,485		20,485		20,485	146
147	54R0020	Casualty Insurance Premium Distribution Modification			15,058		15,058		15,058	147
148	<b>Total</b>	<b>GUARDIAN AD LITEM (GAL)</b>	<b>747.50</b>	<b>32,437,146</b>	<b>52,721,397</b>	<b>-</b>	<b>52,721,397</b>	<b>458,004</b>	<b>53,179,401</b>	148
149										149
150		<b>STATE ATTORNEYS</b>								150
151	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>6,048.00</b>	<b>311,929,532</b>	<b>368,359,043</b>		<b>368,359,043</b>	<b>107,949,474</b>	<b>476,308,517</b>	151
152	160F010	Transfer Funds Between Categories - Add			-			100,000	100,000	152
153	160F020	Transfer Funds Between Categories - Deduct			-			(100,000)	(100,000)	153
154	1600170	Reapproval of Prior Year Budget Amendment						666,985	666,985	154
155	1600270	Reapproval of County Information Technology Agreement						899,912	899,912	155
156	1600990	Distribution of Fiscal Year 2019-20 Assistant State Attorney and Assistant Public Defender Pay Increase - Effective 10/1/2019		3,679,368	2,894,193		2,894,193	746,766	3,640,959	156
157	1605050	Reapproval of Victims of Crime Act Grant			-			94,340	94,340	157
158	2000100	Realignment of Administrative Expenditures - Add			507,098		507,098	702,620	1,209,718	158
159	2000200	Realignment of Administrative Expenditures - Deduct			(507,098)		(507,098)	(702,620)	(1,209,718)	159
160	2401500	Replacement of Motor Vehicles						485,900	485,900	160
161	2402000	Additional Equipment						120,000	120,000	161
162	2402400	Additional Equipment - Motor Vehicles						38,000	38,000	162
163	2503080	Direct Billing for Administrative Hearings						12,955	12,955	163
164	2600130	Annualization of Victims of Crime Act (VOCA) Program						31,446	31,446	164
165	2600210	Annualization of Grant and Donation Trust Fund						15,375	15,375	165
166	2600340	Annualization of County Information Technology Agreement						299,970	299,970	166
167	2600990	Annualization of Assistant State Attorney and Assistant Public Defender Fy 2019-20 Pay Increase - 3 Months Annualization			964,730		964,730	248,919	1,213,649	167
168	3001250	State Attorney Workload			1,000,000		1,000,000		1,000,000	168
169	3001520	Increase Trust Fund Authority						610,137	610,137	169
170	3005500	Grants and Donations Trust Fund Authority Adjustment						256,053	256,053	170
171	3009500	Increased State Attorney Forfeiture and Investigative Support Trust Fund (FIST)						100,000	100,000	171
172	3009510	Increase Victims of Crime Act Authority	3.00	102,960				172,864	172,864	172

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		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
173	33V6200	Eliminate Unfunded Positions	(11.00)	(539,940)	-				-	173
174	3301510	Reduce Trust Fund Authority			-			(324,508)	(324,508)	174
175	3402900	Transfer State Attorneys Revenue Trust Fund Authority to Grants and Donations Trust Fund - Add			-			300,000	300,000	175
176	3402910	Transfer State Attorneys Revenue Trust Fund Authority to Grants and Donations Trust Fund - Delete			-			(300,000)	(300,000)	176
177	3402920	Transfer Grants and Donations Trust Fund Authority to the State Attorneys Revenue Trust Fund - Add			-			11,003	11,003	177
178	3402930	Transfer Grants and Donations Trust Fund Authority to the State Attorneys Revenue Trust Fund - Deduct			-			(11,003)	(11,003)	178
179	4200270	Adjustment to Grant and Donations Trust Fund Authority			-			50,000	50,000	179
180	4201700	Rental Space Requirements			-			229,957	229,957	180
181	4300250	Maximize Use of Trust Fund Revenues for Operating Expenditures			-			71,500	71,500	181
182	51R0100	Increase Current Authorized Rate		50,000	-					182
183	54R0010	Casualty Insurance Premium Readjustment			-			282,102	282,102	183
184	54R0020	Casualty Insurance Premium Distribution Modification			(7,407)		(7,407)	(161,672)	(169,079)	184
185	<b>Total</b>	<b>STATE ATTORNEYS</b>	<b>6,040.00</b>	<b>315,221,920</b>	<b>373,210,559</b>	<b>-</b>	<b>373,210,559</b>	<b>112,896,475</b>	<b>486,107,034</b>	185
186										186
187		<b>PUBLIC DEFENDERS</b>								187
188	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>2,818.00</b>	<b>159,227,318</b>	<b>199,158,623</b>		<b>199,158,623</b>	<b>35,593,141</b>	<b>234,751,764</b>	188
189	1600170	Reapproval of Prior Year Budget Amendment			-			42,711	42,711	189
190	1600990	Distribution of Fiscal Year 2019-20 Assistant State Attorney and Assistant Public Defender Pay Increase - Effective 10/1/2019		2,006,134	1,723,490		1,723,490	261,295	1,984,785	190
191	2000100	Realignment of Administrative Expenditures - Add			510,864		510,864	672,935	1,183,799	191
192	2000200	Realignment of Administrative Expenditures - Deduct			(510,864)		(510,864)	(672,935)	(1,183,799)	192
193	2401500	Replacement of Motor Vehicles			-			123,000	123,000	193
194	2600210	Annualization of Grant and Donation Trust Fund			-			9,237	9,237	194
195	2600990	Annualization of Assistant State Attorney and Assistant Public Defender Fy 2019-20 Pay Increase - 3 Months Annualization			574,498		574,498	87,099	661,597	195
196	3000160	Rapid Intervention	2.00	40,910	77,284	4,822	82,106		82,106	196
197	3000190	Substance Abuse and Mental Health Rapid Response Team	9.00	365,000	603,216	23,895	627,111		627,111	197
198	3000310	Implementation of Juvenile Direct File	2.00	85,000	140,623	5,188	145,811		145,811	198
199	3001350	Public Defender Workload			1,000,000		1,000,000		1,000,000	199
200	3001510	Additional Criminal Court Divisions		89,836	108,020		108,020		108,020	200

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		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
201	3005500	Grants and Donations Trust Fund Authority Adjustment			-			232,000	232,000	201
202	3301510	Reduce Trust Fund Authority			-			(109,509)	(109,509)	202
203	3402840	Transfer Grants and Donations Trust Fund to Indigent Criminal Defense Trust Fund - Add			-			3,327	3,327	203
204	3402850	Transfer Grants and Donations Trust Fund to Indigent Criminal Defense Trust Fund - Deduct			-			(3,327)	(3,327)	204
205	36224C0	County Agreement for Information Technology Personnel Services			-			85,140	85,140	205
206	4200080	Transfer Appropriations Between Budget Entities - Add			25,000		25,000		25,000	206
207	4200330	Mental Health Diversion Program	6.50	279,066	-					207
208	4200350	Mental Health, Veterans and Drug Court Staffing	26.00	832,056	2,709,760	70,738	2,780,498		2,780,498	208
209	4300200	Maximize Use of Indigent Criminal Defense Trust Funds for Operating Expenditures			-			30,000	30,000	209
210	51R0200	Reduce Excess Authorized Rate		(300,000)	-					210
211	54R0010	Casualty Insurance Premium Readjustment			-			(21,299)	(21,299)	211
212	54R0020	Casualty Insurance Premium Distribution Modification			-			57,407	57,407	212
213	<b>Total</b>	<b>PUBLIC DEFENDERS</b>	<b>2,863.50</b>	<b>162,625,320</b>	<b>206,120,514</b>	<b>104,643</b>	<b>206,225,157</b>	<b>36,390,222</b>	<b>242,615,379</b>	213
214										214
215		<b>APPELLATE PUBLIC DEFENDERS</b>								215
216	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>173.00</b>	<b>11,749,910</b>	<b>16,672,942</b>		<b>16,672,942</b>	<b>331,439</b>	<b>17,004,381</b>	216
217	1600990	Distribution of Fiscal Year 2019-20 Assistant State Attorney and Assistant Public Defender Pay Increase - Effective 10/1/2019		82,900	81,910		81,910		81,910	217
218	2600990	Annualization of Assistant State Attorney and Assistant Public Defender Fy 2019-20 Pay Increase - 3 Months Annualization			27,303		27,303		27,303	218
219	4200090	Transfer Appropriations Between Budget Entities - Deduct			(25,000)		(25,000)		(25,000)	219
220	<b>Total</b>	<b>APPELLATE PUBLIC DEFENDERS</b>	<b>173.00</b>	<b>11,832,810</b>	<b>16,757,155</b>	<b>-</b>	<b>16,757,155</b>	<b>331,439</b>	<b>17,088,594</b>	220
221										221
222		<b>CAPITAL COLLATERAL REGIONAL COUNSELS)</b>								222
223	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>92.00</b>	<b>5,876,598</b>	<b>10,332,051</b>		<b>10,332,051</b>	<b>940,137</b>	<b>11,272,188</b>	223
224	2301900	Building Rental for Privately Owned Office Space			30,000		30,000		30,000	224
225	24010C0	Information Technology Infrastructure Replacement			-	68,958	68,958		68,958	225
226	3000130	Additional Collateral Caseload Resources Request	1.00	54,000	93,291	3,895	97,186		97,186	226
227	36201C0	Information Technology Critical Needs			9,763	3,013	12,776		12,776	227
228	51R0100	Increase Current Authorized Rate		50,000	-					228
229	54R0010	Casualty Insurance Premium Readjustment			(1,187)		(1,187)	5,258	4,071	229

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		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
230	54R0020	Casualty Insurance Premium Distribution Modification			(183)		(183)	(2,445)	(2,628)	230
231	<b>Total</b>	<b>CAPITAL COLLATERAL REGIONAL COUNSELS)</b>	<b>93.00</b>	<b>5,980,598</b>	<b>10,463,735</b>	<b>75,866</b>	<b>10,539,601</b>	<b>942,950</b>	<b>11,482,551</b>	231
232										232
233		<b>CRIMINAL CONFLICT AND CIVIL REGIONAL COUNSEL</b>								233
234	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>501.75</b>	<b>29,245,041</b>	<b>52,653,054</b>		<b>52,653,054</b>	<b>571,648</b>	<b>53,224,702</b>	234
235	2000100	Realignment of Administrative Expenditures - Add			197,449		197,449	135,980	333,429	235
236	2000200	Realignment of Administrative Expenditures - Deduct			(197,449)		(197,449)	(135,980)	(333,429)	236
237	2301900	Building Rental for Privately Owned Office Space			106,560		106,560		106,560	237
238	3001340	Operational Support for the Regional Conflict Counsels	3.00	135,000	702		702		702	238
239	3001360	Criminal Conflict and Civil Regional Counsel Workload			250,000		250,000		250,000	239
240	3005190	Forensic Social Workers for Dependency Court			250,000		250,000		250,000	240
241	4201760	Swipe Card Access for Building Security			-	8,541	8,541		8,541	241
242	4204020	Florida Bar Dues			23,000		23,000		23,000	242
243	5005020	Cross Jurisdictional Death Penalty Program	7.00	307,500	1,000,000		1,000,000		1,000,000	243
244	51R0100	Increase Current Authorized Rate		150,000	-				-	244
245	54R0010	Casualty Insurance Premium Readjustment			20,878		20,878		20,878	245
246	54R0020	Casualty Insurance Premium Distribution Modification			(5,701)		(5,701)		(5,701)	246
247	<b>Total</b>	<b>CRIMINAL CONFLICT AND CIVIL REGIONAL COUNSEL</b>	<b>511.75</b>	<b>29,837,541</b>	<b>54,298,493</b>	<b>8,541</b>	<b>54,307,034</b>	<b>571,648</b>	<b>54,878,682</b>	247
248										248
249		<b>STATE COURT SYSTEM</b>								249
250	<b>1100001</b>	<b>Startup (OPERATING)</b>	<b>4,314.00</b>	<b>325,700,368</b>	<b>462,353,357</b>		<b>462,353,357</b>	<b>94,288,735</b>	<b>556,642,092</b>	250
251	1600590	Distribution of Fiscal Year 2019-20 Judicial Branch Pay Increase		8,875,276	9,790,235		9,790,235	515,736	10,305,971	251
252	1604240	Approved Budget Amendment			57,355		57,355		57,355	252
253	1604250	Approved Budget Amendment			(57,355)		(57,355)		(57,355)	253
254	3000135	Problem Solving Courts Funding	2.00	125,918	300,662		300,662	7,880	308,542	254
255	3003050	Family Court Operational Support	2.00	147,795	309,566		309,566	7,880	317,446	255
256	3009310	Certification of Additional Judgeships	15.00	1,293,701	2,103,780		2,103,780	35,310	2,139,090	256
257	3306000	Reduce Excess Budget Authority			-			(352,378)	(352,378)	257
258	36315C0	Judicial Data Management			-			448,696	448,696	258
259	4600620	Appellate Judiciary Travel			125,000		125,000		125,000	259
260	5200400	Timely Resolution of Cases	64.00	2,880,601	4,721,353		4,721,353	328,716	5,050,069	260
261	5303100	Court Interpreting Resources	37.50	1,986,998	4,600,961		4,600,961	404,395	5,005,356	261
262	54R0010	Casualty Insurance Premium Readjustment			(379,950)		(379,950)		(379,950)	262
263	54R0020	Casualty Insurance Premium Distribution Modification			476,440		476,440		476,440	263
264	5402000	Courthouse Furnishings - Nonpublic Areas			-			297,313	297,313	264

## Appropriations Subcommittee on Criminal and Civil Justice Proposed Budget

		Agency / Department	CHAIRMAN'S PROPOSAL							
Row #	Issue Code	Issue Title	FTE	Rate	Rec GR	NR GR	Total GR	Trust Funds	All Funds	Row #
265	5500020	Fort Lauderdale Community Court (Senate Form 1292)			-			136,387	136,387	265
266	5500030	Union County Courthouse and Jail (Senate Form 2430) (See Line 270)			-			125,000	125,000	266
267	5500050	Juvenile Drug Court (Senate Form 1954)			-			260,000	260,000	267
268	6800000	Appellate Court Security			503,678		503,678	12,461	516,139	268
269	080073	<i>Second District Court of Appeal New Courthouse Constructions - Dms Mgd</i>			-	20,000,000	20,000,000		20,000,000	269
270	140700	Union County Courthouse and Jail (Senate Form 2430) (See Line 265)			-			275,000	275,000	270
271	140700	<i>Nassau County Courthouse Annex Completion Project (Senate Form 1680)</i>			-			250,000	250,000	271
272	140700	<i>Taylor County Courthouse Improvements(Senate Form 1457)</i>			-			250,000	250,000	272
273	140708	<i>Improvements - Liberty County Courthouse(Senate Form 1451)</i>			-			250,000	250,000	273
274	<b>Total</b>	<b>STATE COURT SYSTEM</b>	<b>4,434.50</b>	<b>341,010,657</b>	<b>484,905,082</b>	<b>20,000,000</b>	<b>504,905,082</b>	<b>97,541,131</b>	<b>602,446,213</b>	274

# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 1/29/2020 9:02:38 AM

Ends: 1/29/2020 9:37:53 AM

Length: 00:35:16

9:02:45 AM Sen. Brandes (Chair)  
9:03:19 AM Tab 3 - Review and Discussion of Fiscal Year 2020-2021 Subcommittee Budget Proposal  
9:03:24 AM PK Jameson, Staff Director, Appropriations Subcommittee on Criminal and Civil Justice  
9:03:56 AM Sen. Brandes  
9:04:14 AM Sen. Bracy (Chair)  
9:04:39 AM S 556  
9:04:49 AM Sen. Brandes  
9:06:42 AM Am. 544822  
9:06:47 AM Sen. Brandes  
9:08:28 AM S 556 (cont.)  
9:08:37 AM Sen. Harrell  
9:08:58 AM Sen. Brandes  
9:10:27 AM Sen. Harrell  
9:11:21 AM Sen. Brandes  
9:12:02 AM Sen. Harrell  
9:12:07 AM Sen. Brandes  
9:12:13 AM Sen. Gainer  
9:12:42 AM Sen. Brandes  
9:13:09 AM Ida Eskamani, Public Policy, Organize Florida (waives in support)  
9:13:19 AM Brenda Spitzbarth, Retired, Citizen (waives in support)  
9:13:26 AM Robert Weissert, EVP and General Counsel, Florida Tax Watch (waives in support)  
9:13:35 AM Diego Echeverri, Legislative Liaison, Americans for Prosperity (waives in support)  
9:13:43 AM Sen. Rouson  
9:15:29 AM S 574  
9:15:36 AM Sen. Brandes  
9:16:36 AM Am. 937440  
9:16:42 AM Sen. Brandes  
9:19:13 AM Sen. Harrell  
9:20:20 AM Sen. Brandes  
9:23:18 AM Sen. Harrell  
9:24:09 AM Sen. Brandes  
9:25:22 AM Sen. Harrell  
9:25:47 AM Sen. Brandes  
9:25:56 AM Sen. Gainer  
9:26:15 AM Sen. Brandes  
9:26:23 AM Ryan Cox, Analyst, Senate Criminal Justice Committee  
9:26:55 AM Sen. Gainer  
9:27:02 AM R. Cox  
9:27:21 AM Sen. Brandes  
9:27:28 AM Sen. Gainer  
9:27:28 AM Sen. Brandes  
9:27:33 AM Sen. Gainer  
9:27:51 AM Sen. Brandes  
9:28:13 AM Sen. Gainer  
9:28:24 AM Sen. Brandes  
9:29:50 AM Diego Echeverri, Legislative Liaison, Americans for Prosperity (waives in support)  
9:29:58 AM Robert Weissert, EVP and General Counsel, Florida Tax Watch  
9:30:49 AM Brenda Spitzbarth, Retired, Citizen (waives in support)  
9:30:59 AM Ida Eskamani, Public Policy, Organize Florida (waives in support)  
9:31:03 AM Nancy Daniels, Legislative Consultant, Florida Public Defender Association (waives in support)  
9:31:14 AM Sen. Harrell  
9:33:01 AM Sen. Brandes

**9:34:23 AM** Sen. Brandes (Chair)  
**9:34:28 AM** Bill Cervone, State Attorney, Florida Prosecuting Attorneys Association  
**9:35:35 AM** Sen. Brandes  
**9:36:22 AM** B. Cervone  
**9:36:28 AM** Sen. Rouson  
**9:37:42 AM** Sen. Brandes  
**9:37:46 AM** Sen. Gainer