

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SPB 7020

INTRODUCER: Criminal Justice Committee

SUBJECT: Corrections

DATE: February 18, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		CJ Submitted as Committee Bill

I. Summary:

SPB 7020 is a bill with a wide variety of changes to the laws affecting the corrections system. Specifically, SPB 7020:

- Revises the method of appointment for the Secretary of Corrections for appointments made on or after July 1, 2015;
- Creates the Florida Corrections Commission to oversee the safe and effective operations of major correctional institutions;
- Requires the Criminal Justice Estimating Conference to project prison admissions for elderly felony offenders;
- Expands the Department of Correction's (department/DOC) security review inspection process to include safety considerations, the identification of blind spots, and the use of audio and video monitoring;
- Requires priority be given to inspecting those institutions with high incidents of use of force on inmates, assaults on employees, and sexual abuse of inmates;
- Expands the ability of an inmate to get a one-time award of gain-time for educational attainment without violating the requirement for every inmate to serve 85 percent of their court imposed sentence;
- Requires a Memorandum of Understanding between the Florida Department of Law Enforcement (FDLE) and DOC regarding external investigations of inmate deaths be written and requires notification to the Legislature;
- Requires inspector generals to have specialized training in sexual abuse investigations in conformity with the Prison Rape Elimination Act;
- Requires multiple internal ways for inmates to file a grievance; requires the Correctional Medical Authority (CMA) and DOC to review grievance procedures at each institution; and requires both entities to post their findings on their websites;
- Requires all correctional officer training programs to include specialized training for managing mentally ill inmates;
- Specifies that health care providers shall use an employee identification number in lieu of a name and signature when completing incident reports;

- Requires that each institution create and maintain a system to track the use of force incidents;
- Requires use of force reports written by employees to be under oath;
- Provides that an employee with two or more notations of inappropriate use of force incidents in their file not be assigned to transitional care, crisis stabilization, or mental health treatment facilities and also provides exceptions for extended good behavior;
- Includes private health care providers and employees of private correctional facilities to the list of persons who can be charged for a misdemeanor or felony for committing with malicious intent a battery or inflicting cruel or inhuman treatment by neglect;
- Creates a new third degree felony for DOC employees or employees of a private provider who willfully or by culpable negligence neglect an elderly or disabled inmate;
- Creates a new second degree felony for DOC employees or employees of a private provider who willfully or by culpable negligence neglect an inmate and in so doing causes great bodily harm;
- Authorizes DOC employees or employees of a private provider who witness abuse or neglect to anonymously report directly to the inspector general's office;
- Requires the correctional officer training program to include instruction on communication techniques to avoid the use of force;
- Requires the department to establish a policy to protect from retaliation inmates and employees who report abuse or cooperate with investigations;
- Establishes a usage and inventory policy to track the use of chemical agents and the disposal of expired, used, or damaged canisters;
- Requires the department to collect and report inmate health cost information for elderly inmates;
- Provides legislative intent related to veterans programs in state and private correctional institutions and requires the department to measure recidivism rates for veterans who participate in programs;
- Recreates the inmate welfare trust fund¹ for department operated institutions, caps the new trust fund at \$5 million, allows the funds to be used for education, chapels, visitation, libraries, wellness, televisions, and other expenditures and prohibits the fund from being used to purchase weight-training equipment;
- Requires correctional officers who have close contact with inmates housed in a mental health treatment facility to complete annual training in crisis intervention;
- Increases the frequency from every three years to every 18 months the mental and physical health care surveys conducted by the Correctional Medical Authority;
- Provides for damages in inmate health care contracts;
- Requires the department, in establishing minimum health care standards, to establish standards of care criteria for the needs of inmates over age 50;
- Allows for an inmate's family, lawyer, and other interested parties to hire and pay for an independent medical evaluation; and
- Expands the existing conditional medical release program to include elderly and infirm inmates which would allow the Commission on Offender Review to consider the release of elderly and infirm inmates.

¹ Contingent upon the passage of SB 540 by Senator Evers relating to State Operated Institutions Inmate Welfare Trust Fund.

II. Present Situation:

The Florida Corrections Commission and Appointment of the Secretary

The Florida Corrections Commission was established in Ch. 94-117, L.O.F., and was abolished in 2006. The commission consisted of nine members appointed by the Governor subject to confirmation by the Senate. The primary functions of the Corrections Commission was to:

- Recommend major correctional policies and assure that approved policies and revisions are properly executed;
- Review community-based intermediate sanctions and recommend intergovernmental approaches;
- Provide a status of elderly offenders, evaluate the annual Department of Corrections' legislative budget request, the comprehensive correctional master plan, and the tentative construction program;
- Monitor the financial status of the department; and
- Regularly evaluate the efficiency, productivity, and management of the department.

The head of the Department of Corrections is the Secretary of Corrections. The Secretary is appointed by the Governor, subject to confirmation by the Senate and shall serve at the pleasure of the Governor.² On January 5, 2015, Secretary Julie Jones was appointed by Governor Rick Scott to be Secretary of the Florida Department of Corrections.

Criminal Justice Estimating Conference

Consensus Estimating Conferences have statutory authority under ss. 216.133 – 216.138, F.S., to forecast economic, demographic, caseload, and revenue information for a variety of governmental planning and budgeting functions. This ensures that the “State meets the constitutional balanced budget requirement.”³ The forecasts are “primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor’s budget recommendations and General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.”⁴

Specifically, the Criminal Justice Estimating Conference is statutorily tasked under s. 216.136(6), F.S., with developing forecasts of prison admissions and population and of supervised felony offender admissions and population; developing information relating to the number of eligible discharges and the projected number of civil commitments for determining needs for space; and developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

Security Audits of Correctional Facilities

The 1995 escape of six inmates from Glades Correctional Institute in Belle Glade resulted in the passage of legislation creating a security review committee to help to ensure public safety and

² Section 20.315, F.S.

³ <http://edr.state.fl.us/Content/conferences/index.cfm>

⁴ Id.

contain violent and chronic offenders at correctional institutions and facilities.⁵ In addition, \$6.2 million was provided for 197 positions to help increase the relief factor and 4.7 million for 180 security staffing positions focusing in the areas of inmate movement, emergency response, searches, and confinement escort.⁶

The committee members are appointed by the Secretary and are composed of, at a minimum, the inspector general, the statewide security coordinator, the regional security coordinators, three wardens, and one correctional officer.

The committee:

- Establishes a periodic schedule for the physical inspection of buildings and structures;
- Conducts or causes to be conducted announced and unannounced comprehensive security audits;
- Adopts and enforces minimum security standards and policies;
- Annually makes written prioritized budget recommendations to the secretary that identify critical security deficiencies at major correctional institutions;
- Investigates and evaluates the usefulness and dependability of existing security technology at the institutions and new technology available and makes periodic written recommendations to the secretary on the discontinuation or purchase of various security devices;
- Contracts, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts; and
- Establishes a periodic schedule for conducting announced and unannounced escape simulation drills.

Education Gain-Time

Gain-time⁷

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department's assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time during the portion of time that the mandatory sentences are in effect.

Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs.

⁵ Section 944.151, F.S.

⁶ Florida Department of Corrections Timeline, available at <http://www.dc.state.fl.us/oth/timeline/1992-1995b.html> (last visited January 29, 2015).

⁷ Information in this section of the analysis is derived from "Frequently Asked Questions Regarding Gaintime," <http://www.dc.state.fl.us/oth/inmates/gaintime.html#1>, viewed on January 28, 2015. Additional information regarding the history of Florida's sentencing laws and policies can be found in "Historical Summary of Sentencing and Policy in Florida," <http://www.dc.state.fl.us/pub/history/>, viewed on January 28, 2015.

Meritorious gain-time may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

Educational Achievement gain-time in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Department of Corrections Inspector General and Memorandum of Understanding with FDLE

In 2002, legislation passed requiring the department to maintain a Memorandum of Understanding with FDLE for the notification and investigation of mutually agreed-upon predicate events. The memorandum must include, but is not limited to, reporting and investigation of suspicious deaths and major organized criminal activity.⁸ This practice had been in place previous to this legislation but had not been codified in statute.⁹

Inmate Grievance Procedure and Prison Rape Elimination Act

The department is required to establish by rule an inmate grievance procedure that conforms to the Minimum Standards for Inmate Grievance Procedures as promulgated by the U.S. Department of Justice. This procedure is overseen by the department's Office of General Counsel. According to the department, the purpose for the procedure is to "provide inmates with a channel for the administrative settlement of a legitimate complaint."¹⁰

The Prison Rape Elimination Act of 2003 (PREA) was created to eliminate sexual abuse in confinement facilities including adult prisons and jails, lockup, community confinement facilities, and juvenile facilities. PREA consists of 43 standards defining three goals: to prevent; detect; and respond to sexual abuse.

The department established a zero-tolerance policy for all forms of sexual abuse, sexual battery, and sexual harassment. The policy governs inmates, staff members, contractors, and volunteers. The department has two PREA coordinators to help in developing, implementing, and monitoring compliance with the standards.¹¹

Increase in Use of Force

In October 2014, a significant increase in the use-of-force cases in Florida correctional facilities prompted Secretary Crews (Secretary Crews resigned in November 2014) to order an independent audit of the agency's procedures and policies involving the use of force against

⁸ Ch. 2002.75 L.O.F.

⁹ See Senate Staff Analysis CS/SB 408, January 29, 2002.

¹⁰ Section 944.331, F.S.

¹¹ See Florida Department of Corrections, Prison Elimination Act <http://www.dc.state.fl.us/oth/PREA/> (last visited January 28, 2015).

inmates. There were 7,300 use of force cases by Florida correctional officers in the last fiscal year. This number has “roughly doubled since 2008.”¹²

Section 944.35, F.S., authorizes employees of the department to apply physical force upon an inmate only when and to the extent that it reasonably appears necessary:

- To defend himself or herself or another against such other imminent use of unlawful force;
- To prevent a person from escaping;
- To prevent damage to property;
- To quell a disturbance;
- To overcome physical resistance to a lawful command; or
- To administer medical treatment only by or under the supervision of a physician.

The Criminal Justice Standards and Training Commission (CJSTC) is required to develop a course designed to explain and teach the parameters of the proper methods and techniques in applying authorized force.

Prior to any authorized use of force, Rule 33-602.210, F.A.C., requires the shift supervisor to review the Risk Assessment Form for Use of Chemical Restrain Agents and Electronic Immobilization Devices to determine whether the inmate has a medical condition that may exacerbate the intended force.

Criminal Justice Standards and Training Commission Advanced Training Program

In 2006, the CJSTC adopted in its Advanced Training Program a course entitled Managing and Communicating with Inmates and Offenders. It is a 40-hour course intended for law enforcement officers, corrections officers, and correctional probation officers. Officers completing this course may be eligible for a salary incentive under s. 943.22, F.S. Attendance in this course is voluntary. The goal of the course is to identify managing and communication skills relating to officer safety when dealing with offenders and inmates who have mental illness, substance abuse, and co-occurring disorders and where such skills may increase the safety and security of a well-run facility. This course describes many of the different types of disorders an officer may encounter and provides various methods and techniques for de-escalation; and inmate/offender management.

The Correctional Basic Recruit Training Program provides a lesson on communications and a separate lesson on inmates with mental illness. Neither lesson meets the intent of s. 944.35, F.S., as amended in this bill.¹³

Criminal Penalties and Employee Misconduct

Employees of the department who, with malicious intent, commit a battery on an inmate supervised by the department, commits a first degree misdemeanor. Employees who, with malicious intent, commit a battery or inflict cruel or inhuman treatment by neglect causing great

¹² “Florida prison boss orders use-of-force audit” Miami Herald, 10/17/2014. <http://www.miamiherald.com/news/special-reports/florida-prisons/article2925586.html>

¹³ 2015 FDLE Legislative Bill Analysis

bodily harm, permanent disability, or permanent disfigurement to an inmate commits a third degree felony.¹⁴

Abuse and Neglect of an Elderly Person or Disabled Adult; penalties

Section 825.102, F.S., provides in part that a person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the first degree. A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, commits a felony of the second degree. A person who willfully or by culpable negligence neglects and elderly or disabled adult without causing great bodily harm commits a third degree felony.

Elderly Offenders

Section 944.8041, F.S., requires the department and the Correctional Medical Authority to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems and the geriatric facilities and dorms. The report must also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States. Inmates age 50 and older are classified as “aging or elderly” under the Florida Administrative Code.¹⁵

The department reported that the number of elderly inmates in state prison has steadily increased from 11,178 on June 30, 2006, to 20,753 on June 30, 2014, with an expectation of a continued increase over the next decade.¹⁶

The Correctional Medical Authority’s 2013-2014 Report on Elderly Offenders reported the following findings and recommendations concerning elderly offenders:

The CMA’s report on the status of elderly offenders continues to show that older inmates have more health problems and generally consume more health care services than younger inmates. The demands of caring for the elderly continue to have an impact on corrections’ health care costs. According to The National Institute of Corrections, the overall cost of incarceration for inmates over 50 is as much as three times higher than for the younger population mostly due to the difference in health care costs.¹⁷ Across the country the impact of rising health care costs, especially for elderly inmates, is similar to the impact in Florida.

Florida’s elderly prison population has increased almost 5 percent over the last 5 years and is expected to gain over 6,000 inmates by the end of the next fiscal year. Considering the trend of increasing elderly inmate populations and health care costs, the CMA supports medical passes and special accommodations (e.g., low bunks, special shoes, wheelchairs, etc.) provided to older inmates housed in DOC’s general population. DOC policies ensuring periodic screenings, regularly scheduled clinic

¹⁴ Section 944.35(3)(a), F.S.

¹⁵ R. 33-601-217, F.A.C.

¹⁶ <http://www.dc.state.fl.us/pub/annual/1314/ar-additional-facts-elderly.html>

¹⁷ Florida TaxWatch Research Institute, Inc. (2014) Florida’s Aging Prisoner Problem (September 2014).

visits, and the establishment of specific facilities for elderly inmates in need of a higher level of care improves the health of elderly inmates. Improved health status within the aging population will serve as a positive cost-containment measure.

It is recommended that DOC continue to examine and consider the needs of inmates over 50 when establishing standards of care criteria for the private health care providers. Additionally, reporting of detailed health care costs for aging inmates would be beneficial for analysis of projected needs to adequately care for the elderly population in the coming years.

Elderly Inmates in prison on June 30, 2014

- The majority of elderly inmates in prison on June 30, 2014, were serving time for sex offenses (21.6%), murder/manslaughter (20.8%), or drug offenses (12.9%).
- The 20,753 elderly inmates in prison on June 30, 2014, represented 20.6% of the total inmate population.
- 94.6% of the elderly inmates in prison were male; 5.4% were female.
- 46.2% of the elderly inmates in prison had no prior prison commitments.
- On June 30, 2014, the department housed three inmates whose age was 92.

Most of the elderly inmates are housed separately from the general population for purposes of reducing the potential for predatory and abusive behavior by younger, more aggressive inmates and to promote efficient use of medical resources. There are three centers currently housing elderly inmates:

- Reception and Medical Center on-site in Lake Butler
- South Unit of the Central Florida Reception Center
- Zephyrhills Correctional Institution

Health Care Costs for Elderly Inmates

Florida TaxWatch in September 2014 reported¹⁸ that the department budget had grown by \$560 million (35 percent) from 2000-2012. The health care cost had grown by \$176 million or 76 percent. The report states that the elderly patients accounted for 49 percent of all hospital in days in 2012. By assuming that hospitalization is a representation of overall prison health care costs, the report states the elderly prison population is responsible for approximately half of the \$408 million in prisoner healthcare costs in 2012.

In addition, the Pew Center on Research estimated that the cost of managing elderly prisoners is \$70,000 annually which yields a per diem of \$192 compared to the average healthcare cost of \$10.96.¹⁹

¹⁸ "Florida's Aging Prisoner Problem," Florida TaxWatch, September 2014.

¹⁹ Florida Department of Corrections 2013-2014 Annual Report, Elderly Inmates at <http://www.dc.state.fl.us/pub/annual/1314/ar-additional-facts-elderly.html>

Veterans Programs in Correctional Facilities

In 2012, the department established Veteran’s Dormitories at Santa Rosa, Gulf, Martin, Sumter, and Lowell Correctional Institutions that can house around a total of 400 inmates. These dormitories provide inmates the opportunity to participate in specialized pre-release services including cognitive thinking training, Post-Traumatic Stress Disorder (PTSD) counseling, improved access to Veteran’s Affairs Benefits, and strict military standards.²⁰

Inmate Welfare Trust Fund and Revenue Received from Canteen Sales

For many years prior to 2003, s. 945.215, F.S., created a trust fund that allowed the department to use revenue from the purchase of inmate canteen items and from inmate telephone calls to fund chapels, education, and wellness programs at publically operated correctional facilities. The source of the revenue was from family and friends of the inmate. Chapter 2003-179, L.O.F., eliminated the trust fund and required the revenue from inmate canteens and telephone usage among other revenue generators to go directly into the General Revenue Fund. When s. 945.215, F.S., was amended to eliminate the Inmate Welfare Trust Fund for state operated correctional facilities, the Inmate Welfare Trust Fund for privately operated facilities was maintained in the law. Consequently, under current law, revenue from the purchase of canteen items and from telephone usage is deposited into General Revenue and not earmarked for inmate welfare or betterment programs.

According to a January 15, 2015, Auditor General audit²¹ of the department’s canteen operations, from July 2012 through February 2014 sales in department institution canteens totaled approximately \$133.31 million and catalog sales totaled \$868,474. The department received MP3 program commissions from Keefe totaling approximately \$940,412 relating to MP3 program sales totaling approximately \$5.99 million.

Below is a chart from the department showing revenues collected from inmate canteen purchases, medical co-pays, and inmate telephone usage from FY 2009-10 through FY 2013-14.

REVENUE COLLECTION SUMMARY						
FY 2009-10 – FY 2013-14						
Description	Authorizing Statute	Fiscal Year 2009-10	Fiscal Year 2010-11	Fiscal Year 2011-12	Fiscal Year 2012-13	Fiscal Year 2013-14
General Revenue Unallocated (GRU) Collections:						
Subsistence	s. 944.485 FS	\$ 5,686,726	\$ 6,748,740	\$ 7,712,150	\$ 8,035,040	\$ 8,092,206
Interest Income – ITF	s. 944.516(1)(f) FS	258,423	230,677	204,227	204,368	103,669
ITF Balances <\$1.00	s. 944.516(5) FS	1,367	1,194	1,219	1,197	1,211
Canteen Commissions	s. 945.215(1)(a) FS	31,382,837	31,162,387	30,970,697	30,907,621	31,027,325
Vending Commissions	s. 945.215(1)(e) FS	250,234	343,096	357,371	369,591	212,345
Telephone Commissions	s. 945.215(1)(b) FS	5,294,749	5,205,804	5,156,269	5,334,549	6,142,399
Medical Copay	s. 945.6037 FS	740,231	737,410	713,823	661,604	673,325
Inmate Bank-GR		\$43,614,567	\$44,429,308	\$45,115,756	\$45,513,970	\$46,252,480

²⁰ Florida Department of Corrections Opens Five Veteran’s Dormitories, November 9, 2011 at <http://www.dc.state.fl.us/secretary/press/2011/11-09VetDorms.html> (last visited January 29, 2015).

²¹ Report No. 2015-087, January 2015, “Department of Corrections Canteen Operations and Prior Audit Follow-up.”

Rights of Inmates Provided Mental Health Treatment

The Corrections Mental Health Act (ss. 945.40 through 945.49, F.S.) provides for the evaluation and appropriate treatment of mentally ill inmates who are in the department's custody. It establishes procedures that must be followed when an inmate is involuntarily placed into a hospital setting for the purpose of mental health treatment.

Section 945.48, F.S., provides that an inmate in a mental health treatment facility has the right to receive treatment that is suited to his or her needs and that is provided in a humane psychological environment. The inmate provided psychiatric treatment shall be asked to give express and informed written consent for the treatment. In addition, there are specific procedures for involuntary treatment of inmates and when and how hearings on involuntary treatment must be conducted.

Correctional Medical Authority

The Correctional Medical Authority (CMA) was created in July 1986, while the state's prison healthcare system was under the jurisdiction of the federal court as a result of litigation that began in 1972. *Costello v. Wainwright* (430 U.S. 57 (1977)) was a class action suit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The CMA was created as part of the settlement of that case and continues to serve as an independent monitoring body providing oversight of the systems in place to provide health care to inmates in the Department of Corrections. In the final order closing the *Costello* case, Judge Susan Black noted that the creation of the CMA made it possible for the Federal Court to relinquish the prison monitoring and oversight function it had performed for the prior twenty years. In light of "Florida's affirmation of its continued commitment to the CMA's independence" and the support from the Defendant and the State of Florida, the court found that the CMA was capable of "performing an oversight and monitoring function over the department in order to assure continued compliance with the orders entered in this case."²²

In December 2001, DOC entered into a settlement agreement in a lawsuit (*Osterback v. Crosby*, 16 Fla. Weekly Fed. D 513 (N.D. Fla. 2003)) involving mentally ill inmates housed in close management (CM). The purpose of close management is to confine inmates separate from the general inmate population for reasons of security and for the order and effective management of the prison system. The *Osterback* agreement included a stipulation that the CMA monitor provisions of the agreement including clinical, administrative, and security components of the program designed to ensure effective treatment of mental illness in the CM population. The CMA completed its special monitoring responsibilities pending the outcome of the federal court's hearing of the case. The department completed and complied with each component of the CM corrective action plan process. The court entered a final judgment ruling in favor of the department and the case was closed on March 28, 2008. Facilities with CM are now monitored as part of the regular CMA survey process. In the 2011 Legislative Session, the CMA lost its funding. Governor Rick Scott vetoed a conforming bill which would have eliminated the CMA

²² State of Florida, Correctional Medical Authority 2012-2013 Annual Report and Report on Aging Inmates
http://www.flgov.com/wp-content/uploads/pdfs/correctional_medical_authority_2012-2013_annual_report.pdf

from statute. In the 2012 Legislative Session, the Governor requested funding be restored. The Legislature concurred and funding was provided effective July 1, 2012. Osterback, along with the multitude of lawsuits related to the provision of correctional health care, serve as reminders of the CMA's important role in ensuring proper health and mental health care is provided to incarcerated members of society.²³

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but they are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.²⁴

Prior to July 1, 2011, the CMA was housed within the Department of Health (DOH) for administrative purposes. During the 2011 Legislative Session two bills designed to abolish the CMA passed both chambers and were sent to the Governor for approval, Ch. 2011-69, L.O.F., (the 2011 General Appropriations Act), which eliminated the funding and positions related to the authority, and HB 5305 which repealed the statutes related to the CMA. The Governor vetoed HB 5305, but not the General Appropriations Act, therefore the CMA did not have the funding to operate or perform its duties for the 2011-2012 fiscal year.

The CMA was funded again in 2012 as an independent state agency housed within the administrative structure of the Executive Office of the Governor.

Conditional Medical Release and Geriatric-Related Release Policies in Other States

In 1992, the Florida Legislature created the Conditional Medical Release Program (s. 947.149, F.S.) which is a discretionary release process allowing the Commission on Offender Review (Commission) to release inmates on supervision who are "terminally ill" or "permanently incapacitated" and who are not a danger to others. The department is charged with the responsibility of recommending to the Commission cases to be considered for conditional medical release. Upon release, the offender is subject to conditions of supervision set by the Commission. The Commission monitors the offender's progress through periodic medical reviews. The supervision can be revoked and the offender returned to prison if the Commission determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves. In FY 2013-14, the Commission granted eight of the 19 inmates recommended by the department for conditional medical release.

Under current law, Florida does not have a geriatric-based release policy as exists in many states. Of those states with geriatric-related release policies, one state considers inmates as young as 45 (Louisiana); 55 (Alabama); and 60 to 65 (Virginia, North Carolina, Colorado, Washington D.C., New Mexico, Maryland, Oklahoma, Wisconsin).²⁵ The federal system considers inmates for geriatric release at age 70.²⁶

²³ *Id.*

²⁴ *Id.*

²⁵ "It's About Time: Aging Prisoner, Increasing Cost, and Geriatric Release," April 2010, Vera Institute of Justice.

²⁶ "Florida's Aging Prisoner Problem," September 2014, Florida Taxwatch.

III. Effect of Proposed Changes:

Section 1 revises the method of appointment of the Secretary of Corrections to be appointed by the Governor with the concurrence of three members of the Cabinet for appointments made after July 1, 2015.

It creates the Florida Corrections Commission. The commission is administratively assigned to the department but will function independently. The primary purpose of the commission will be to ensure the safe and effective operations of prisons. The commission will consist of 9 members appointed by the governor and subject to confirmation by the Senate. The composition of the commission shall consist of a sheriff, state attorney, public defender, pastor, community leader, and a business leader. The primary duties of the Commission shall be to:

- Conduct investigations, including internal affairs investigations and criminal investigations;
- Inspect both public and private correctional facilities;
- Identify and monitor high-risk facilities;
- Monitor the violence in the prisons and the introduction of contraband;
- Submit an annual report to the Governor and the Legislature;
- Develop budgetary, legislative, and operational recommendations for improvements to our correctional system;
- Review the annual LBR from the department and make recommendations and comments on the budgetary requests;
- Convene public hearings, with the commission able to issue subpoenas and take sworn testimony;
- Conduct confidential interviews with employees, inmates, contract providers, volunteers, and citizens relating to the operations and conditions of the prisons; and
- Develop and implement a set of standards and performance measures to establish and track an accountability system for each prison.

The Commission is prohibited from entering into the day-to-day operations, but may conduct investigations. It shall meet at least 6 times per year and the meetings shall be held at correctional facilities. The Commission may appoint an executive director.

Section 2 provides that the amendments made by this act to s. 20.315(3), F.S., do not apply to a Secretary of Corrections appointed before July 1, 2015. Secretary Julie Jones was appointed on January 5, 2015.

Section 3 amends s. 216.136, F.S., to require the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders.

Section 4 amends s. 944.151, F.S., to amend the legislative intent to include “safety” as part of the department’s responsibilities in operating the correctional institutions and facilities. It requires that the department ensure the safety of department employees and offenders. It also includes institutions with a high level of substantiated or unsubstantiated incidents of use of force on inmates, assaults on employees, or inmate sexual abuse as part of the department’s periodic physical inspections. In conducting announced and unannounced audits of all state and private correctional institutions, the bill requires that the evaluation include the identification of blind

spots or areas where staff or inmates may be isolated and the deployment of audio and video monitoring systems and other monitoring technologies in such areas.

Section 5 amends s. 944.275, F.S., to allow inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 days. If this bill becomes law, an inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development (GED) diploma or for earning a certificate for completion of a vocational program. Under current law, inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Section 6 amends s. 944.31, F.S., to require that memorandums of understanding (MOU) between the department and the Florida Department of Law Enforcement be in writing and that a copy of an active MOU be provided in a timely manner to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Under current law, MOU's are formed between the two agencies to, among other events, investigate suspicious deaths and organized criminal activity.

A new subsection (4) is created to require that the inspector general and inspectors who conduct sexual abuse investigations in confinement settings, shall receive specialized training in conducting the investigations. Specialized training shall include, techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution.

The Prison Rape Elimination Act (PREA) has set national standards for the prevention, detection, and response to sexual victimization. Each Department of Corrections' institution will be audited for compliance with the PREA standards. Failure to meet the PREA standards may result in the loss of federal grant funds. According to the department's legislative budget request for FY 2015-16, standard 115.34 requires all investigators to attend a specialized training to ensure sexual abuse investigations are conducted properly.

Section 7 amends s. 944.331, F.S., to require the department to provide multiple internal avenues for inmates to privately report sexual abuse and sexual harassment and any staff neglect of, or failure to perform, responsibilities which may have contributed to the incidents. The reports may be made in writing, anonymously, or by third parties.

The bill requires the department in consultation with the CMA to review inmate grievance procedures at each correctional institution and private correctional facility to determine the procedural soundness and effectiveness of the grievance process, to identify employees prone to misconduct, and to identify life-threatening inmate health and safety concerns.

Beginning October 1, 2015, the bill requires the department and the CMA to annually report their joint findings to their respective websites. The authority shall document findings on the:

- Effectiveness of inmate health care grievance procedures;
- Number of health care grievances filed by inmates, by institution and by region;
- Types of health care problems alleged by inmates; and

- Actions taken by the department or the authority as a result of its investigation of inmate health care grievances.

Section 8 amends s. 944.35, F.S., to require correctional officers to have specialized training in the effective, nonforceful management of mentally ill inmates who may exhibit erratic behavior.

The identity of the health care provider shall be designated by using an employee identification number in lieu of a name and signature when completing incident reports.

The bill requires that each institution create and maintain a system to track episodes involving the use of force to determine if inmates require subsequent physical or mental health treatment. By October 1 of each year, the department shall post on the agency website a report documenting incidents involving the use of force during the previous fiscal year. The report shall include, but not be limited to:

- Descriptive statistics on the reason force was used and whether the use of force was deemed appropriate;
- Multi-year statistics documenting annual trends in the use of force;
- Information on the level of inmate or officer injury, including death, in incidents involving the use of force;
- A breakdown, by institution, of statistics on use of force; and
- Statistics on the number of employees who were disciplined or terminated because of their involvement in incidents involving the inappropriate use of force, based on notations of such incidents in their personnel files.

The bill prohibits an employee with two or more notations in the employee's file related to inappropriate use of force to be assigned to transitional care, crisis stabilization, or corrections mental health treatment facility inmate housing units. An employee with two or more notations in the employees' file who remains free of inappropriate use of force incidents, for a significant time may be permitted to work in the transitional care, crisis stabilization, or corrections mental health treatment facility inmate housing units.

The bill clarifies that private health care providers and private correctional facilities along with any employee of the department can be prosecuted for committing certain misdemeanor or felony offenses by inflicting great bodily harm, permanent disability, or disfigurement to an inmate or an offender supervised by the department.

The bill defines "neglect of an inmate" as a failure or omission on the part of an employee of the department, private health care provider, or private correctional facility, to:

- Provide an inmate with the care, supervision, and services necessary to maintain the inmate's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the inmate; or
- Make a reasonable effort to protect an inmate from abuse, neglect, or exploitation by another person.

Determinations of neglect of an inmate may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury or risk of death.

The bill creates two new felony offenses; a third degree felony and a second degree felony. Employees of the department or private providers who willfully or by culpable negligence neglect an elderly or disabled inmate without causing great bodily harm could be prosecuted for a third degree felony, punishable by up to 5 years in state prison. Employees of the department or private providers who willfully or by culpable negligence neglect an inmate and cause great bodily harm could be prosecuted for a second degree felony, punishable by up to 15 years in state prison.

The bill requires that instruction on communication techniques related to crisis stabilization to avoid use of force be included in the correctional officer training program. It requires the department to establish a policy to protect inmates and employees from retaliation who report physical or sexual abuse. The policy shall establish multiple protective measures for both inmates and employees relating to the reporting of abuse as well as designate a method of monitoring follow up.

According to FDLE, its Advanced Training Program course: Managing and Communicating with Inmates and Offenders, will have to be revised to incorporate additional techniques using non-forceful ways or the least amount of force necessary to effectively manage mentally ill inmates who exhibit erratic behavior. FDLE states that an extensive revision in these areas will be required, which may result in an increase in hours for the Correctional Basic Recruit Training Program. The program is currently 420 hours.

The bill requires the department to establish a usage and inventory policy to track, by institution, the use of chemical agents and the disposal of expired, used, or damaged canisters of chemical agents.

Section 9 amends s. 944.8041, F.S., by requiring the department to report the cost of health care to elderly inmates in the annual report. The report shall include the average incarceration cost per year and the types of health care delivered which result in the highest expenditures.

Section 10 creates s. 944.805, F.S., relating to veterans' programs in state and private correctional institutions. The bill provides legislative intent for specialized programs for veterans to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and ease community reentry through availability of expanded community resources. It also provides legislative intent that veterans housed in state and private correctional institutions be provided special assistance before their release by identifying benefits and services available in the community where the veteran plans to reside.

The bill requires the department to measure recidivism rates for veterans who have participated in specialized dormitories and who have received special assistance in community reentry and include the data in the annual report.

Section 11 creates the State Operated Institutions Inmate Welfare Trust Fund contingent upon the passage of SB 540. The bill provides that the department hold this trust fund for the benefit and welfare of inmates incarcerated in correctional facilities operated directly by the department. The deposits shall not exceed \$5 million in any fiscal year. Deposits for purchases in excess of \$5 million shall be deposited into the General Revenue Fund.

The funds shall be used exclusively for correctional facilities operated by the department:

- To provide literacy programs, vocational training programs, and educational programs;
- To operate inmate chapels, faith-based programs, visiting pavilions, visiting services and programs, family services and programs, and libraries;
- To provide inmate substance abuse treatment programs and transition and life skills training programs;
- To provide for the purchase, rental, maintenance or repair of electronic or audio visual equipment used by inmates;
- To provide for the purchase, rental, maintenance or repair of recreation and wellness equipment; or
- To provide for the purchase, rental, maintenance, or repair of bicycles used by inmates traveling to and from employment in the work release program.

Funds in the State Operated Institutions Inmate Welfare Trust Fund shall be expended only pursuant to legislative appropriation. Finally, the bill requires the department to annually compile a report. Funds may not be used to purchase weight-training equipment.

Section 12 amends s. 945.48, F.S., to require annual training in crisis intervention for correctional officers who have close contact with inmates housed in a mental health facility. Correctional officers who have two or more notations involving use of force in their personnel files may not be assigned to transitional care, crisis stabilization, or corrections mental health treatment facility inmate housing units. However, an employee with two or more notations in the employee's file who remains free of inappropriate use of force incidents, for a significant period may be permitted to work in the transitional care, crisis stabilization, or corrections mental health treatment facility inmate housing units.

Section 13 amends s. 945.6031, F.S., to change the frequency of surveys of the physical and mental health care system at each institution from triennially to every 18 months.

Section 14 amends s. 945.6033, F.S., to require the department to only enter into health care contracts which contain damage provisions.

Section 15 amends s. 945.6034, F.S., to require the department to consider the needs of inmates over 50 years of age and adopt health care standards for that population.

Section 16 amends s. 945.6039, F.S., to require the department to promulgate rules for independent medical evaluations and examinations. The department shall permit an inmate's family member, lawyer, or interested party to hire and pay for an independent medical evaluation or examination by a medical professional of an incarcerated inmate. The results of the medical evaluation or examination shall be provided to the department and to the Commission on Offender Review. The purpose is to assist in the delivery of medical care to the inmate and to

assist the commission on Offender Review in considering an inmate for conditional medical release.

Section 17 amends s. 947.149, F.S., to expand the eligibility for the conditional medical release program to include elderly and infirm inmates. An “elderly and infirm inmate” is defined as an inmate who has no current or prior convictions for capital or first degree felonies, who has no current or prior convictions for sexual offenses or offenses against children, who is over 70 years of age, and who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate infirm or physically impaired to the extent that the inmate does not constitute a danger to himself or herself or others.

Sections 18, 19, and 20 amend s. 921.0021 and s. 921.221, F.S., by conforming cross-references to changes made by this act.

Sections 21, 22, and 23 reenact certain sections and makes conforming changes.

Section 24 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

Correctional Medical Authority

While no official estimates from the department, the Correctional Medical Authority, the Commission on Offender Review, or the Criminal Justice Estimating Conference were

available at the writing of this report, it is anticipated that the following sections of the bill will present the most likely fiscal impact:

Section(s) of the Bill	Issue	Estimated Fiscal Impact
1	Creates the Florida Corrections Commission	According to Criminal Justice Appropriations staff there will be a fiscal impact of \$970,000 recurring General Revenue for 6 FTE's and expenses
5	Expands use of education gain-time	Cost savings – The department projects average daily prison population to be reduced by 66 inmates over the course of the year
6	Requires specialized training for sexual abuse investigations by DOC inspectors	Need for indeterminate increase in funding for the department
8	Creates two new criminal penalties for neglect of inmates	Most likely insignificant prison bed impact
8	Requires the Criminal Justice Standards and Training Commission (within FDLE) to enhance the corrections basic recruit training program and revise the advance training program to avoid use of force on inmates and managing inmates who are mentally ill	According to FDLE, the additional workload may be absorbed within existing resources
11	Creates the inmates welfare trust fund for the department	Reduce by \$5 million funds deposited into GR, but will allow the department to fund \$5 million in inmate betterment programs
13	Increases the frequency of CMA surveys	Need for increase in funding and 6 additional FTEs to CMA
16	Allows inmate's family, lawyer or interested party to hire and pay for an independent medical evaluation	Additional workload by the department expected. Fiscal impact unknown
17	Expands the current conditional release program to include elderly and infirm inmates	Cost savings – has the potential to reduce average daily prison population slightly (97 inmates meet criteria). Additional workload by the Offender Review Commission may be able to be absorbed within existing resources

Education Gain-time

According to the preliminary projections by the department, approximately 650 inmates will immediately receive the one-time 60 day additional gain-time award for past educational attainments. It is estimated that approximately 60 of these inmates will be immediately released due to this award since this group is within 60 days of release. In

terms of future impact on prison bed space, the department estimates 24,000 fewer inmate-days saved per year as a result of this bill. In other words, the average daily prison population is projected to be reduced by 66 inmates over the course of the year.

Elderly and Infirm Inmates

The following table was provided by the department to show the medical grades for those elderly inmates in custody as of January 16, 2015.

“Elderly and Infirm” Inmates Over the Age of 70 who are Eligible²⁷ under the Bill to be Reviewed by the Commission and Possibly Released Under the Conditional Medical Release Program							
Age 70-plus	Current Medical Grade in the Department						
	Medical Grade Unknown	Routine care	Currently in Chronic Illness Clinic for six months	Currently in Chronic Illness Clinic for three months	Chronic Illness Clinic and Regular Health Contact	Long Term In-Patient Housing	Total Eligible Inmates as of 1-16-15
TOTAL	1	11	51	32	1	1	97

VI. Technical Deficiencies:

Section 1 of the bill providing that members of the commission include a sheriff, state attorney, and public defender violates Art. 2, s. 5 of the Florida Constitution which prohibits dual office holding. Staff recommends the following amendment to cure this defect in the bill: delete lines 222-223 and insert “greatest extent possible, include a deputy sheriff, assistant state attorney, assistant public defender, pastor or former prison chaplain, community”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.315, 216.136, 944.151, 944.275, 944.31, 944.331, 944.35, 944.8041, 945.215, 945.48, 945.6031, 945.6033, 945.6034, 947.149, 921.0021, 948.10, and 951.221.

This bill creates sections 944.805 and 945.6039 of the Florida Statutes.

²⁷ To be eligible for possible early release the 70-plus year old inmate must meet criminal history limitations in the bill (have no current or prior convictions for capital or first degree felonies and who has no current or prior convictions for sexual offenses or offenses against children).

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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