

Tab 1	SB 116 by Stewart; (Identical to H 00611) Motor Vehicle Racing					
Tab 2	CS/SB 128 by CF, Bean; (Similar to H 00179) Child Abuse					
877828	T	S	RCS	CJ, Bean	In title, delete L.14:	03/04 05:39 PM
Tab 3	SB 534 by Brandes; Pretrial Release					
Tab 4	SB 624 by Montford; (Similar to H 00755) Youth in Solitary Confinement					
366196	A	S	RS	CJ, Montford	Delete L.117:	03/04 05:39 PM
274848	SA	S	RCS	CJ, Montford	Delete L.104 - 201:	03/04 05:39 PM
569312	A	S	RS	CJ, Montford	Delete L.278 - 389:	03/04 05:39 PM
448502	SA	S	RCS	CJ, Montford	Delete L.263 - 487:	03/04 05:39 PM
Tab 5	SB 642 by Brandes (CO-INTRODUCERS) Gruters, Rouson, Perry, Broxson; (Similar to H 00705) Criminal Justice					
739966	A	S	RCS	CJ, Brandes	Delete L.185 - 225:	03/04 05:39 PM
615712	A	S	RCS	CJ, Brandes	Delete L.242 - 261:	03/04 05:39 PM
Tab 6	SB 766 by Gruters; (Similar to CS/H 00075) Expanded Uses of Unmanned Aircraft					
712380	D	S	RCS	CJ, Gruters	Delete everything after	03/04 05:39 PM
Tab 7	SB 782 by Simmons; (Identical to H 00887) Youthful Offenders					
Tab 8	SB 822 by Pizzo; (Identical to H 00113) Assault or Battery					
421210	A	S	RCS	CJ, Pizzo	Delete L.43:	03/04 05:39 PM
Tab 9	SB 828 by Rader; (Similar to CS/H 00599) Lewd or Lascivious Exhibition					
860444	A	S	RCS	CJ, Rader	Delete L.15 - 22:	03/04 05:39 PM
Tab 10	SB 966 by Perry; (Identical to H 06065) Juvenile Diversion Expungement					
Tab 11	SB 976 by Powell; (Similar to H 00841) Care for Retired Law Enforcement Dogs					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Monday, March 4, 2019

TIME: 1:00—3:00 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 116 Stewart (Identical H 611)	Motor Vehicle Racing; Increasing the criminal penalty for a third or subsequent violation related to motor vehicle racing within a specified period after the date of a prior violation that resulted in a conviction, etc. IS 02/19/2019 Favorable CJ 03/04/2019 Favorable JU RC	Favorable Yeas 5 Nays 0
2	CS/SB 128 Children, Families, and Elder Affairs / Bean (Similar H 179)	Child Abuse; Expanding the list of incidents or injuries that constitute harm to a child's health or welfare to include incidents or injuries resulting from violations of child restraint and seatbelt requirements; requiring the central abuse hotline to accept certain reports or calls for investigation for children who do not live in this state; expanding the types of reports that the Department of Health must refer to Child Protection Teams, etc. CF 02/19/2019 Fav/CS CJ 03/04/2019 Fav/CS IS AP	Fav/CS Yeas 3 Nays 2
3	SB 534 Brandes (Compare S 1334)	Pretrial Release; Authorizing each county to establish a supervised bond program with the concurrence of the chief judge of the judicial circuit, the county's chief correctional officer, the state attorney, and the public defender; authorizing the chief judge of each circuit, with the concurrence of the county's chief correctional officer, the state attorney, and the public defender, to enter an administrative order for the use of a risk assessment instrument in pretrial release determinations; providing that a court retains sole discretion to determine the appropriateness of pretrial release and any necessary pretrial release conditions, etc. CJ 03/04/2019 Temporarily Postponed ACJ AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 4, 2019, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 624 Montford (Similar H 755, Compare H 499, S 110)	Youth in Solitary Confinement; Prohibiting the Department of Corrections from placing a youth in solitary confinement except under certain circumstances; authorizing a youth to be placed in emergency confinement if certain conditions are met; requiring that, within a specified timeframe and at specified intervals, a mental health clinician conduct certain evaluations of a youth who is in emergency confinement, etc. CJ 03/04/2019 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 0
5	SB 642 Brandes (Similar H 705, Compare H 859, H 953, H 963, S 400, S 1334)	Criminal Justice; Citing this act as the Florida First Step Act; requiring that the court impose, for an offense relating to trafficking in certain substances, a sentence pursuant to the Criminal Punishment Code and without regard to any statutory minimum sentence if the court makes specified findings under certain circumstances; authorizing the Correctional Education Program to establish a Prison Entrepreneurship Program and adopt procedures for admitting student inmates; requiring a probation officer to determine whether a probationer or offender on community control who commits a technical violation is eligible for a certain alternative sanctioning program, etc. CJ 03/04/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
6	SB 766 Gruters (Similar CS/H 75, Compare H 1131, CS/S 132)	Expanded Uses of Unmanned Aircraft; Authorizing the use of drones by law enforcement agencies and other specified entities for specified purposes, etc. CJ 03/04/2019 Fav/CS IS RC	Fav/CS Yeas 4 Nays 1
7	SB 782 Simmons (Identical H 887)	Youthful Offenders; Revising the criteria allowing a court to sentence as a youthful offender a person who is found guilty of, or who pled nolo contendere or guilty to, committing a felony before the person turned 21 years of age, etc. CJ 03/04/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 4, 2019, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 822 Pizzo (Identical H 113)	Assault or Battery; Providing for reclassification of assault or battery offenses committed on certain persons when such persons are engaged in their lawful duties, etc. CJ 03/04/2019 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 0
9	SB 828 Rader (Similar CS/H 599)	Lewd or Lascivious Exhibition; Prohibiting certain lewd or lascivious acts in the presence of county or municipal correctional personnel; providing criminal penalties, etc. CJ 03/04/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
10	SB 966 Perry	Juvenile Diversion Expungement; Deleting a requirement that limits diversion program expunction to programs for misdemeanor offenses, etc. CJ 03/04/2019 Favorable JU RC	Favorable Yeas 5 Nays 0
11	SB 976 Powell (Similar H 841)	Care for Retired Law Enforcement Dogs; Creating the "Care for Retired Law Enforcement Dogs Program Act"; requiring the Department of Law Enforcement to contract with a corporation not for profit to administer and manage the program; providing requirements for the disbursement of funds for the veterinary care of eligible retired law enforcement dogs, etc. CJ 03/04/2019 Favorable AP	Favorable Yeas 5 Nays 0

Other Related Meeting Documents

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: SB 116

INTRODUCER: Senator Stewart

SUBJECT: Motor Vehicle Racing

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Favorable
2.	Storch	Jones	CJ	Favorable
3.			JU	
4.			RC	

I. Summary:

SB 116 increases the penalty from a first degree misdemeanor to a third degree felony for a third or subsequent violation of s. 316.191(2), F.S., which prohibits any form of participation in motor vehicle racing, if such violation occurs within 5 years of a prior violation of the statute.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill would result in a positive insignificant fiscal impact to prisons (i.e. an increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Motor vehicle racing is a professional and amateur automobile sport practiced throughout the world, which includes drag racing.¹ A drag race is an acceleration contest from a standing start between two vehicles over a measured distance.² Drag racing began in the California deserts, with the first organized event dating back to 1949.³ Legal drag races take place on monitored drag strips or racetracks.⁴

¹ Encyclopedia Britannica, *Automobile Racing*, available at <https://www.britannica.com/sports/automobile-racing> (last visited February 21, 2019).

² National Hot Rod Association, *NHRA 101*, available at <https://www.nhra.com/nhra-101> (last visited February 21, 2019).

³ PBS, *Drag Racing*, available at <http://www.pbs.org/opb/historydetectives/feature/drag-racing/> (last visited February 21, 2019).

⁴ Driving Line, *Drag Racing 101: Understanding the Basics of 1320 Racing*, (July 24, 2015), available at <https://www.drivingline.com/articles/drag-racing-101-understanding-the-basics-of-1320-racing/> (last visited February 21, 2019).

In contrast, illegal drag racing takes place on highways. Videos of such racing depict drivers either taking off from a rolling start or coming to a complete stop on the highway and then taking off. Specifically, in Broward County, dragsters make their way to “The Spot,” a stretch of highway US-27, to race their cars up to speeds of 140 mph or better. Racers use cameras with microphones and drones to get footage of the races to post to websites. The dangers of such racing is apparent from the videos – there is no concrete median separating the lanes and a flat tire or debris in the road could have fatal consequences.⁵

Drag racing encourages cars to reach unsafe speeds, which has prompted the adoption of laws regulating or prohibiting it. Specifically, s. 316.191(2), F.S., prohibits a person from doing any of the following:

- Driving any motor vehicle, including any motorcycle, in any race,⁶ speed competition or contest, drag race⁷ or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- Participating in, coordinating, facilitating, or collecting money at any location for any such race, competition, contest, test, or exhibition;
- Knowingly riding as a passenger in any such race, competition, contest, test, or exhibition; or
- Purposefully causing the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.⁸

Any person who violates s. 316.191(2), F.S., commits a first degree misdemeanor.⁹ However, additional fines and penalties increase for subsequent violations. For example:

- A first-time violation is punishable with a fine of not less than \$500 and not more than \$1,000, and a revocation of one’s driver’s license for 1 year.
- A second violation within 5 years of a prior violation is punishable with a fine of not less than \$1,000 and not more than \$3,000, and a revocation of one’s driver’s license for 2 years.

⁵ Jim DeFede, CBS Miami, *An Inside Look at Broward County’s Illegal Drag Racing*, (May 1, 2018), available at <https://miami.cbslocal.com/2018/05/01/broward-illegal-drag-racing/> (last visited February 21, 2019).

⁶ “Race” means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race. Section 316.191(1)(c), F.S.

⁷ “Drag race” means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit. Section 316.191(1)(b), F.S.

⁸ Section 316.191(2)(a)-(d), F.S. Section 316.191, F.S., does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes. Section 316.191(7), F.S.

⁹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year, a fine of \$1,000, or both. Sections 775.082 and 775.083, F.S.

- A third or subsequent violation within 5 years of a prior violation is punishable with a fine of not less than \$2,000 and not more than \$5,000, and a revocation of one's driver's license for 4 years.¹⁰

A law enforcement officer may immediately arrest a person who has engaged in a race.¹¹ Any motor vehicle that was used in unlawful racing may be impounded for 30 days, if the person who is arrested and taken into custody for such unlawful racing is the registered owner or co-owner of the vehicle.¹²

III. Effect of Proposed Changes:

The bill increases the penalty from a first degree misdemeanor to a third degree felony¹³ for a third or subsequent violation of s. 316.191(2), F.S., which prohibits any form of participation in motor vehicle racing, if such violation occurs within 5 years of a prior violation of the statute.

The bill is effective October 1, 2019.

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.

¹⁰ Section 316.191(3)(a)-(c), F.S. In all instances of a violation that results in the subsequent revocation of a person's driver's license, he or she may request a hearing pursuant to s. 322.271, F.S.

¹¹ Section 316.191(5), F.S.

¹² Section 316.191(5)(c), F.S.

¹³ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill would result in a positive insignificant fiscal impact to prisons (i.e. an increase in prison beds).¹⁴

There were a total of 764 violations of s. 316.191, F.S., in 2017.¹⁵ However, the Florida Department of Law Enforcement indicated that there were no arrests, convictions, or adjudications withheld for a third or subsequent violation of s. 316.191, F.S., during FY 2017-18.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.191 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

¹⁴ Information provided by EDR staff (on file with the Senate Criminal Justice Committee).

¹⁵ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, (Select 2017, all counties, all agencies, criminal violation, racing on highway violation to generate data) available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited February 21, 2019).

¹⁶ *Supra* n. 14.

B. Amendments:

None.

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

By Senator Stewart

13-00175-19

2019116__

A bill to be entitled

An act relating to motor vehicle racing; amending s. 316.191, F.S.; increasing the criminal penalty for a third or subsequent violation related to motor vehicle racing within a specified period after the date of a prior violation that resulted in a conviction; providing an effective date.

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

Section 1. Subsection (2) and paragraph (c) of subsection (3) of section 316.191, Florida Statutes, are amended to read: 316.191 Racing on highways.—

(2) A person may not do any of the following:

(a) Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot.†

(b) In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition.†

(c) Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition.†~~or~~

(d) Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

(3)

(c) Any person who commits a third or subsequent violation

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

13-00175-19

2019116__

of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a felony of the third ~~misdemeanor of the first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084, and shall pay a fine of not less than \$2,000 and not more than \$5,000. The department shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to s. 322.271.

Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 611 – Motor Vehicle Racing (Identical SB 116)

This bill amends s. 316.191(3)(c), F.S., increasing the current 1st degree misdemeanor for a third or subsequent violation of racing on highways to an **unranked, 3rd degree felony**. Such violations include “any of the following:” Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot. In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition. Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition. Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.”

Per FDLE, in FY 17-18, there were no arrests or convictions/adjudications withheld for a third or subsequent violation of racing on highways.

In FY 17-18, the incarceration rate for an unranked, 3rd degree felony was 8.7%.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: House & Senate

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.4.19

Meeting Date

116

Bill Number (if applicable)

Topic Motor Vehicle Racing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

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)

3-4-19

Meeting Date

SB 116

Bill Number (if applicable)

Topic MOTOR VEHICLE LACING

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR
Street

Phone 321-436-4447

ORLANDO
City

FL
State

32802
Zip

Email MICHAEL.CRABB@ORCL.NET

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

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)

3 14 2019

Meeting Date

Topic _____

Bill Number 116
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 20, 2019

I respectfully request that **Senate Bill #: 116** relating to Motor Vehicle Racing, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

c.c. Lauren Jones, Staff Director
Sue Arnold, Committee Administrative Assistant

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: CS/CS/SB 128

INTRODUCER: Criminal Justice Committee; Children, Families, and Elder Affairs Committee; and
Senator Bean

SUBJECT: Child Abuse

DATE: March 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.	Storch	Jones	CJ	Fav/CS
3.			IS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 128 makes a number of changes to current law relating to child abuse, abandonment, and neglect. Specifically, the bill:

- Revises the definition of the term “harm” to include a violation of child safety restraints or seat belt usage laws which results in the death or injury of a child that requires treatment at a hospital, if a licensed physician determines that such violation exacerbated the child’s injuries or resulted in the child’s death;
- Requires the central abuse hotline (hotline) to accept a report and call for investigation of known or suspected child abuse, abandonment, or neglect, that occurred out of state relating to an alleged perpetrator and child victim who live out of state *if* the child is currently being evaluated in a medical facility in Florida;
- Requires the Department of Children and Families (DCF) to initiate an investigation when a report of child abuse, abandonment, or neglect is received from an emergency room physician; and
- Requires the DCF to refer child abuse, abandonment, and neglect reports to child protection teams (CPT) within the Department of Health (DOH) that involve a child who does not live in Florida but is currently being evaluated in a medical facility in Florida and a child who was not properly restrained in a motor vehicle, which exacerbated the child’s injury or resulted in the child’s death.

While the fiscal impact is indeterminate at this time, the DOH may incur costs associated with the addition of reports that must be referred to CPTs for assessment.

The bill is effective July 1, 2019.

II. Present Situation:

Inadequate Supervision of a Child

Current law defines “abuse” in part as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or *harm* that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.¹ Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by any person responsible for the child’s welfare, or that a child is in need of supervision and care, must immediately report such knowledge or suspicion to the DCF’s hotline.²

Florida law specifies that a child can suffer “harm” to his or her health or welfare in a number of ways. For example, harm can occur when any person allows, encourages, or forces the sexual exploitation of a child; exploits a child, or allows a child to be exploited; or exposes a child to a controlled substance or alcohol.³ Also included within the definition of harm is “inadequate supervision,” which is defined as a parent or caregiver leaving a child without adult supervision or arrangement appropriate for the child’s age, maturity, developmental level, or mental or physical condition, so that the child is unable to care for his or her own needs or is unable to exercise sufficient judgment in responding to a physical or emotional crisis.⁴ In Florida, there is no age in which a child can be left unattended or alone.⁵

An example of inadequate supervision is when a parent or legal guardian who is a driver or passenger in a motor vehicle fails to ensure his or her child is properly safeguarded in a legally required child restraint device or seat belt, and this results in either the child’s death or the child’s suffering of serious injuries requiring treatment at an emergency department or trauma center at a hospital.⁶

Currently, however, administrative rule provides that complaints concerning infants or children in automobiles who are not in legally required child restraint devices do not constitute reports of abuse, neglect, or abandonment unless one or more of the following circumstances are present:

- The parent or legal guardian was charged with driving under the influence of drugs or alcohol.
- The parent or legal guardian received a traffic citation(s) for reckless driving.
- A child was seriously injured or killed during an accident.⁷

¹ Section 39.01(2), F.S.

² Sections 39.201(1)(a) and 39.201(2)(a), F.S.

³ See generally s. 39.01(35), F.S.

⁴ Section 39.01(35)(a)3., F.S.

⁵ Department of Children and Families, *Child Welfare*, CFOP 170-4, pg. A-29, (July 1, 2018), available at <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-04,%20Child%20Maltreatment%20Index.pdf> (last visited February 25, 2019).

⁶ *Id.*

⁷ 65C-29.002(6)(e), F.A.C.

If one of the above scenarios is met, then a report of abuse, abandonment, or neglect can be made to the hotline. Each report of abuse, abandonment, or neglect must contain at least one type of maltreatment.⁸ Inadequate supervision qualifies as a type of maltreatment.⁹ There are a number of factors to consider in assessing whether there has been maltreatment, which would prompt an investigation by the DCF. Specifically, the following factors are considered if the intake done following an accident alleges failure of a parent or legal guardian to use a child restraint device:

- Was the child transported to the hospital by EMS or other first responders due to the injuries sustained as a result of the accident?
- What statements did the child provide to first responders, the emergency department/trauma center physician/staff, or law enforcement when questioned about being placed in a child restraint seat or having used a seat belt while being transported in the vehicle?
- What is the parent or legal guardian's explanation for a child restraint device not being used at the time of the accident?
- Do statements from the emergency department/trauma center physician or medical records reflect the child suffered injuries that clearly indicate use of a child restraint device?
- Do statements from the attending emergency department/trauma center physician or medical records reflect the child suffered serious injuries that clearly indicate non-use of a child restraint device?
- Does the police report document an injured child was not properly safeguarded in a legally approved child restraint device (car seat or seat belt)?
- What was the location of the alleged child victim when first responders appeared on scene (in the vehicle or ejected from the vehicle)?
- Attempt to obtain medical opinion on whether the severity of the vehicular accident (head-on collision at high speed, etc.) would have likely resulted in serious injury or death despite the use of a legally required child restraint device.
- Does the parent have a history of traffic citations for failure to use a restraint device?
- When the parent or legal guardian reports the injured child was originally placed in a child restraint device but disconnected the device themselves during transit is/was the child physically capable of disconnecting the device on their own?
- Does the parent or legal guardian report that this was a first time incident or does/did the child have a pattern of disconnecting the device? If a pattern, how did the parent attempt to control this behavior? What other collateral sources can validate this pattern?¹⁰

Child Safety Restraint Laws

Section 316.613(1)(a), F.S., requires every operator of a motor vehicle,¹¹ while transporting a child in a motor vehicle operated on the roadways, streets, or highways of the state, to provide protection for a child by properly using a crash-tested, federally approved child restraint device if the child is 5 years or younger. The law also requires children 3 years of age and younger to be

⁸ "Maltreatment" means behavior that is harmful and destructive to a child's cognitive, social, emotional, or physical development. *Supra*, n. 4 at 4.

⁹ *Supra*, n. 4 at 6-7.

¹⁰ *Supra*, n 4 at A-29-31.

¹¹ "Motor vehicle" means a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. Section 316.003(42), F.S.

restrained by a separate carrier device or a vehicle manufacturer's integrated child seat. A separate carrier, an integrated child seat, or a child booster seat may be used for children aged 4 through 5 years.¹²

Further, current law prohibits the operation of a motor vehicle or an autocycle¹³ unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by a safety belt¹⁴ or by a child restraint device pursuant to s. 316.613, F.S., if applicable.¹⁵ The requirement to use a child restraint device does not apply if a safety belt is used and the child:

- Is being transported gratuitously by an operator who is not a member of the child's immediate family;
- Is being transported in a medical emergency situation involving the child; or
- Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.¹⁶

Reports of Child Abuse, Abandonment, or Neglect Occurring Out of State

Current law requires all known or suspected child abuse, abandonment, or neglect to be reported to the hotline. However, if the report is of an instance that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the hotline must not accept the report or call for investigation, but instead must transfer the information on the report to the appropriate state.¹⁷

Child Protection Teams

A child protection team¹⁸ (CPT) program is a medically directed, multidisciplinary program that works with local Sheriff's offices and the DCF in child abuse and child neglect cases to supplement investigation activities. The CPTs are tasked with the following:

- Providing expertise in evaluating alleged child abuse and neglect;
- Assessing risk and protective factors; and
- Providing recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.¹⁹

¹² Section 316.613(1)(a), F.S.

¹³ "Autocycle" means a 3-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with applicable federal motorcycle safety standards. Section 316.003(2), F.S.

¹⁴ "Safety belt" means a seat belt assembly that meets the requirements established under Federal Motor Vehicle Safety Standard No. 208, 49 C.F.R. s. 571.208. Section 316.614(3)(b), F.S.

¹⁵ Section 316.614(4)(a), F.S.

¹⁶ Section 316.613(1)(a)2.a.-c., F.S.

¹⁷ Section 39.201(2)(d), F.S.

¹⁸ "Child protection team" is a team of professionals established by the DOH to receive referrals from the protective investigators and protective supervision staff of the DCF and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. Such team shall provide consultation to other programs of the DCF and other persons regarding child abuse, abandonment, or neglect cases. Section 39.01(13), F.S.

¹⁹ Children's Medical Services, *Child Protection Teams*, available at http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited February 25, 2019).

Current law requires the Children's Medical Services Program in the DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF.²⁰ The role of a CPT is to support activities of the family safety and preservation program of the DCF and provide services deemed by the CPTs to be necessary and appropriate to abused, abandoned, and neglected children upon referral. A CPT must be capable of providing specialized diagnostic assessments, evaluations, coordination, consultation, and other supportive services.²¹ Reports of child abuse, abandonment, and neglect made to the DCF that must be referred to CPTs include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age;
- Bruises anywhere on a child 5 years of age or younger;
- Any report alleging sexual abuse of a child;
- Any sexually transmitted disease in a prepubescent child;
- Reported malnutrition or failure of a child to thrive;
- Reported medical neglect of a child;
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival, or have been injured and later died as a result of suspected abuse, abandonment, or neglect; and
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.²²

III. Effect of Proposed Changes:

Section 1 revises the definition of the term “harm” to include a violation of the child safety restraint laws pursuant to s. 316.613, F.S., or the seat belt usage laws pursuant to s. 316.614, F.S., if a licensed physician determines that such violation exacerbated the child's injuries or resulted in the child's death.

Section 2 requires the hotline to accept the call of known or suspected child abuse, abandonment, or neglect, which occurred out of state and the alleged perpetrator and the child victim live out of state if the child is currently being evaluated in a medical facility in Florida. If the child is not currently being evaluated in Florida, the hotline must transfer the information or call to the appropriate state or country.

The bill also requires the DCF to initiate an investigation when a report to the hotline is made by an emergency room physician.

Section 3 requires the DCF to refer child abuse, abandonment, and neglect reports to CPTs that involve a child who does not live in Florida but is currently being evaluated in a medical facility in Florida and a child not properly restrained in a motor vehicle which exacerbated the child's injury or resulted in the child's death.

The bill is effective July 1, 2019.

²⁰ Section 39.303(1), F.S.

²¹ Section 39.303(3), F.S.

²² Section 39.303(4)(a)-(h), F.S.

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:

While the fiscal impact is indeterminate at this time, the DOH may incur costs associated with the addition of reports that must be referred to CPTs for assessment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

No analysis from the DCF, the DOH, or the Office of the State Courts Administrator was received to provide additional information on the impact of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, and 39.303.

IX. Additional Information:

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

CS/CS by Criminal Justice on March 4, 2019:

The Committee Substitute clarifies that the DCF is tasked with referring specific reports to CPTs.

CS by Children, Families, and Elder Affairs on February 19, 2019:

The Committee Substitute:

- Clarifies that only those children that require treatment at a hospital emergency department or trauma center are added to the definition of the term “harm”; and
- Requires the DCF to initiate an investigation when a report is received from an emergency room physician.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Bean) recommended the following:

Senate Amendment

In title, delete line 14
and insert:
reports that the department must refer to

By the Committee on Children, Families, and Elder Affairs; and
Senator Bean

586-02485-19

2019128c1

A bill to be entitled

An act relating to child abuse; amending s. 39.01, F.S.; expanding the list of incidents or injuries that constitute harm to a child's health or welfare to include incidents or injuries resulting from violations of child restraint and seatbelt requirements; amending s. 39.201, F.S.; requiring the central abuse hotline to accept certain reports or calls for investigation for children who do not live in this state; requiring the Department of Children and Families to initiate an investigation when a report is received from an emergency room physician; amending s. 39.303, F.S.; expanding the types of reports that the Department of Health must refer to Child Protection Teams; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (35) of section 39.01, Florida Statutes, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(35) "Harm" to a child's health or welfare can occur when any person:

(m) Violates s. 316.613 or s. 316.614 resulting in the death of a child or the injury of a child which requires treatment at a hospital emergency department or a trauma center, if substantiated by a licensed physician's opinion that the violation exacerbated the child's injuries or resulted in the

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02485-19

2019128c1

child's death.

Section 2. Paragraph (d) of subsection (2) of section 39.201, Florida Statutes, is amended, and paragraph (1) is added to that subsection, to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)

(d) If the report is of an instance of known or suspected child abuse, abandonment, or neglect which ~~that~~ occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline ~~may~~ shall not accept the report or call for investigation unless the child is currently being evaluated in a medical facility in this state.

1. If the child is currently being evaluated in a medical facility in this state, the central abuse hotline shall accept the report or call for investigation and transfer the information on the report or call to the appropriate state or country.

2. If the child is not currently being evaluated in a medical facility in this state, the central abuse hotline, ~~but~~ shall transfer the information on the report or call to the appropriate state or country.

(1) The department shall initiate an investigation when a report from an emergency room physician is received.

Section 3. Paragraphs (i) and (j) are added to subsection (4) of section 39.303, Florida Statutes, to read:

39.303 Child Protection Teams and sexual abuse treatment programs; services; eligible cases.—

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02485-19

2019128c1

(4) The child abuse, abandonment, and neglect reports that must be referred by the department to Child Protection Teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (3) must include cases involving:

(i) A child who does not live in this state who is currently being evaluated in a medical facility in this state.

(j) A child who was not properly restrained in a motor vehicle pursuant to s. 316.613 or s. 316.614 and the improper restraint exacerbated the child's injuries or resulted in the child's death.

Section 4. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 128

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr

Street

Phone

Largo

City

FL

State

33773

Zip

Email

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.

S-001 (10/14/14)

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 0128

Bill Number (if applicable)

Topic CHILD ABUSE

Amendment Barcode (if applicable)

Name VICTORIA FERDJob Title CHIEF POLICY OFFICERAddress 411 EAST COLLEGE AVE

Street

Phone 850.561.1102TALLAHASSEE, FL 32301

City

State

Zip

Email VICTORIA@FLCHILDCON.ORGSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing FLORIDA COALITION FOR CHILDRENAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/4/19

Meeting Date

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

128

Bill Number (if applicable)

Topic CHILD ABUSE

Amendment Barcode (if applicable)

Name LOUIS ST. PETERY

Job Title PEDIATRICIAN

Address 1122 LEE AVE

Street

Phone 850 294-4309

TALLAHASSEE

FL

32308

City

State

Zip

Email LSTPETERY@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHAPTER AMERICAN ACADEMY OF PEDIATRICS

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)

3.4.19

Meeting Date

128

Bill Number (if applicable)

Topic Child Abuse

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

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)

APPEARANCE RECORD

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

128

Bill Number (if applicable)

Meeting Date

Topic Child Abuse

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Phone 850-746-8800

Tallahassee FL 32301
City State Zip

Email lhenning@legislative.gob.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3/4/19

Meeting Date

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

128

Bill Number (if applicable)

Topic Child Abuse

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blainstone Pines Dr

Phone 878-3056

Street

Tallahassee

FL

32301

City

State

Zip

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical 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)

3 14 2019

Meeting Date

Topic _____

Bill Number 128

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Street

Phone 727-897-9291

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 19, 2019

I respectfully request that **Senate Bill # 128**, relating to Child Abuse, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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: SB 534

INTRODUCER: Senator Brandes

SUBJECT: Pretrial Release

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 534 creates two new programs that provide more tools for courts to use in the determination of whether it is appropriate to release a defendant from custody pending trial and what conditions are necessary to ensure pretrial release compliance.

First, the bill creates s. 907.042, F.S., authorizing counties, through the concurrence of specified entities, to establish a supervised bond program (Bond Program). Any circuit that establishes a Bond Program must allow eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both pending trial. The Bond Program utilizes evidence-based methods to provide a more consistent and accurate assessment of a defendant's ability to successfully comply with specified pretrial release conditions. The bill specifies components of the Bond Program, which, in part, include to:

- Use the results of a validated pretrial risk assessment instrument that has been administered to the defendant for specified purposes.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program and if release if appropriate, to impose an individualized release plan.

This Bond Program will provide pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who cannot afford to satisfy the bond imposed by the court.

Additionally, the bill creates s. 907.0421, F.S., authorizing each judicial circuit to enter an administrative order, in concurrence with specified entities, to administer a risk assessment instrument (RAI) in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. The bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release and in determining the conditions of release which are appropriate based on the predicted level of risk and failure of pretrial release conditions. The bill also requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill requires any circuits that choose to establish a program created by s. 907.042, F.S., s. 907.0421, F.S., or both, to report specified data about the programs to the Office of Program Policy and Government Accountability (OPPAGA) and requires the OPPAGA to include such data in its annual report addressing pretrial release programs.

The bill requires the RAI used in either program to be independently validated by the Department of Corrections (DOC) and the bill provides necessary rulemaking authority to the DOC to ensure compliance with this provision.

The bill authorizes counties to implement a Bond Program, which allows an eligible defendant to be released on active supervision and some form of bond while awaiting trial. Additionally, the bill authorizes judicial circuits to utilize RAIs for pretrial determination decisions. To the extent that such programs are created and defendants that would otherwise remain in custody pending trial are released, local governments may experience reduced costs due to not paying the full daily county jail per diem for such inmates. Additionally, the DOC and the OPPAGA have reported that there is no fiscal impact from the bill. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Pretrial Release Subsequent to an Arrest

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.¹ There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.²

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.³ Bail is a common monetary condition of pretrial release, governed by

¹ Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

² See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

³ Section 903.046(1), F.S.

ch. 903, F.S.⁴ For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.⁵

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond⁶ executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.⁷

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;⁸
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure required appearance, including a condition requiring the defendant to return to custody after specified hours.⁹

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.¹⁰ Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.¹¹ These

⁴ "Bail," BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

⁵ *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

⁶ Sections 903.011 and 903.105, F.S.

⁷ Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 2. (November 2018) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf> (last visited February 21, 2019)(hereinafter cited as "OPPAGA Pretrial Report").

⁸ A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

⁹ Rule 3.131(b)(1), Fla. R. Crim. Pro.

¹⁰ *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

¹¹ See s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.

programs supervise defendants with various methods, including electronic monitoring¹² or phone contact.¹³

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.¹⁴

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable;¹⁵ and
- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors, and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.¹⁶ Even though a county may have an established standard

¹² An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf (last visited February 21, 2019).

¹³ See OPPAGA Pretrial Report, at 9.

¹⁴ Section 903.046(2), F.S. See also Rule 3.131(b)(3), Fla. R. Crim. Pro.

¹⁵ Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

¹⁶ Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. See Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order No. 2-49.8, IN RE: Uniform Bond Schedule*, available at <http://www.jud10.flcourts.org/sites/default/files/adminOrders/2-49.8.pdf>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm> (last visited all sites February 20, 2019).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.¹⁷

Violation of Pretrial Release Conditions

A defendant who does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.¹⁸ Under s. 903.0471, F.S., the court may revoke, on its own motion, pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.¹⁹

Supervised Bond Programs in Florida

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a risk assessment instrument (RAI), which is then utilized to determine the release conditions for the defendant.

Pinellas County created a supervised bond program which has been operating since 2014.²⁰ Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail population in Pinellas County and avoid the need to build a larger facility.²¹ Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance the judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.²²

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established the supervised bond program that requires active electronic monitoring, continuous alcohol monitoring,²³ or both.²⁴

¹⁷ *Mehaffie v. Rutherford*, 143 So.3d 432, 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

¹⁸ See s. 903.26, F.S.

¹⁹ This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

²⁰ Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); See also Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee)(hereinafter cited as "Supervised Bond PowerPoint").

²¹ Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, p. 3.

²² Supervised Bond PowerPoint, p. 2-4.

²³ Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in a person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. See National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at <https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf> (last visited February 20, 2019).

²⁴ *Id.* at p. 4-5.

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program.²⁵ Sheriff Gualtieri reported that of all the defendants that have been released on the supervised bond program, 99.5 percent have appeared for court hearings as required and 94.9 percent did not commit a new crime while in the program.²⁶ Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for the offense of driving under the influence (both felonies and misdemeanors).²⁷ Sheriff Gualtieri reported that these programs have resulted in a savings of \$38.9 million annually.²⁸

Evidence-Based Risk Assessment Tools

RAIs measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.²⁹ RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminals reoffending. The questioner typically supplements the interview with an official records check. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.³⁰

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors³¹ do not change, while dynamic risk factors³² either can change on their own or change through an intervention. The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment.³³ The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need. In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.³⁴

²⁵ Supervised Bond PowerPoint, p. 7.

²⁶ *Id.* at p. 9.

²⁷ *Id.* at p. 10.

²⁸ *Id.* at p. 16. This savings takes into account the cost it would require to house an additional 900 inmates per day with the current per diem rate and the cost to run the program.

²⁹ Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited February 26, 2019)(hereinafter cited at CRS Report)

³⁰ *Id.* 2-4.

³¹ Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, Summary Page.

³² Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. *Id.*

³³ The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. *Id.*

³⁴ *Id.*

Use of Risk Assessment Instruments by the Department of Corrections

The Department of Corrections (DOC) has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.³⁵ Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.³⁶ Spectrum has been independently verified through the School of Criminology at the Florida State University.³⁷

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.³⁸ Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains³⁹ and three core program areas.⁴⁰

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.⁴¹ Spectrum was completed in September, 2016, and subsequently deployed throughout the state.⁴²

III. Effect of Proposed Changes:

Supervised Bond Program

The bill creates s. 907.042, F.S., authorizing each county to create a supervised bond program (Bond Program). The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the sheriff, the state attorney (SA), and the public defender (PD). However, a county that has already established and implemented a Bond Program may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

³⁵ DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited February 26, 2019) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee)(hereinafter cited as "DOC Program Information").

³⁶ Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with Senate Criminal Justice Committee).

³⁷ Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018)(on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

³⁸ DOC Program Information.

³⁹ The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

⁴⁰ The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with the Senate Criminal Justice Committee).

⁴¹ *Id.*

⁴² See WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Corder, September 23, 2016, available at <http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates> (last visited February 26, 2019).

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.
- Use the results of a validated pretrial RAI that has been administered to the defendant for the purposes of pretrial release or supervision determinations.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program. If such a determination is made, the court must also:
 - Determine the conditions of the individualized supervision plan with which the defendant must comply, including, but not limited to, the requirement that the defendant must:
 - Be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the risk assessment instrument; and
 - Communicate weekly, via telephone or in-person contact, as determined by the court, with the Sheriff's office.
 - Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to and including its entirety, is appropriate.
- Establish procedures for reassessing or terminating from the Bond Program defendants who do not comply with the terms of the individualized supervision plan imposed through the program.

Each county that establishes a Bond Program must use a RAI that is validated by the DOC. A RAI that is used for other pretrial release determinations in accordance with s. 907.0421, F.S., discussed below, and that has previously been validated by the DOC does not need to be validated for use in the Bond Program. Additionally, the bill provides that a Bond Program may continue to operate while the DOC validates the RAI used by such program if the Bond Program is in operation on October 1, 2019.

The bill requires each county that establishes a Bond Program under the bill, or that has an existing Bond Program that operates in compliance with the bill, to provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA). The bill requires the reports beginning in 2020 and then by October 1 of each year thereafter. The reports must include:

- The results of the administration of the risk assessment instrument;
- The programming used for defendants who received the assessment and were accepted into the supervised bond program;
- The success rate of the program; and
- Any savings realized by the county as a result of such defendants being released from custody pending trial.

The bill also requires OPPAGA to compile the results of such county reports and include this data in an independent section of its annual pretrial release report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

Lastly, the bill provides legislative findings in support of the need for the creation of Bond Programs throughout the state, including the finding that:

- Using evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions provides a more consistent and accurate assessment of a defendant's risk of noncompliance.
- Both the community and a defendant are better served when a low-risk defendant is provided the opportunity to maintain employment and familial responsibilities in the community under a structured pretrial release plan that ensures the best chance of complying with all pretrial conditions.
- Providing pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who do not have the ability to satisfy the bond imposed by the court is beneficial.
- The creation of Bond Programs will reduce the likelihood that defendants will remain unnecessarily in custody pending trial.

Risk Assessment Instruments in Pretrial Decisions

The bill also creates s. 907.0421, F.S., authorizing the chief judge of each judicial circuit, with the concurrence of the county's chief correctional officer, the SA, and the PD, to administer a RAI in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. To utilize the provisions of the bill, the circuit must enter an administrative order to authorize the use of RAIs.

The bill further provides that the RAI must be objective, standardized, and based on analysis of empirical data and risk factors relevant to failure of pretrial release conditions. The bill further provides that the risk factors considered must be those that:

- Evaluate the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial release period; and
- Have been validated through data based on the pretrial population.

For circuits that enter into an administrative order in accordance with s. 907.0421, F.S., the bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release. Further, the RAI results must be used to determine the conditions of release which are appropriate based on predicted level of risk and failure of pretrial release conditions. The bill requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill retains the court's sole discretion to impose any pretrial conditions.

The bill requires that the DOC independently validate any RAI used by a circuit in pretrial release determinations. A circuit may begin to use the specified RAI in pretrial release

determinations immediately after validation and implementation of training all local staff who will administer the RAI to defendants.

As is required of circuits that establish the above mentioned Bond Program, the bill requires each circuit that establishes an administrative order for the use of RAI in first appearance pretrial release determinations, beginning in 2020 and every October 1 thereafter, to provide an annual report to the OPPAGA which details:

- The risk assessment instrument used;
- The results of the administration of the risk assessment instrument, including the results of defendants who were detained in custody awaiting trial and those who were released from custody awaiting trial;
- The frequency at which released defendants failed to appear at one or more subsequent court hearings; and
- The level of risk determined in the risk assessment instrument associated with a defendant that failed to appear for any court hearings.

The OPPAGA must compile the results of such reports and include the data in an independent section of its annual report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

The bill also provides findings to support the use of RAIs in considering pretrial release decisions, including the finding that:

- There is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions.
- The use of actuarial instruments that classify offenders according to the likelihood of failure to appear at subsequent hearings or to engage in criminal conduct while awaiting trial provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial.
- Research indicates that using RAIs ensure successful compliance with pretrial release conditions imposed on a defendant and reduces the likelihood of a defendant remaining unnecessarily in custody pending trial.

The bill also provides rulemaking authority to the DOC to administer the relevant provisions of the bill.

The bill is effective October 1, 2019.

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 bill requires the DOC to validate the RAI used in both of the programs created in the bill. The DOC reports that the bill does not have a direct impact on the agency.⁴³ Additionally, the OPPAGA reports that the bill does not have an impact and the tasks assigned to the OPPAGA in the bill can be achieved within existing resources.⁴⁴

Supervised Bond Program

Local governments may experience reduced costs as a result of the implementation of the Bond Program. A county may implement a supervised bond program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the participants may be decreased from the full daily county jail per diem to the much lower per diem rates for active electronic monitoring or continuous alcohol monitoring technologies, or both.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴³ The DOC, *SB 534 Agency Analysis*, January 31, 2019 (on file with the Senate Committee on Criminal Justice).

⁴⁴ The OPPAGA, *SB 534 Agency Analysis*, February 11, 2019 (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 907.042 and 907.0421.

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.

By Senator Brandes

24-00752-19

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1 A bill to be entitled
 2 An act relating to pretrial release; creating s.
 3 907.042, F.S.; providing legislative findings;
 4 authorizing each county to establish a supervised bond
 5 program with the concurrence of the chief judge of the
 6 judicial circuit, the county's chief correctional
 7 officer, the state attorney, and the public defender;
 8 providing an exception for a county that has already
 9 established and implemented a supervised bond program
 10 that uses a risk assessment instrument; providing
 11 minimum program requirements; requiring each county
 12 that establishes a supervised bond program to have the
 13 risk assessment instrument validated by the Department
 14 of Corrections; requiring each county that establishes
 15 a supervised bond program to submit an annual report
 16 by a certain date to the Office of Program Policy
 17 Analysis and Government Accountability; requiring the
 18 Office of Program Policy Analysis and Government
 19 Accountability to compile such reports and include
 20 such information in a specified report sent to the
 21 Legislature; authorizing the department to adopt
 22 rules; creating s. 907.0421, F.S.; providing
 23 legislative findings; authorizing the chief judge of
 24 each circuit, with the concurrence of the county's
 25 chief correctional officer, the state attorney, and
 26 the public defender, to enter an administrative order
 27 for the use of a risk assessment instrument in
 28 pretrial release determinations; requiring the risk
 29 assessment instrument results to be used as

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 supplemental factors for the court's evaluation of
 31 appropriate pretrial release conditions; requiring the
 32 court to impose the least restrictive conditions
 33 necessary to reasonably ensure the defendant's
 34 appearance at subsequent hearings; providing that a
 35 court retains sole discretion to determine the
 36 appropriateness of pretrial release and any necessary
 37 pretrial release conditions; requiring a circuit that
 38 uses a risk assessment instrument to have the
 39 instrument validated by the department; authorizing
 40 the circuit to implement the risk assessment
 41 instrument immediately after validation and
 42 implementation of training of all local staff who will
 43 administer the risk assessment instrument; requiring
 44 each circuit that enters an administrative order to
 45 use risk assessment instruments in pretrial release
 46 determinations to submit an annual report by a certain
 47 date to the Office of Program Policy Analysis and
 48 Government Accountability; requiring the Office of
 49 Program Policy Analysis and Government Accountability
 50 to compile the reports and include such information in
 51 a specified report sent to the Legislature;
 52 authorizing the department to adopt rules; providing
 53 an effective date.
 54
 55 Be It Enacted by the Legislature of the State of Florida:
 56
 57 Section 1. Section 907.042, Florida Statutes, is created to
 58 read:

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907.042 Supervised bond program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial instruments that evaluate criminogenic-based needs and classify defendants according to levels of risk provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial. The Legislature also finds that both the community and a defendant are better served when a defendant who poses a low risk to society is provided the opportunity to fulfill employment and familial responsibilities in the community under a structured pretrial release plan that ensures the best chance of remaining compliant with all pretrial conditions, rather than remaining in custody. The Legislature finds that there is a benefit to establishing a supervised bond program in each county for the purpose of providing pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who do not have the ability to satisfy the bond imposed by the court. The Legislature finds that the creation of such a program will reduce the likelihood of defendants remaining unnecessarily in custody pending trial.

(2) CREATION.—A supervised bond program may be established in each county with the terms of each program to be developed with concurrence of the chief judge of the judicial circuit, the county's chief correctional officer, the state attorney, and the public defender. A county that has already established and

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implemented a supervised bond program that uses a validated risk assessment instrument for similar pretrial or supervision determinations may continue to operate without such concurrence, as long as the program meets all other requirements of this section.

(3) PROGRAM REQUIREMENTS.—A supervised bond program, at a minimum, shall:

(a) Require the county's chief correctional officer to administer the supervised bond program.

(b) Use the results of a validated pretrial risk assessment instrument that has been administered to the defendant for the purposes of pretrial release or supervision determinations.

(c) Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.

(d) Coordinate necessary services and supervision through the program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.

(e) Require the appropriate court to make a final determination regarding whether a defendant will be placed into the supervised bond program. If such a determination is made, the court must also:

1. Determine the conditions of the individualized supervision plan with which the defendant must comply as a part of the supervised bond program, including, but not limited to, the requirement that the defendant must:

a. Be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level

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of risk indicated by the risk assessment instrument; and

b. Communicate weekly, via telephone or in-person contact, as determined by the court, with the office of the county's chief correctional officer.

2. Review the bond of a defendant who is being accepted into the supervised bond program to determine if a reduction of the court-ordered bond, up to and including its entirety, is appropriate.

(f) Establish procedures for reassessing or terminating from the supervised bond program defendants who do not comply with the terms of the individualized supervision plan imposed through the program.

(4) VALIDATION.—Each county that establishes a supervised bond program in accordance with this section must use a risk assessment instrument that is validated by the Department of Corrections. A risk assessment instrument that is used for other pretrial release determinations in accordance with s. 907.0421 and that has previously been validated by the department does not need to be validated for use in the supervised bond program. A supervised bond program that is in operation on October 1, 2019, and that uses a risk assessment instrument may continue to operate while the department validates the risk assessment instrument used by the program.

(5) REPORTING.—

(a) Each county that establishes a supervised bond program in accordance with this section, or that has an existing supervised bond program that operates in compliance with this section, shall provide an annual report to the Office of Program Policy Analysis and Government Accountability which details:

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1. The results of the administration of the risk assessment instrument;

2. The programming used for defendants who received the assessment and were accepted into the supervised bond program;

3. The success rate of the program; and

4. Any savings realized by the county as a result of such defendants being released from custody pending trial.

(b) Beginning in 2020, and by each October 1 thereafter, the annual report from the county must be submitted to the Office of Program Policy Analysis and Government Accountability. The Office of Program Policy Analysis and Government Accountability shall compile the results of such reports for inclusion in an independent section of its annual report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044.

(6) RULEMAKING.—The department may adopt rules to administer this section.

Section 2. Section 907.0421, Florida Statutes, is created to read:

907.0421 Use of risk assessment instruments in pretrial release determinations.—

(1) The Legislature finds that there is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial instruments that classify offenders according to the likelihood of failure to appear at subsequent hearings or to engage in criminal conduct while awaiting trial provides a more consistent and accurate

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assessment of a defendant's risk of noncompliance while on pretrial release pending trial. The Legislature also finds that research indicates that using accurate risk and needs assessment instruments ensures successful compliance with pretrial release conditions imposed on a defendant and reduces the likelihood of a defendant remaining unnecessarily in custody pending trial.

(2) The chief judge of each judicial circuit, with the concurrence of the county's chief correctional officer, the state attorney, and the public defender, may enter an administrative order to administer a risk assessment instrument in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. The risk assessment instrument must be objective, standardized, and based on analysis of empirical data and risk factors relevant to failure of pretrial release conditions which evaluates the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial release period and which is validated on the pretrial population.

(3) (a) The risk assessment instrument results must be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release and, if applicable, the conditions of release which are appropriate based on predicted level of risk and failure of pretrial release conditions. Based on the risk assessment instrument results, the court shall impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

(b) A court that uses the results from a risk assessment instrument in first appearance pretrial release determinations

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retains sole discretion to impose any pretrial conditions it deems necessary to ensure the defendant's subsequent appearance at hearings.

(4) A circuit that intends to use a risk assessment instrument in pretrial release determinations must have such instrument independently validated by the Department of Corrections. A circuit may begin to use such instrument in pretrial release determinations immediately after validation of such instrument and implementation of training of all local staff who will administer the risk assessment instrument.

(5) (a) Each circuit that establishes an administrative order for the use of risk assessment instruments in first appearance pretrial release determinations shall provide an annual report to the Office of Program Policy Analysis and Government Accountability which details:

1. The risk assessment instrument used;

2. The results of the administration of the risk assessment instrument, including the results of defendants who were detained in custody awaiting trial and those who were released from custody awaiting trial;

3. The frequency at which released defendants failed to appear at one or more subsequent court hearings; and

4. The level of risk determined in the risk assessment instrument associated with a defendant that failed to appear for any court hearings.

(b) Beginning in 2020, and by each October 1 thereafter, the annual report from each circuit must be submitted to the Office of Program Policy Analysis and Government Accountability. The Office of Program Policy Analysis and Government

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233 Accountability shall compile the results of such reports for
234 inclusion in an independent section of its annual report
235 developed and submitted to the President of the Senate and the
236 Speaker of the House of Representatives in accordance with s.
237 907.044.

238 (6) The department may adopt rules to administer this
239 section.

240 Section 3. This act shall take effect October 1, 2019.



Sheriff Bob Gualtieri
Pinellas County Sheriff's Office

ROR
and

Supervised Bond Presentation

"Leading The Way For A Safer Pinellas"

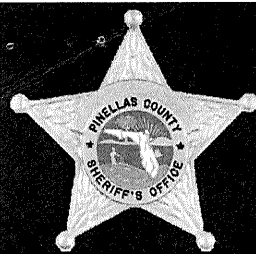


Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Bail Purpose

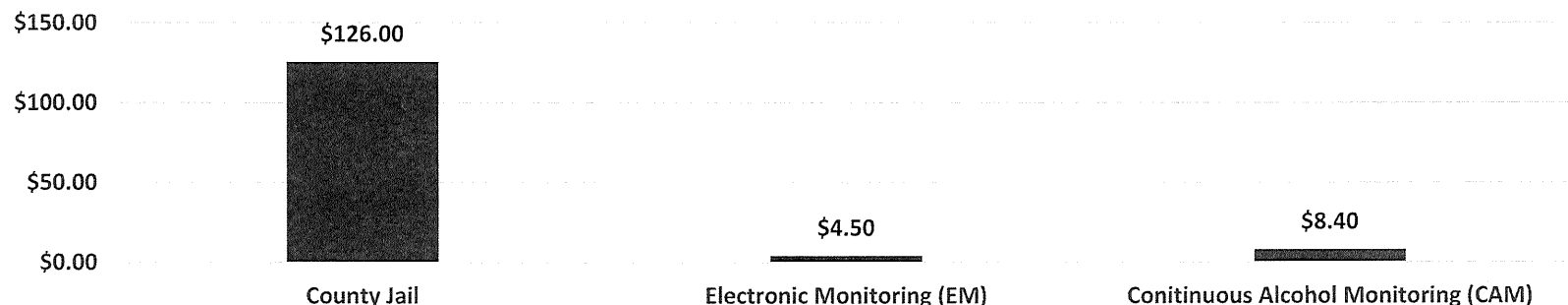
- Bail is to ensure those released from jail pending disposition of their criminal case are not a danger to the community or risk of flight.
- The challenge for judges is to set a proper bail amount that ensures someone will not reoffend, appear for court and generally comply with the terms of release.
- Some bail amounts are proper to ensure compliance, but too high for defendants to meet and that means they may spend months in jail waiting for their case to be resolved.



Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Daily Supervision Costs



- Bail is not and should not be punitive.
- Our goal is public safety, compliance with the terms of release, and effectively managing the jail population.
- In 2014 we had a crowded jail with about 70% of the inmates being pre-trial detainees (those awaiting disposition of their cases).



Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Awaiting Case Disposition

- If someone can be **successfully** released from jail pending disposition of their criminal case, where they can work and support their families, that is better than them unnecessarily sitting in jail for several months.
- Many people were sitting in jail because the bail amounts were too high for them to pay the cash bail or the fee to a bail bondsman.
- The bail amounts were proper, and without more oversight of the defendant the judges could not lower the bail while ensuring public safety and compliance.



Sheriff Bob Gualtieri **Pinellas County Sheriff's Office**

Active Monitoring

- We approached the judges and offered to have the sheriff's office electronic monitor (EM) and/or continuous alcohol monitor (CAM) defendants if the judges would lower the bail amounts so the defendants could afford bail.
- This resulted in a partnership with the bail bond industry; they provide the bail and the sheriff's office provides the supervision to ensure compliance that bail alone might not.
- The key is ACTIVE (passive monitoring is different and ineffective) EM and/or CAM, to enforce the conditions of no alcohol consumption and restrictions on where the defendant can/cannot go and when.

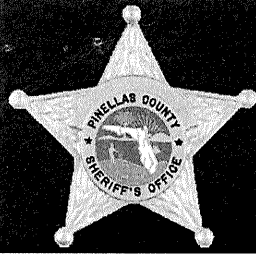


Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Example:

- Example: defendant is in jail on \$10,000 bail. Judge agrees to reduce the bail to \$5,000 because the person will be on EM and/or CAM supervised by the sheriff's office with the condition that he not consume alcohol and be in his residence between 10:00 p.m. and 6:00 a.m., and not go within 500 feet of the victim's home.
- Pinellas County Sheriff's Office started its Supervised Bail Bond Program in October 2014.
- Over 1,700 people have been released from the jail on bail bond with EM and/or CAM through October 2017.

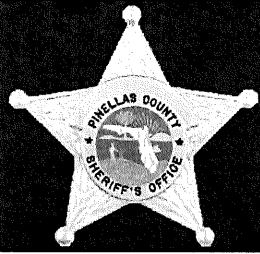


Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Monitoring

- We average 200 people per day on EM and/or CAM through our Supervised Bail program who otherwise would be in jail.
- Our EM and CAM is active monitoring that allows us to continuously track offenders through cellular networks and global positioning system (GPS).
- Our CAM system allows us to randomly test for alcohol consumption, absorption or elimination. The presence of alcohol can be measured by testing breath or perspiration. Current equipment is "Alcohol Monitoring System" (AMS) and Secure Continuous Remote Alcohol Monitor (SCRAM) ankle bracelet and Remote Breath device.



Sheriff Bob Gualtieri **Pinellas County Sheriff's Office**

Savings & Success

Average	Daily Cost (Total)	Annual Cost (Total)
200 (Jail, \$126/day)	\$25,200	\$9,200,000
200 (Monitoring, \$4.50/day)	\$900	\$328,500

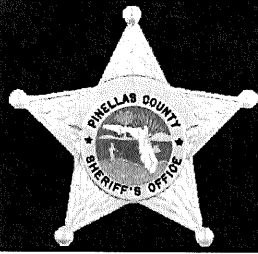
- Of the 1,721 inmates released through our Supervised Bail Bond program, 52% were released on a combination of CAM and bond; 43% EM and bond; and 5% bond with EM and CAM.
- The average length of time a person spends on Supervised Bond is 88 days. That is 88 days that the person would otherwise spend in jail awaiting disposition of their case. (88 days at \$126 = \$11,088 or 88 days at \$4.50 = \$396).



Sheriff Bob Gualtieri Pinellas County Sheriff's Office

Savings & Success

- Of the 1,721 defendants released on EM and/or CAM only 8 or 0.5% failed to appear and 88 or 5.1% had a new arrest while on supervised release.
- Stated the other way **99.5 % appeared as required for court and 94.9% did not commit a new crime while on Supervised Bond.**
- Of the 1,721 released defendants, 347 or 20% violated the terms of the release but did NOT fail to appear or commit a new crime. Violating the terms of release means they consumed alcohol, violated curfew, etc... The violation was addressed and the person remained on supervised release.

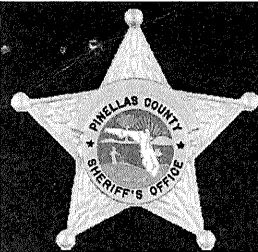


Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Savings & Success

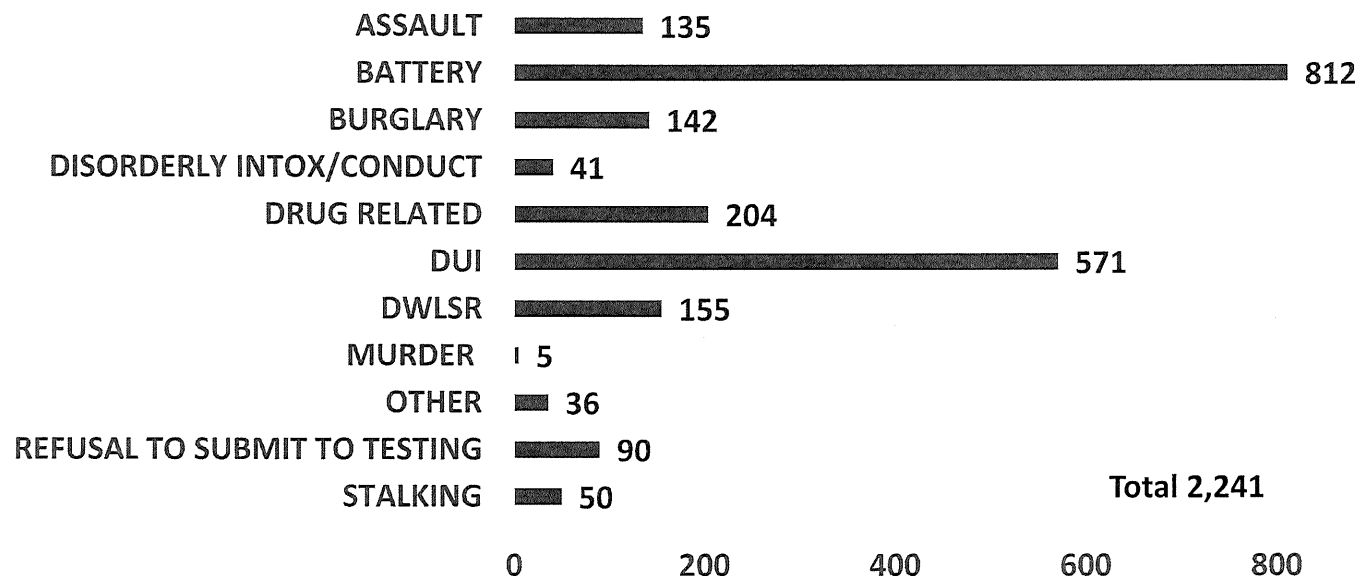
- 80% fully complied with all terms of the Supervised Bond program.
- The program's effectiveness is due to: proper case evaluation and good decision-making by the judges; the program being ACTIVE monitoring with immediate consequences; and the program being run by the sheriff's office (law enforcement supervision).
- Of the total cases supervised, 45% were felonies, 30% misdemeanors and 25% DUI's (felonies and misdemeanors).



Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

Supervised Bond by Case Type – October 2014 to October 2017



Bond Account Summary	
Average Bond Amount Reduced to:	\$5,000
\$0-\$1,000	43%
\$1,001-\$2,500	20%
\$2,501-\$5,000	20%
\$5,001-\$10,000	10%
\$10,001-\$100,000	7%
\$100,001-\$250,000	>1%

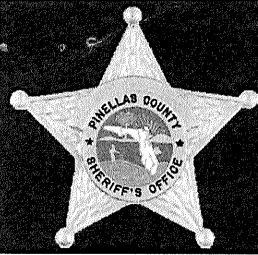
"Leading The Way For A Safer Pinellas"



Sheriff Bob Gualtieri **Pinellas County Sheriff's Office**

Release on Recognizance (ROR) Program

- In addition to the Supervised Bail program we also operate a Release on Recognizance (ROR) program.
- ROR is where a person charged with a crime is released without any monetary conditions.
- This is different from the Supervised Bond program because under supervised bond there is a combination of monetary conditions coupled with other supervision.
- ROR is carries no cash bail or bail bond requirement.



Sheriff Bob Gualtieri
Pinellas County Sheriff's Office

Release on Recognizance (ROR) Program

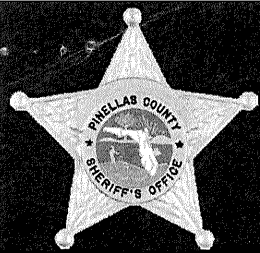
- In addition to the 200 people per day on Supervised Bail, we average 700 per day on supervised ROR. This is in addition to the people who are released from the booking desk at the jail on unsupervised ROR.
- A person is arrested and under the Bail Schedule we have the option in many cases of releasing the person outright from the jail on unsupervised ROR.
- If we set a bail amount and the person does not post bail then they appear before a judge at first appearance court. The judge may release the person on ROR, raise or lower the bail amount, or refer the person to our office for an ROR investigation.



Sheriff Bob Gualtieri
Pinellas County Sheriff's Office

Release on Recognizance (ROR) Program

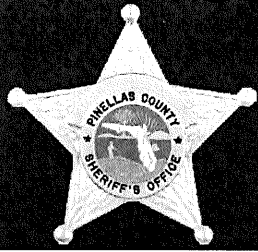
- Upon receipt of the referral we conduct an investigation regarding the person's suitability for ROR and if we believe the criteria has been met we then take the file and recommendation to a judge who makes the ROR decision. Our investigation includes the use of a risk assessment instrument.
- We also monitor the jail inmate population and look for people in jail for offenses and with bail amounts that indicate the person may be a candidate for ROR.



Sheriff Bob Gualtieri
Pinellas County Sheriff's Office

Release on Recognizance (ROR) Program

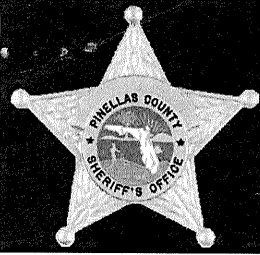
- We self-initiate initiate ROR investigations without a referral from the court and if we believe the person is a good candidate for ROR we take the file to a judge and recommend release on supervised ROR.
- Putting the ROR and Supervised Bond programs together, we have an average of 900 people per day on supervised release who otherwise would be in the Pinellas County Jail.



Sheriff Bob Gualtieri **Pinellas County Sheriff's Office**

Release on Recognizance (ROR) Savings

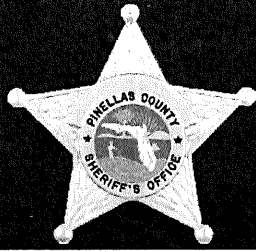
- Our average daily jail population is 3,000 inmates and housing the additional 900 people per day would be an astronomical expense, and it is unnecessary.
- The cost to house 900 people per day is \$113,400 and annually it is \$41 million.
- The cost to run our entire pre-trial release program is \$2.1 million so the annual savings achieved through the ROR and Supervised Bond programs is \$38.9 million, with 99% of the defendants appearing for court.



Sheriff Bob Gualtieri
Pinellas County Sheriff's Office

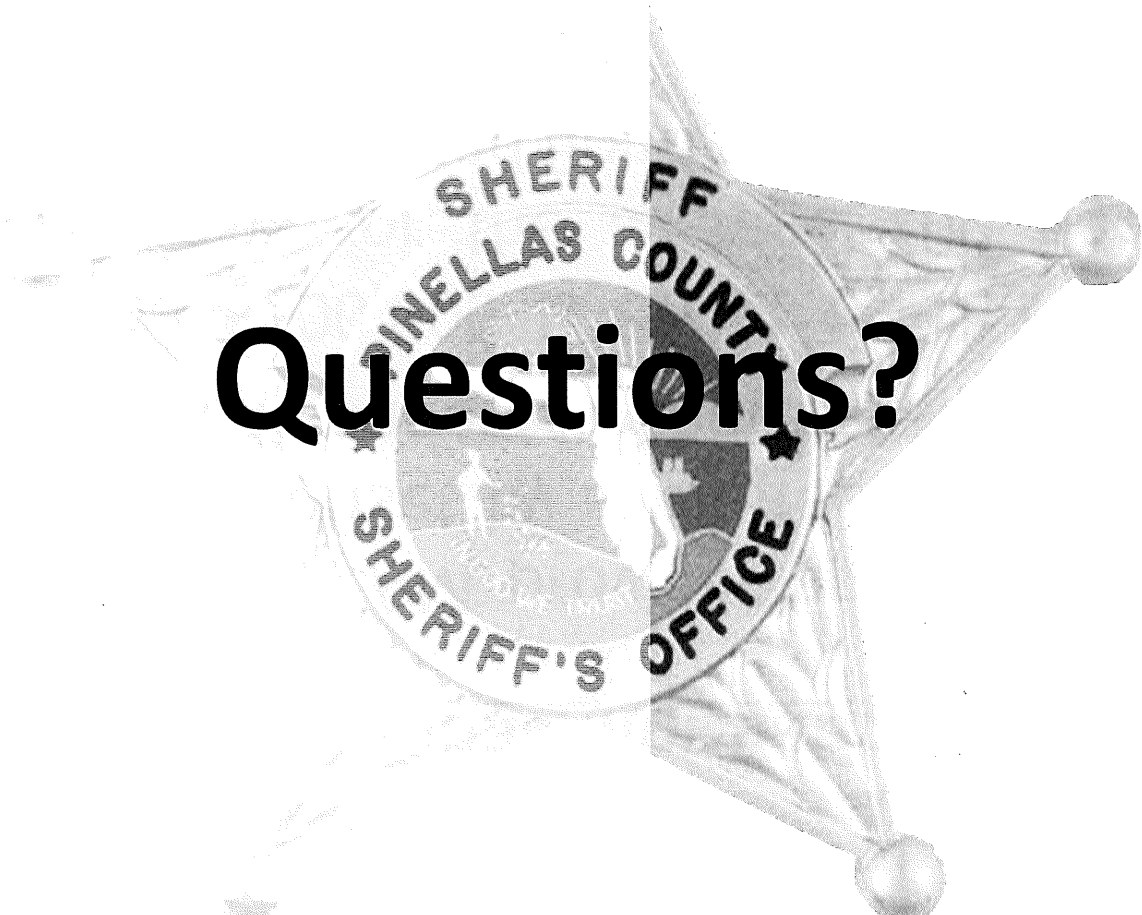
Additional Information

- PCSO pays our EM/CAM provider approximately \$500,000 per year, which is offset by some fees we collect from the Supervised Bond defendants if they have the ability to pay.
- Regardless, the \$500,000 is offset by the \$9.2 million in incarceration costs for the average 200 people per day released on the Supervised Bond program.



Sheriff Bob Gualtieri

Pinellas County Sheriff's Office

A large, faded, and slightly tilted version of the Pinellas County Sheriff's Office star logo is centered in the background of the slide.

Questions?

"Leading The Way For A Safer Pinellas"

Compass 100

Compass 100 meets the statutory requirement that, “each inmate released from incarceration by the department must complete a 100-hour comprehensive transition course that covers job readiness and life management skills.” Compass 100 integrates a comprehensive, standardized program of career, life and community readiness skills into the existing academic and vocational programs already offered by the Florida Department of Corrections (FDC). Individuals who do not have an academic or vocational need will be enrolled in a hybrid section that contains a combination of self-directed instruction and weekly meetings with the Bureau of Programs’ staff to track progress and offer assistance.

To effectively deliver career and community readiness skills, the Compass 100 curriculum contains a modular system of lessons and supporting materials. In addition to the modules, participants will engage in lessons, assignments and discussions on a variety of life and career readiness skills. They include topics such as punctuality, workplace etiquette, interpersonal communication and problem solving, to name a few.

Compass 100 participants will be required to complete the *Thinking for a Change* (T4C) program. T4C is a nationally recognized cognitive-behavioral intervention course specifically designed to assist incarcerated individuals, by changing their thinking and providing skills to effectively communicate and solve problems. For those who cannot complete T4C, there will be an alternate module of lessons to satisfy in order to receive the 24 points/hours. Throughout the program participants will build a *Readiness Portfolio* which will contain items such as well-developed plans/goals, resume, current community resources, scheduled community appointments, program completion certificates and other pertinent documents that will assist in transition back into the community.

Spectrum

Spectrum is an advanced evidence-driven assessment and screening system designed to follow an inmate from community supervision, through institutions and back to the community. This enables FDC to provide data-driven, informed decisions regarding the continuum of care for an individual within our custody. Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education. Spectrum calculates an individual’s overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas. Through motivational interviewing and individualized case planning, FDC maps resources to identified needs to reduce an individual’s risk of recidivism.

Academic and Workforce education/GED

Programs encompasses 3 areas:

1. Core Programs

- a. Literacy
 - b. Academic/workforce education
 - c. Substance abuse treatment
- 2. Domain Programs
 - a. Cognitive Behavioral Treatment, i.e. Thinking for a Change
- 3. Elective Programs
 - a. A wide array of evidence driven, promising programs that influence pro-social behavior and support FDC curriculum
 - i. Labs that support Cognitive Behavioral Treatment coursework, i.e. Babies to Brains for Parenting module of Thinking for a Change
 - ii. Dog training
 - iii. Volunteer support programs, i.e. Toast Masters

Cox, Ryan

From: Cox, Ryan
Sent: Thursday, January 25, 2018 4:59 PM
To: Torres, Jared
Subject: RE: Spectrum

Jared,

Thank you so much!!

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

From: Torres, Jared [mailto:Jared.Torres@fdc.myflorida.com]
Sent: Thursday, January 25, 2018 4:58 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Cc: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Subject: Re: Spectrum

Ryan,

Please find below Department staff:

Spectrum, as well as its predecessor CINAS, is based on the Risk – Needs – Responsivity (RNR) model and they both contain responsivity elements.

Core programming refers to GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors.

On Jan 25, 2018, at 3:27 PM, Cox, Ryan <Cox.Ryan@flsenate.gov> wrote:

Hey guys – one more thing from Abe...

I saw this sentence on your Program information background document – “Spectrum calculates an individual’s overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas”

What are the three core program areas? Is this the Risk-Needs-Responsivity Model I was asking about earlier?

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

From: Cox, Ryan

Sent: Thursday, January 25, 2018 2:50 PM

To: 'Torres, Jared' <Jared.Torres@fdc.myflorida.com>; 'Vaughan, Scotti' <Scotti.Vaughan@fdc.myflorida.com>

Subject: Spectrum

Can you also send me an email about who independently verified Spectrum risk assessment tool? Thanks!

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192



FLORIDA STATE UNIVERSITY
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

January 19, 2018

Secretary Julie L. Jones
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500

Dear Secretary Jones,

The purpose of this letter is to communicate the findings from our independent assessment of the Department's Corrections Integrated Needs Assessment System (CINAS). The primary function of CINAS is to empirically determine an inmate's post-release risk of recidivism so the Department can prioritize high-risk inmates for programming.

Our validation report finds that the components of CINAS are performing as intended. Specifically, CINAS produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States. We hope the findings and recommendations provided in the attached report will be helpful in the transition to the Department's revised risk assessment system—Spectrum.

We wish to express our gratitude to the following individuals for sharing their tremendous knowledge of the development and implementation of CINAS: Abe Uccello, Patrick Mahoney, Brad Locke, Kerensa Lockwood, and others in the Division of Development as well as Rusty McLaughlin in the Bureau of Classification Management. We also wish to extend our gratitude to David Ensley, Dena French, Lori Nolting, and Jami Dunsford in the Bureau of Research and Data Analysis for providing us with the requisite data and valuable insights regarding the construction of the system data and algorithm. By our estimates, these individuals and others have contributed significant time and effort to the internal design, development, and implementation of CINAS. Our report concludes that their efforts have produced commendable results.

If you or your team has questions or needs clarification on the information provided in the attached report, please do not hesitate to contact us.

Sincerely,

William D. Bales, Ph.D.

Jennifer M. Brown, ABD

FDC – BACKGROUND INFORMATION ON RE-ENTRY PROGRAMMING AND TRANSITIONAL SERVICES

RELEASE OFFICERS

The release/transition process is comprised of 8 phases beginning 240 days before the sentence ends. In phase 1, release officers provide the health services administrator with a list of inmates scheduled for release within 240 days for the purpose of identifying inmates who may require continuity of care planning. In phase 2 Release Officers interview the inmates and review their records to determine what their needs are and what resources they have available. Based on this assessment, the release officer develops a release plan which includes community referrals for housing, employment, transportation, medical/mental health, substance abuse transitional housing, faith based services, etc. The Release Officer provides each inmate with corresponding community resource information. In addition, the Release Officer ensures compliance with many statutory requirements pertaining to releasing inmates such as, sexually violent predator referral, sexual offender notices, career offender notices, victim notification, 100-hour Transition Program, DNA requirements, post-release supervision requirements, outstanding warrants checks, etc. In addition, we have a Medical Release unit that assists in the identification of inmates with significant post-release medical needs, the preparation of benefit applications to pay for post-release care, and with coordinating community placement based on the assessed level of need.

IN-PRISON RESIDENTIAL THERAPEUTIC COMMUNITIES – SUBSTANCE USE DISORDER TREATMENT

A 9-12 month Residential Therapeutic Community, emphasizes structure, responsibility, credibility, accountability, discipline, consistency and consequences/limit setting. Inmates participate in daily structured activities which include a minimum of 10 hours per week of group or individual counseling. Counselor to inmate ratio is 1:15.

COMMUNITY-BASED THERAPEUTIC COMMUNITIES – SUBSTANCE USE DISORDER TREATMENT

Inmates must be community custody and are released directly to the community from the program. A 6-12 month modified Residential Therapeutic Community, emphasizes structure, responsibility, credibility, accountability, discipline, consistency and consequences/limit setting. Inmates participate in daily structured activities which include a minimum of 10 hours per week of group or individual counseling. Counselor to inmate ratio is 1:15.

SUBSTANCE ABUSE TRANSITIONAL RE-ENTRY PROGRAMS – SUBSTANCE USE DISORDER TREATMENT

This modified therapeutic community model offers a continuum of substance abuse services including prevention, outpatient and aftercare services, as well as education/vocational services. There are two components, a primary programming component and a community based work release or prison based work component. The focus of this program model is on learning, developing and practicing skills necessary for a successful re-entry into the community upon release from prison, abstinent from drug use.

INTENSIVE OUTPATIENT PROGRAMS – SUBSTANCE USE DISORDER TREATMENT

A 4-6 month program where inmates are involved in substance abuse programming for half a day and participate in a minimum of twelve (12) hours of counselor-supervised activities per week to include group and individual counseling. Counselor to inmate ratio does not exceed 1:25.

OUTPATIENT/AFTERCARE PROGRAMS – SUBSTANCE USE DISORDER TREATMENT

Outpatient/Aftercare Services provide individual and group counseling, can be a step-down program for the more intensive Residential Therapeutic Community or an initial program for those whose time is

limited for pre-release services and they need other types of services while still incarcerated in order to have the best opportunity. Groups meet twice weekly with an individual session held monthly, at minimum. Program Duration is four to six months.

SUBSTANCE USE DISORDER TREATMENT AT DC OPERATED WORK RELEASE CENTERS

These programs offer intervention, outpatient and aftercare. Outpatient services are a minimum of four months and Aftercare/alumni services are provided until the inmate is released. Intervention services are provided to inmates with less than 4 months to serve. The counselor to client ratio is 1:50.

PREVENTION PROGRAMS

Prevention services include, but are not limited to, cognitive-behavioral programs, substance abuse education and family reunification programs.

COMPASS 100

Compass 100 integrates a comprehensive, standardized program of career and community readiness skills into the existing academic and career and technical education programs offered by the Department and is facilitated by a Career Development Specialist contracted through Tallahassee Community College for inmates who are not enrolled in the aforementioned program types. The program consists of a series of modular lessons and supporting materials that results in a well-developed, thorough, Readiness Portfolio that is built throughout the modules. Incorporated within the modules are a variety of life skills that are required for success in the workplace, community, and home. Further, each module includes objectives that specifically align with and satisfy the most current Florida Curriculum Frameworks related to College and Career Readiness.

RESTRICTIVE HOUSING TRANSITION PROGRAMMING

Targeted intervention, in the form of evidence-informed, cognitive behavioral programming for prosocial development in-cell as well as in congregate settings is currently being piloted at Florida State Prison and Santa Rosa Correctional Institution. Participants are interviewed and selected using a multi-disciplinary approach and goals for their individual progression through the levels of Restrictive Housing are developed. Participants are first given some exploratory and reflective assignments in-cell prior to participating in out-of-cell, congregate programming. Secure program chairs are utilized for individuals in the most restrictive levels of Restrictive Housing, which that allows them to be brought out of their secure cell and participate in cognitive behavioral programming with small groups of their peers while secured in individual desk-type chairs. Participants in the least restrictive level of Restrictive Housing participate in small groups in designated program space unrestrained. The multi-disciplinary approach is used throughout the length of the pilot.

CAREER & TECHNICAL EDUCATION (CTE) PROGRAMS

Educational programs that prepare individuals for occupations important to Florida's economic development. Each program is aligned to a career cluster. With partners from education, business and industry, and trade associations, the program standards are both academically integrated and responsive to business and industry.

THE ADULT BASIC EDUCATION (ABE) PROGRAM

Includes content standards that describe what students should know and be able to do in Mathematics, Language Arts (language, speaking and listening, and writing), and Reading. The content standards support provision of basic skills instruction (grade level equivalents 0.0 – 8.9) and critical thinking skills to prepare students for the GED® Preparation Program (grade level equivalents 9.0 – 12.9),

postsecondary education, and employment. The ABE content standards include the College and Career Readiness (CCR) standards. The integration of CCR standards into ABE programs is intended to provide the foundation of knowledge and skills that students will need to transition to adult secondary programs with the goal of continuing on to postsecondary education.

THE GED® PREPARATION PROGRAM

Consists of four content-area assessments: Reasoning through Language Arts, Mathematics Reasoning, Science, and Social Studies. The purpose of the program is to prepare students to obtain the knowledge and skills necessary to pass the Official GED® Tests and be awarded a State of Florida High School Diploma. An additional performance level will certify that the adult student is career and college ready. This program strives to motivate students not only to obtain a GED® diploma, but to enroll in a career and technical course simultaneously and continue their education to earn a postsecondary degree, certificate, or industry certification. In order to be enrolled in the GED® Integrated Comprehensive course number, students must pretest at or above the 9th grade level in at least two of the content areas (reading, language arts, or math).

COMMUNITY RELEASE PROGRAM UNIT (BUREAU OF CLASSIFICATION MANAGEMENT)

The Community Release Program Unit is divided into two entities:

- 1) The Community Release Center Unit which provides oversight and guidance in the application of the Community Release Programs (Any program that allows inmates to work at paid employment or a center work assignment or to participate in education, training, substance abuse treatment programs, or any other transitional program to facilitate re-entry into the community while in a community release center) for Community Release Centers statewide, and contract management for vendor operated centers.
- 2) The Community Release Center Electronic Monitoring Unit which is responsible for the oversight and monitoring of the Global Positioning Satellite (GPS) system utilized at community release centers.

Within the Community Release Centers there are four distinct types of assignments:

- **Community Work Release (CWR)**: The portion of the community release program that allows inmates to work at paid employment in the community while continuing as inmates of the facility where they are confined. Inmates with non-advanceable release dates (85% sentence) must be within 14 months of their tentative release date. Inmates with advanceable release dates must be within 19 months of release.
- **Center Work Assignment (CWA)**: The portion of the community release program for inmates which allow placement at a community release center to assist with the maintenance, food service duties, or assignment on outside work squads while confined at the facility. They are allowed to earn a small stipend while in this status. Inmates with non-advanceable release dates (85% sentence) must be within 19 months of release. Inmates with advanceable release dates must be within 28 months of release.
- **Transition (PWR)**: The portion of the community release program that provides inmates substance abuse programming and skills necessary for employment and re-entry into their communities prior to being assigned to work release. Inmates with non-advanceable release dates (85% sentence) must be within 28 months of release. Inmates with advanceable release dates must be within 36 months of release.
- **Community-based Therapeutic Program (CTP)**: The portion of the community release program for inmates that provides transitional services which includes substance abuse treatment, educational/vocational services, and self-betterment programs, while in the community, in lieu

of placement into paid employment (CWR) or center work assignment (CWA). The inmates' release dates must be not shorter than six months and no longer than twelve months.

PRIVATELY OPERATED WORK RELEASE CENTERS

These programs provide housing, meals, job placement opportunities, substance abuse treatment, education and other transitional services for employed inmates nearing re-entry back into society. The Substance abuse treatment programming offers a continuum of licensed services including outpatient, aftercare and intervention. Outpatient services are a minimum of four months and Aftercare/alumni services are provided until the inmate is released. Intervention services are provided to inmates with less than 4 months to serve. Inmates in this program must be community custody and are released directly to the community from the program.



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor

RON DESANTIS

Secretary

MARK S. INCH

501 South Calhoun Street, Tallahassee, FL 32399-2500

www.dc.state.fl.us

To whom it may concern:

A request was made to the Florida Department of Corrections to complete an analysis of SB 534—Pretrial Release. Please be advised that SB 534 does not have direct impact on the Florida Department of Corrections.



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



R. Philip Twogood, Coordinator

February 11, 2019

SB0534

SB0534 has no policy impact on OPPAGA. The tasks assigned to OPPAGA in the proposed legislation may be accomplished with existing resources.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 534

Bill Number (if applicable)

Topic SB 534 - Pretrial Release

Amendment Barcode (if applicable)

Name Mike Harrison

Job Title Bail Bondsman - Owner

Address 3039 Crawfordville Hwy

Street

Phone 850-926-2299

Crawfordville

City

FL

State

32321

Zip

Email harrisonbailbonds@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing F B A A

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)

APPEARANCE RECORD

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

3-4-19

Meeting Date

534

Bill Number (if applicable)

Topic Prc Trial Release

Amendment Barcode (if applicable)

Name Chris Lucero

Job Title Bail Agent / Managing Genral Agent

Address 4540 us Hwy 1 North

Phone 904 226 5007

Street

St Augustine FL

State

32095

Zip

Email aabailable@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bail Agents 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019
Meeting Date

534
Bill Number (if applicable)

Topic Pre-Trial Release

Amendment Barcode (if applicable)

Name Judy Mandrell

Job Title Pastor

Address 1911 Chowkeebin Court
Street

Phone 850-212-8805

Tallah FL 32301
City State Zip

Email evangelistjudy00@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

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)

3/4/19

Meeting Date

SB534

Bill Number (if applicable)

Topic Pretrial Release

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Communications and Public Affairs

Address 100 N Duval Street

Phone 850-386-3131

Street

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

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

3-4-19

Meeting Date

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

534

Bill Number (if applicable)

Topic Pre trial

Amendment Barcode (if applicable)

Name Sam B Wesley II

Job Title Bail Bonds

Address 739 NW 5th Ave

Phone 352 377 7135

Street

Gainesville

FL

32601

City

State

Zip

Email onesunwesleyii@att.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Alachua County Bail Bonds Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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APPEARANCE RECORD

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

3/4/19

Meeting Date

534

Bill Number (if applicable)

Topic Pre-Trial Release

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 113 E. College Ave.
Street

Phone 850-933-5994

Tallahassee FL 32301
City State Zip

Email edward@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Financial Casualty & Surety

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

3/4/19

Meeting Date

SB0534

Bill Number (if applicable)

Topic Pretrial Release

Amendment Barcode (if applicable)

Name Cesar Grajales

Job Title Director of Coalitions

Address 200 W College Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Libre Initiative

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 534

Bill Number (if applicable)

Topic Pre trial Release

Amendment Barcode (if applicable)

Name Matthew Jones

Job Title President Florida Bail Agents Association

Address 312 May St
Street

Phone 231-896-2811

Punta Gorda FL 33950
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bail Agents Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3-4-19

Meeting Date

534

Bill Number (if applicable)

Topic Pretial Release

Amendment Barcode (if applicable)

Name Dan Amato

Job Title Vice President

Address 6421 Saint Partin Place

Phone 877-750-2528

Street

Belle Isle Fl. 32812

City

State

Zip

Email danato@asc-usi.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Surety Company

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3.4.19

Meeting Date

534

Bill Number (if applicable)

Topic Pretrial Release

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Clayton

Job Title Executive Director

Address PO Box 352
Street

Phone _____

Franklinville

City

NJ

State

08322

Zip

Email _____

Speaking: ☐ For ☒ Against ☒ Information

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

Representing Amer American Bond Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/19
Meeting Date

534
SB 1334
Bill Number (if applicable)

Topic Bail Reform - Pre-Trial Release

Amendment Barcode (if applicable)

Name Rodney S. Long

Job Title General Agent / Bail Agent

Address 1712 NE Waldo Road
Street

Phone _____

CRAVENVILLE, FL 32609
City State Zip

Email longandlongagents@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Rodney Long - Bail Bonds & Long & Long General Agents

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.

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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)

3 1 4 12019

Meeting Date

Topic _____

Bill Number 534
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB534
Bill Number (if applicable)

Meeting Date _____

Topic Retrial Release SB534

Amendment Barcode (if applicable) _____

Name Kimberly Palmer

Job Title Bail Agent

Address 2724 S. Orlando Drive

Phone 407-688-8223

Sanford FL 32773
City State Zip

Email Kpalmer9869@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

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.

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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)

3/4/2019

Meeting Date

SB 534

Bill Number (if applicable)

Topic Pretrial Release

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 8, 2019

I respectfully request that **Senate Bill #534**, relating to **Pretrial Release**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Montford

SUBJECT: Youth in Solitary Confinement

DATE: March 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 624 creates ss. 945.245, 985.28, and 985.4415, F.S., which prohibit a youth from being placed in isolation except in certain circumstances. The restrictions for placing a youth in isolation created in the bill are the same for youth in the custody of the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ). Additionally, the bill amends s. 951.23, F.S., requiring a new model rule to be included in the Model Jail Standards that ensures compliance with the standards for placing a youth in isolation established in the newly created s. 945.425, F.S., and requiring each sheriff and chief correctional officer to adopt such model rule. The Model Jail Standards apply to county detention facilities.

The bill prohibits solitary confinement and limits the circumstances for placing a youth into isolation to emergency or medical confinement. A placement of a youth into one of these two types of confinement is limited to specific periods of time. For emergency confinement, a youth may not be placed in confinement for longer than 24 hours, or 48 hours if a one-time extension is granted and only if specific conditions are met. For medical confinement, a youth may not be placed in confinement for a period of time exceeding the time that is necessary for recovering from his or her illness or to prevent the spread of a communicable illness to the facility.

The bill requires that all less restrictive means for resolving the issues requiring the youth to be placed in confinement must be exhausted prior to placing the youth into emergency or medical confinement. Additionally, the bill requires that any placement of a youth in confinement in accordance with the bill must be documented and specific guidelines for monitoring a youth that

is placed in either type of confinement are established. The bill specifically prohibits the use of emergency or medical confinement for the purposes of punishment or discipline.

The bill will likely have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) to the DOC, the DJJ, and local counties due to the increased workload and need to hire staff to fulfill the requirement to conduct periodic evaluations of youth placed in confinement. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Solitary confinement is the most extreme form of isolation in a detention setting and can include physical and social isolation in a cell for 22 to 24 hours per day. The American Academy of Child and Adolescent Psychiatry says that juveniles placed in solitary confinement can experience a number of negative impacts, including, but not limited to, depression, anxiety, sleeplessness, psychosis, and long lasting trauma. This type of isolation can be particularly harmful for adolescents who need social interaction for ongoing developmental progress.¹ The National Conference of State Legislatures (NCSL) reports that 16 states and the District of Columbia currently prohibit or limit the use of solitary confinement with youth.²

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).³ 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, imposing a prohibition on placing youth in solitary confinement. A “juvenile” is defined in federal law to mean a person who is less than 18 years of age.⁴

¹ The National Conference of State Legislatures, Anne Tiegen, *States that Limit or Prohibit Juvenile Shackling and Solitary Confinement*, August 16, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx> (hereinafter cited as “The NCSL State Data”); See also USA Today, Jessica Feierman and Jenny Lutz, *Placing juvenile in solitary confinement doesn’t fix them. In fact, it makes them worse*, January 11, 2019, available at <https://www.usatoday.com/story/opinion/policing/2019/01/11/policing-usa-juvenile-detention-solitary-confinement-mental-illness/2505702002/> (all cites last visited February 27, 2019).

² The NCSL State Data includes a map detailing the 16 states, which include Alaska, Arizona, California, Colorado, Connecticut, Maine, Massachusetts, Nevada, New Jersey, New York, Oklahoma, Tennessee, Texas, Vermont, Virginia, and West Virginia.

³ The First Step Act of 2018, Pub. L. No. 115-391 (2018).

⁴ The United States Department of Justice, “*Juvenile*” defined, available at <https://www.justice.gov/jm/criminal-resource-manual-38-juvenile-defined> (last visited March 1, 2019).

The First Step Act specifically provides that a covered juvenile⁵ may not be placed on room confinement⁶ at a juvenile facility⁷ for discipline, punishment, retaliation, or any reason other than as a temporary response to a covered juvenile's behavior that poses a serious and immediate risk of physical harm to any individual, including the covered juvenile.⁸

Additionally, the First Step Act requires a staff member to attempt to use less restrictive techniques⁹ prior to placing a covered juvenile in room confinement. If, after attempting to use less restrictive techniques, a staff member of a juvenile facility decides to place a covered juvenile in room confinement, the staff member is required to explain to the covered juvenile the reasons for the room confinement and inform the covered juvenile of the conditions that will lead to the release from room confinement.¹⁰

The First Step Act imposes restrictions on the maximum amount of time a covered juvenile may be placed in confinement. If a covered juvenile is placed in room confinement, the First Step Act requires the covered juvenile to be released:

- Immediately when the covered juvenile has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or
- If a covered juvenile does not sufficiently gain control, release from confinement must occur not later than:
 - Three hours after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm to others; or
 - Thirty minutes after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm only to himself or herself.¹¹

Additionally, the First Step Act provides that if, after the above-mentioned maximum period of time has expired, the covered juvenile continues to pose a serious and immediate risk of physical harm then he or she must:

- Be transferred to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement; or
- If a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility is required to initiate a referral to a location that can meet the needs of the covered juvenile.¹²

⁵ The First Step Act defines a “covered juvenile” to mean a juvenile who is being prosecuted for an alleged act of juvenile delinquency under ch. 403, U.S.C., or has been adjudicated delinquent under ch. 403, U.S.C., or who is being proceeded against as an adult in a district court of the United States for an alleged criminal offense. Pub. L. No. 115-391, s. 613 (2018).

⁶ The First Step Act defines “room confinement” to mean the involuntary placement of a covered juvenile alone in a cell, room, or other area for any reason.

⁷ The First Step Act defines “juvenile facility” to mean any facility where covered juveniles are committed pursuant to an adjudication of delinquency under ch. 403, U.S.C., or detained prior to disposition or conviction.

⁸ *Supra*, n. 3.

⁹ *Id.* For example, the First Step Act lists talking with the covered juvenile in an attempt to de-escalate the situation and permitting a qualified mental health professional to talk to the covered juvenile as less restrictive techniques.

¹⁰ *Id.*

¹¹ *Supra*, n. 3.

¹² *Id.*

The First Step Act also specifically prohibits the use of consecutive periods of room confinement for the purpose of avoiding the time limitations discussed above.¹³

The BOP reports that there are eight inmates under the age of 18 years and 1,961 inmates between the ages of 18 years and 21 years imprisoned in its facilities.¹⁴

Youth in Confinement in Florida's Correctional Facilities

Department of Corrections

Confinement - General

Inmates in the custody of the DOC may be placed in confinement status based on specified conditions, which are detailed in the DOC's rules. Confinement status types used by the DOC include administrative or disciplinary confinement and protective management. "Administrative confinement" means the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.¹⁵ "Disciplinary confinement" means a form of punishment in which inmates found guilty of committing violations of the DOC rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.¹⁶ "Protective management" means a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.¹⁷

All inmates, regardless of age, are subject to the same consideration for placement in administrative or disciplinary confinement.¹⁸ These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.¹⁹ For protective management, the Rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.²⁰

¹³ The First Step Act also requires the Director of the Bureau of Justice Statistics, with information that is to be provided by the Director of the BOP to include in the National Prisoner Statistics Program the number of prisoners who have been placed in solitary confinement at any time during the previous year. Pub. L. No. 115-391, s. 610 (2018).

¹⁴ The BOP, *Statistics, Inmate Age*, available at https://www.bop.gov/about/statistics/statistics_inmate_age.jsp (last visited February 27, 2019).

¹⁵ Fla. Admin. Code R. 33-602.220(1)(a).

¹⁶ Fla. Admin. Code R. 33-602.222(1)(f).

¹⁷ Fla. Admin. Code R. 33-602.221(1)(j). Protective management is not disciplinary in nature and, to the extent possible, all less restrictive avenues to address protection needs must be employed.

¹⁸ The DOC, *SB 624 Agency Analysis*, p. 3 and 4, February 28, 2019 (hereinafter cited as "The DOC SB 624 Agency Analysis") (on file with the Senate Committee on Criminal Justice). All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314 of the Florida Administrative Code related to prohibited conduct and penalties for infractions of such conduct.

¹⁹ The DOC, *SB 624 Agency Analysis*, p. 3 and 5. *See also* Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

²⁰ Fla. Admin. Code R. 33-602.221(4)(t). All such restrictions must be documented on a specified form and reported to the ICT. The ICT is authorized to restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order or effective management of the institution. The ICT's decision for continuing restriction must also be documented on a specified form.

However, if a youth is housed in a protective management unit they may be subject to more restrictions than a non-youth inmate for their safety and security.²¹

Certain procedures appear to apply consistently across all types of confinement, such as:

- Prior to placing the inmate in confinement, the inmate is given a pre-confinement health assessment or medical evaluation.²²
- The ability to house inmates in confinement with other inmates, subject to the inmates being interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other prior to placing inmates in the same cell.²³
- The number of inmates housed in an administrative confinement cell must not exceed the number of bunks in the cell.²⁴

Inmates in confinement retain certain modified privileges, as mentioned above. For example, such inmates are provided:

- Exercise, which occurs either in the inmate's cell if confined on a 24-hour basis or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum out of doors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.²⁵
- The same clothing and clothing exchange as is provided to the general inmate population.²⁶
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities which are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.²⁷

²¹ The DOC SB 624 Agency Analysis, p. 5.

²² See Fla. Admin. Code R. 33-602.220(2)(b) and (c) and Fla. Admin. Code R. 33-602.222(2)(a). An inmate does not have to be given the pre-confinement evaluation if he or she is currently in another confinement status that required a pre-confinement medical assessment. Rule 33-602.221, related to protective management is silent on whether a pre-confinement evaluation is necessary.

²³ Fla. Admin. Code R. 33-602.220(4)(a); Fla. Admin. Code R. 33-602.221(3)(a); and Fla. Admin. Code R. 33-602.222(3).

²⁴ Fla. Admin. Code R. 33-602.220(4)(a) and (d); Fla. Admin. Code R. 33-602.221(3). Fla. Admin. Code R. 33-602.222(3)(a).

²⁵ The exception to this is when an item on the normal menu creates a security problem in the confinement unit, in which case, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

²⁶ The exception to this is when there is an individual factual basis that exceptions are necessary for the welfare of the inmate or the security of the institution.

²⁷ The warden or his or her designee must approve all legal visits in advance.

- Legal materials in the same manner as in general population as long as security concerns permit.^{28, 29}

Administrative Confinement

The Rule provides that an inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.
- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.³⁰

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in the case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in the case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer, and a member of the Institutional Classification Team (ICT).³¹

An inmate is assessed weekly to determine the appropriateness of placement with the goal of returning the inmate to general population as soon as the facts of the case indicate that such return can be done safely.³² Other assessment requirements that are applicable to inmates who have been confined for more than 30 days include:

²⁸ An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

²⁹ The DOC SB 624 Agency Analysis, p. 3-5; Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

³⁰ The DOC SB 624 Agency Analysis, p. 3; Fla. Admin. Code R. 33-602.220(3).

³¹ Fla. Admin. Code R. 33-602.220(4).

³² Fla. Admin. Code R. 63-602.220(8)(a).

- A psychological screening assessment by a mental health professional to determine his or her mental condition.³³
- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.³⁴

Disciplinary Confinement

Staff are required to conduct regular visits to disciplinary confinement in the same frequency as mentioned above related to administrative confinement with the addition of specific visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.
- As frequently as necessary by the State Classification Officer (SCO) to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.³⁵

Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) does not use solitary confinement with youth that are in the custody of its secure detention centers³⁶ or residential commitment programs.³⁷ Section 985.03(7), F.S., defines a "child" or "juvenile" or "youth" to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.

The DJJ, in conjunction with the Annie E. Casey Foundation, has implemented the Juvenile Detention Alternatives Initiative (JDAI). JDAI is the most widely recognized set of national best practices on the practices and conditions inside juvenile justice facilities. The JDAI Standards

³³ Fla. Admin. Code R. 33.602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

³⁴ Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the SCO reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

³⁵ Fla. Admin. Code R. 33-602.222(7). Fla. Admin. Code R. 33-602.222(1)(l) provides that the SCO refers to the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

³⁶ Section 985.03(19), F.S., defines "detention center or facility" to mean a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents is not considered a detention center or facility.

³⁷ Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines "restrictiveness level," addresses the different levels of commitment programs, including, in part, "minimum-risk nonresidential," "nonsecure residential," and "high-risk residential."

provide that solitary confinement can never be used for purposes of punishment or discipline and must be limited to periods of less than four hours.³⁸

The DJJ does use short-term supervised confinement, precautionary observation, and secure and controlled observation for youth presenting an immediate danger to themselves or others in its detention and residential facilities. Additionally, medical confinement is used for youth who present with a communicable disease that may infect others.³⁹

Detention Facilities

The applicable DJJ Rules provide definitions related to types of confinement, including behavioral confinement and medical confinement. “Behavioral confinement” is defined to mean placement of a youth in a secure room during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself or herself.⁴⁰ “Medical confinement” is defined to mean the placement of a youth in a secure room to allow the youth to rest and recover from illness and/or prevents the spread of a communicable illness (i.e. flu, H1N1 virus, etc.).⁴¹

Additionally, confinement may not be used to harass, embarrass, demean, or otherwise abuse a youth. The use of confinement must be monitored by the Superintendent or designee and the time limit for placement of a youth in confinement is no more than eight hours unless the superintendent or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The Regional Director or designee must review and grant any confinement extended beyond 24 hours, and, if granted, must notify the Assistant Secretary or designee.⁴²

A confinement report must be submitted by the detention officer as soon as possible, but no later than one hour after the youth’s confinement. The confinement report must be reviewed by the detention officer’s supervisor as soon as possible, but no later than two hours after the youth’s confinement. The detention officer supervisor must evaluate and document the youth’s status, at a minimum, every three hours to determine if the continued confinement of the youth is required. A youth is prohibited from being held in confinement beyond 72 hours without a confinement hearing.⁴³

Residential Commitment Facilities

The applicable DJJ Rules to residential facilities prohibits a residential commitment program’s behavior management system from including disciplinary confinement, wherein a youth is

³⁸ See JDAI, A Project of the Annie E. Casey Foundation, *Revised JDAI Standards, Standards Instrument, 2014 Update*, p. 6, December 2014, available at <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited February 27, 2019).

³⁹ The DJJ, *SB 624 Agency Analysis*, p. 2, January 31, 2019 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as “The DJJ SB 624 Analysis”); See also Fla. Admin. Code Chs. 63E-7, 63G-2, and 63N-1.

⁴⁰ Fla. Admin. Code R. 63G-2.014(7).

⁴¹ Fla. Admin. Code R. 63G-2.014(50). The use of medical confinement is not intended as punishment or discipline and is ordered by the Designated Health Authority.

⁴² Fla. Admin. Code R. 63G-2.022(4).

⁴³ Fla. Admin. Code R. 63G-2.022(4).

isolated in a locked room, as discipline for misbehavior.⁴⁴ A residential commitment program may use room restriction, which is described to mean temporarily restricting the youth's participation in routine activities by requiring the youth to remain in his or her sleeping quarters, when:

- A youth is out of control or a suicide risk.
- A supervisor has given prior approval for each use of room restriction.
- It does not exceed four hours and the door to the room remains open to facilitate staff supervision.
- Staff engages, or attempts to engage, the youth in productive interactions at least every 30 minutes.
- The program does not deny a youth basic services, such as regular meals and physical or mental health services.
- The program staff uses strategies, such as conflict resolution and constructive dialogue, to facilitate the youth's reintegration into the general population.⁴⁵

The program documents certain details for each case of room restriction, including:

- A description of the behavior that resulted in room restriction;
- The date and time room restriction was implemented;
- The name of the staff person who recommended the use of room restriction and the name of the approving supervisor;
- The name of the staff person removing the youth from room restriction;
- The date and time of removal and a description of the youth's behavior and attitude upon removal; and
- Follow-up actions taken or attempted to help re-integrate the youth back into the general population when released from room restriction.⁴⁶

A residential commitment program must ensure that staff observe a youth at least every ten minutes while in their sleeping quarters, including when on room restriction. Staff must conduct the observations in a manner to ensure the safety and security of each youth and document real time observations manually or electronically.⁴⁷

Further, a residential commitment program may use controlled observation only when necessary and as a last resort.⁴⁸ Controlled observation is defined to mean an immediate, short-term crisis management strategy, not authorized for use as punishment or discipline, wherein a youth in a residential commitment program is placed in a separate, identified, safe, and secure room.⁴⁹ Such specified programs are authorized to temporarily place a youth in a controlled observation room only in the following situations when non-physical interventions would not be effective:

⁴⁴ Fla. Admin. Code R. 63E-7.009(3)(e).

⁴⁵ Fla. Admin. Code R. 63E-7.009(4).

⁴⁶ *Id.* Further, Rule 63E-7.011, F.A.C., provides that a youth is prohibited from large muscle exercise when he or she is temporarily separated from the general population, including when placed on controlled observation or room restriction status pursuant to Rule 63E-7.013, F.A.C. However, if a youth is restricted to a room, the program must give the youth an opportunity for large muscle exercise as soon as is reasonably possible after the youth is reintegrated into the general population.

⁴⁷ Fla. Admin. Code R. 63E-7.013(3)(b).

⁴⁸ Fla. Admin. Code R. 63E-7.013(16).

⁴⁹ Fla. Admin. Code R. 63E-7.002(20).

- Emergency safety situations where there is imminent risk of the youth physically harming himself or herself, staff, or others; or
- When the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the youth's safety or the safety of others.⁵⁰

Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior 15-minute intervals.⁵¹

A supervisor with delegated authority must give prior authorization for each use of controlled observation unless the delay caused by seeking prior approval would further jeopardize the safety of others and the program's security. Staff is prohibited from leaving a youth alone in a controlled observation room until an inspection of the room is conducted and it is deemed safe, secure, and in compliance with specified guidelines.⁵² The Rule further provides specific procedures for how to address a youth whose health or safety deteriorates once placed into controlled observation.⁵³

The Rule prohibits the use of controlled observation as punishment or discipline.⁵⁴

County Detention Facilities

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS Committee is required to develop and continually enforce model standards adopted by the group.⁵⁵

The FMJS defines terms such as administrative confinement and disciplinary confinement, but does not include policies specific to youth regarding such types of confinement. "Administrative confinement" is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.⁵⁶ "Disciplinary confinement" is defined to mean the segregation of an inmate for disciplinary reasons.⁵⁷

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an

⁵⁰ Fla. Admin. Code R. 63E-7.013(16).

⁵¹ The DJJ SB 624 Agency Analysis, p. 2.

⁵² *Id.*

⁵³ See Fla. Admin. Code R. 63E-7.013(16)(e)-(i). For example, a youth must be immediately removed from the controlled observation room and provided follow-up mental health services if he or she begins demonstrating acute psychological distress or suicide risk behaviors subsequent to placement in controlled observation.

⁵⁴ Fla. Admin. Code R. 63E-7.001(20).

⁵⁵ The Florida Sheriff's Association (FSA), *Florida Model Jail Standards, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited February 27, 2019) (hereinafter cited as "FMJS Rule").

⁵⁶ The FMJS Rule 1.2.

⁵⁷ The FMJS Rule 1.17.

incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate's file.⁵⁸

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except as justified by his or her classification status or special inmates.⁵⁹ Further, special inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.⁶⁰ The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate's general condition and attitude at each visit.⁶¹

Additionally, the FMJS requires that an inmate confined in an isolation cell used for medical purposes be examined by a physician or designee within 48 hours following his or her confinement in such area or cell. A physician or designee must determine when the inmate will be returned to the general population. The inmate must remain in isolation if the physician or designee:

- Finds that the inmate presents a serious risk to himself or others; or
- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.⁶²

While the FMJS has some policies related to confinement as described above, the only portion that is specific to youth provides that a youth may not be confined in isolation for medical purposes unless the order is made by a medical professional and approved by a medical doctor. In addition, the model rule provides that such youth should be examined by a physician or designee within 8-12 hours of his or her confinement.⁶³

It is unclear whether there are consistent rules throughout the Sheriff's entities regarding the use of solitary confinement for administrative or disciplinary purposes with youth. Additionally, it is unclear related to the manner, type, or frequency of placing youth in confinement, if such a practice is used.

III. Effect of Proposed Changes:

The bill creates ss. 945.245, 985.28, and 985.4415, F.S., which are applicable to youth in the custody of the DOC or DJJ, respectively, prohibiting a youth from being placed in isolation except in certain circumstances. Additionally, the bill amends s. 951.23, F.S., creating an additional rule for the Model Jail Standards that addresses confinement of prisoners by classification on the basis of age and which includes a strict prohibition on the use of solitary confinement for prisoners under the age of 19 years. The bill requires each sheriff and chief

⁵⁸ The FMJS Rule 13.13.

⁵⁹ *Id.*

⁶⁰ The FMJS Rule 5.04.

⁶¹ The FMJS Rule 13.14.

⁶² The FMJS Rule 7.23.

⁶³ The FMJS Rule 21.11(e).

correctional officer to adopt the model rule to be in compliance with s. 945.425, F.S., which is created in this bill. The Model Jail Standards apply to county detention facilities.

The bill provides a general prohibition against a youth or child being placed in solitary confinement. The bill establishes criteria for placing a youth or child in emergency or medical confinement and guidelines for monitoring a youth that is placed in either type of confinement. The bill prohibits the use of emergency or medical confinement for the purposes of punishment or discipline.

The restrictions for placing a youth in isolation created in the bill are the same for youth in the custody of the DOC, the DJJ, or county detention facilities.

Definitions

The bill provides definitions relevant to the provisions of the bill, including:

- “Youth” or “child,” which means a person in the custody of the DOC or DJJ, respectively, who is under the age of 19 years.⁶⁴
- “Emergency confinement,” which means a type of confinement that involves the involuntary placement of a youth or child in an isolated room to separate him or her from others in the facility and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.
- “Medical confinement,” which means a type of confinement that involves the involuntary placement of a youth or child in an isolated room to separate him or her from others in the facility to allow him or her to recover from illness or to prevent the spread of a communicable illness.
- “Mental health clinician,” which means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician’s assistant.
- “Solitary confinement,” which means the involuntary placement of a youth or child in an isolated room to separate him or her from others in the facility for any period of time.

Emergency Confinement

The bill provides that a youth or child may be placed in emergency confinement if all of the following conditions are met:

- A nonphysical intervention with the youth or child would not be effective in preventing harm or danger to the youth or others.
- There is imminent risk of the youth or child physically harming himself or herself, staff, or others or that he or she is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of himself or herself or others.
- All less-restrictive means have been exhausted.

The bill also requires that facility staff document the placement of a youth or child in emergency confinement, including the justification for the placement and a description of the less-restrictive

⁶⁴ The term used in s. 945.245, F.S., is entitled “youth,” but is entitled as “child” in ss. 985.28 and 985.4415, F.S. The terms are interchangeable and have the same definition.

options that the facility staff exercised before the youth or child was placed in emergency confinement.

The bill requires a mental health clinician to evaluate a youth or child who is placed in emergency confinement within one hour of such placement to ensure that the confinement is not detrimental to his or her mental or physical health. Subsequent to the initial evaluation, a mental health clinician must conduct a face-to-face evaluations of the youth or child every two hours thereafter to determine whether he or she should remain in emergency confinement. The mental health clinician must document each evaluation and provide justification for continued placement in emergency confinement.

The bill prohibits a youth or child from being placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician. A one-time extension of 24 hours for continued placement may be granted if a mental health clinician determines that release of the youth or child would imminently threaten the safety of the youth or child, or others. However, if, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the youth or child to be released from emergency confinement, the facility staff must prepare to transfer the youth or child to a facility that is able to provide specialized treatment to address his or her needs.

The bill requires a youth or child placed in emergency confinement to have access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to him or her in other custody status placements.

Medical Confinement

The bill provides that a youth or child may be placed in medical confinement if all the following conditions are met:

- Isolation from the general inmate population and staff is required to allow the youth or child to rest and recover from illness or to prevent the spread of a communicable illness.
- A medical professional deems such placement necessary.
- The use of other less-restrictive means would not be sufficient to allow the youth or child to recover from illness or to prevent the spread of a communicable illness.

The bill prohibits a youth or child from being placed in medical confinement for a period of time exceeding the time that is necessary for recovering from his or her illness or to prevent the spread of a communicable illness to others in the facility. Additionally, facility staff is required to document the placement of a youth or child in medical confinement and include a medical professional's justification for the placement.

Subsequent to a youth or child being placed in medical confinement, a medical professional must evaluate the youth or child face-to-face at least once every 12 hours to determine whether he or she should remain in medical confinement. The medical professional must document each evaluation and provide justification for continued placement in medical confinement.

Implementation

The bill requires the DOC and the DJJ to review their policies and procedures relating to youth or children in confinement to determine whether such policies and procedures comply with the bill. Further, the DOC and the DJJ are required to certify compliance with the provisions of this bill in a report that must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

The bill also amends ss. 944.09 and 985.601, F.S., authorizing the DOC and DJJ with rulemaking authority to create rules to address youth in confinement in compliance with the bill. Lastly, the bill reenacts s. 944.279, F.S., for purposes of incorporating changes made in the act.

The bill is effective July 1, 2019.

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

The bill requires all state correctional facilities, juvenile detention and residential facilities, and county detention facilities and detention centers to comply with newly created standards for placing a youth in confinement. It is possible that the requirements of the bill related to the compliance of monitoring youth placed in confinement and performing periodic evaluations of such youth by specified staff could result in local fund expenditures. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of youth who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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 bill requires the DOC, DJJ, and county detention facilities to comply with new standards for the placement of youth in confinement, including the requirement of specific staff to conduct assessments of a youth on regular intervals for the entirety of the time that such youth is in emergency or medical confinement. To the extent that such entities do not have the proper types, or number, of staff to satisfy the requirements of conducting such evaluations, the bill will have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) due to the increased workload and the need to hire staff to fulfill the requirements of the bill.

The DJJ Impact

The DJJ reports that the total cost for implementing such provisions for youth housed in detention facilities would be \$9,247,056 for the state. Additionally, in accordance with Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost, which totals to \$4,623,528. The entire half would not be covered due to the fiscally constrained counties. The DJJ reports that Detention Cost Share is a reimbursement system, meaning the entire \$9,247,052 would need to be allocated to the DJJ in year one and \$4,623,526 allocated to the DJJ in the following years for detention staff increases.⁶⁵

Specifically, the DJJ reports that it will likely need to hire a total of 90 FTE in its residential facilities with an estimated annual recurring cost of \$7,855,385. Additionally, the DJJ reports that it would have to provide coverage for an additional 128 hours a week⁶⁶ in its detention facilities totaling an estimated annual recurring cost of \$5,730,816.⁶⁷

Additionally, the DJJ reports that it will need to hire medical staff to evaluate the physical health of a youth in emergency confinement given that a mental health clinician who attempts to evaluate the physical health of a youth would risk losing his or her license. Therefore, the DJJ estimated that to evaluate the physical health of a youth in emergency confinement within two hours of placement the DJJ would need 24-hour, 7 day a week medical staffing, which will likely result in the need to hire a total of 90 FTE, totaling annual recurring costs of \$6,263,622, and an additional \$3,516,240 for the additional hours necessary to properly staff detention facilities with medical staff.⁶⁸

⁶⁵ The DJJ SB 624 Analysis, p. 6-9.

⁶⁶ *Id.* at 8. The DJJ estimated this through calculating the hours required for 24 hours a day, seven days a week equaling 168 hours of coverage needed, of which 40 hours is already funded.

⁶⁷ The DJJ SB 624 Analysis, p. 7-8.

⁶⁸ *Id.* at 8.

The DOC Impact

The DOC reports that the overall impact is indeterminate, but will likely result in a positive significant fiscal impact (i.e. a significant increase in costs). The DOC further states that it is unable to determine how many additional mental health and correctional staff will be necessary to perform the increased volume of checks required by this bill, but that it is anticipated to be significant.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.09, 951.23, and 985.601.

This bill creates the following sections of the Florida Statutes: 945.425, 985.28, and 985.4415.

The bill reenacts section 944.279 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March, 4, 2019:

The Committee Substitute:

- Removes the term “solitary” from any places in the bill that may lead to confusion about the new standards for confinement of youth.
- Clarifies that the mental health clinicians required to conduct certain checks under the bill must be licensed.
- Adds physician assistants and mental health counselors to the definition of “mental health clinician.”

- B. **Amendments:**

None.

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

⁶⁹ The DOC SB 624 Agency Analysis, p. 9.



366196

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/04/2019	.	
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The Committee on Criminal Justice (Montford) recommended the following:

Senate Amendment

Delete line 117
and insert:
(c) "Mental health clinician" means a licensed
psychiatrist,



274848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
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The Committee on Criminal Justice (Montford) recommended the following:

Senate Substitute for Amendment (366196) (with title amendment)

Delete lines 104 - 201
and insert:

945.425 Youth in confinement.—

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

(a) "Emergency confinement" means a type of confinement that involves the involuntary placement of a youth in an isolated room to separate that youth from the general inmate



274848

11 population and to remove him or her from a situation in which he
12 or she presents an immediate and serious danger to the security
13 or safety of himself or herself or others.

14 (b) "Medical confinement" means a type of confinement that
15 involves the involuntary placement of a youth in an isolated
16 room to separate that youth from the general inmate population
17 to allow him or her to recover from an illness or to prevent the
18 spread of a communicable illness.

19 (c) "Mental health clinician" means a licensed
20 psychiatrist, psychologist, social worker, mental health
21 counselor, nurse practitioner, or physician assistant.

22 (d) "Solitary confinement" means the involuntary placement
23 of a youth in an isolated room to separate that youth from the
24 general inmate population for any period of time.

25 (e) "Youth" means a person within the custody of the
26 department who is under the age of 19 years.

27 (2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A youth
28 may not be placed in solitary confinement, except as provided in
29 this section.

30 (3) PROTECTING YOUTH IN EMERGENCY CONFINEMENT.—

31 (a) A youth may be placed in emergency confinement if all
32 of the following conditions are met:

33 1. A nonphysical intervention with the youth would not be
34 effective in preventing harm or danger to the youth or others.

35 2. There is imminent risk of the youth physically harming
36 himself or herself, staff, or others or the youth is engaged in
37 major property destruction that is likely to compromise the
38 security of the program or jeopardize the safety of the youth or
39 others.



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3. All less-restrictive means have been exhausted.

(b) Facility staff shall document the placement of a youth in emergency confinement. The documentation must include justification for the placement, in addition to a description of the less-restrictive options that the facility staff exercised before the youth was so placed.

(c) A mental health clinician shall evaluate a youth who is placed in emergency confinement within 1 hour after such placement to ensure that the confinement is not detrimental to the mental or physical health of the youth. Following the initial evaluation, a mental health clinician shall conduct a face-to-face evaluation of the youth every 2 hours thereafter to determine whether the youth should remain in emergency confinement. The mental health clinician shall document each evaluation and provide justification for continued placement in emergency confinement.

(d) A youth may not be placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician.

1. If a mental health clinician determines that release of the youth would imminently threaten the safety of the youth or others, the mental health clinician may grant a one-time extension of 24 hours for continued placement in emergency confinement.

2. If, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the youth to be released from emergency confinement, the facility staff must prepare to transfer the youth to a facility that is able to provide specialized treatment to address the youth's needs.



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69 (e) A youth who is placed in emergency confinement must be
70 provided access to the same meals and drinking water, clothing,
71 medical treatment, contact with parents and legal guardians, and
72 legal assistance as provided to youth in the general inmate
73 population.

74 (f) The use of emergency confinement is strictly prohibited
75 for the purposes of punishment or discipline.

76 (4) PROTECTING YOUTH IN MEDICAL CONFINEMENT.—

77 (a) A youth may be placed in medical confinement if all of
78 the following conditions are met:

79 1. Isolation from the general inmate population and staff
80 is required to allow the youth to rest and recover from illness
81 or to prevent the spread of a communicable illness.

82 2. A medical professional deems such placement necessary.

83 3. The use of other less-restrictive means would not be
84 sufficient to allow the youth to recover from illness or to
85 prevent the spread of a communicable illness.

86 (b) A youth may be placed in medical confinement for a
87 period of time not to exceed the time that is necessary for the
88 youth to recover from his or her illness or to prevent the
89 spread of a communicable illness to other inmates or staff in
90 the facility.

91 (c) Facility staff shall document the placement of a youth
92 in medical confinement. The documentation must include a medical
93 professional's justification for the placement.

94 (d) A medical professional must evaluate a youth who is
95 held in medical confinement face-to-face at least once every 12
96 hours to determine whether the youth should remain in medical
97 confinement. The medical professional shall document each



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98 evaluation and provide justification for continued placement in
99 medical confinement.

100 (e) The use of medical confinement is strictly prohibited
101 for the purposes of punishment or discipline.

102 (5) IMPLEMENTATION.—

103 (a) The department shall review its policies and procedures
104 relating to youth in confinement to determine whether

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

107 And the title is amended as follows:

108 Delete line 26

109 and insert:

110 relating to youth in confinement; requiring



569312

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/04/2019	.	
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The Committee on Criminal Justice (Montford) recommended the following:

Senate Amendment

Delete lines 278 - 389
and insert:

(d) "Mental health clinician" means a licensed psychiatrist, psychologist, social worker, or nurse practitioner.

(e) "Solitary confinement" means the involuntary placement of a child in an isolated room to separate that child from other children in the facility for any period of time.



569312

(2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child may not be placed in solitary confinement, except as provided in this section.

(3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

(a) A child may be placed in emergency confinement if all of the following conditions are met:

1. A nonphysical intervention with the child would not be effective in preventing harm or danger to the child or others.

2. There is imminent risk of the child physically harming himself or herself, staff, or others or the child is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of the child or others.

3. All less-restrictive means have been exhausted.

(b) Facility staff shall document the placement of a child in emergency confinement. The documentation must include justification for the placement of a child in emergency confinement, in addition to a description of the less-restrictive options that the facility staff exercised before the child was so placed.

(c) A mental health clinician shall evaluate a child who is placed in emergency confinement within 1 hour after such placement to ensure that the confinement is not detrimental to the mental or physical health of the child. Following the initial evaluation, a mental health clinician shall conduct a face-to-face evaluation of the child every 2 hours thereafter to determine whether the child should remain in emergency confinement. The mental health clinician shall document each evaluation and provide justification for continued placement in



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emergency confinement.

(d) A child may not be placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician.

1. If a mental health clinician determines that release of the child would imminently threaten the safety of the child or others, the mental health clinician may grant a one-time extension of 24 hours for continued placement in emergency confinement.

2. If, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the child to be released from emergency confinement, the facility staff must prepare to transfer the child to a facility that is able to provide specialized treatment to address the child's needs.

(e) A child who is placed in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to children in the facility.

(f) The use of emergency confinement is strictly prohibited for the purposes of punishment or discipline.

(4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.—

(a) A child may be placed in medical confinement if all of the following conditions are met:

1. Isolation from staff and other children in the facility is required to allow the child to rest and recover from illness or to prevent the spread of a communicable illness.

2. A medical professional deems such placement necessary.

3. The use of other less-restrictive means would not be sufficient to allow the child to recover from illness or to



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69 prevent the spread of a communicable illness.

70 (b) A child may be placed in medical confinement for a
71 period of time not to exceed the time that is necessary for the
72 child to recover from his or her illness or to prevent the
73 spread of a communicable illness to other children or staff in
74 the facility.

75 (c) Facility staff shall document the placement of a child
76 in medical confinement. The documentation must include a medical
77 professional's justification for the placement.

78 (d) A medical professional must conduct a face-to-face
79 evaluation of a child who is held in medical confinement at
80 least once every 12 hours to determine whether the child should
81 remain in medical confinement. The medical professional shall
82 document each evaluation and provide justification for continued
83 placement in medical confinement.

84 (e) The use of medical confinement is strictly prohibited
85 for the purposes of punishment or discipline.

86 (5) IMPLEMENTATION.—

87 (a) The department and the board of county commissioners of
88 each county that administers a detention facility shall review
89 their policies and procedures relating to disciplinary treatment
90 to determine whether their policies and procedures comply with
91 this section.

92 (b) The department and the board of county commissioners of
93 each county that administers a detention facility shall certify
94 compliance with this section in a report that the department and
95 the board shall submit to the Governor, the President of the
96 Senate, and the Speaker of the House of Representatives by
97 January 1, 2020.



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98 (c) This section does not supersede any law providing
99 greater or additional protections to a child in this state.

100 Section 4. Section 985.4415, Florida Statutes, is created
101 to read:

102 985.4415 Solitary confinement in residential facilities.—

103 (1) DEFINITIONS.—As used in this section, the term:

104 (a) "Child" means a person within the custody of the
105 department who is under the age of 19 years.

106 (b) "Emergency confinement" means a type of solitary
107 confinement that involves the involuntary placement of a child
108 in an isolated room to separate that child from other children
109 in the facility and to remove him or her from a situation in
110 which he or she presents an immediate and serious danger to the
111 security or safety of himself or herself or others.

112 (c) "Medical confinement" means a type of solitary
113 confinement that involves the involuntary placement of a child
114 in an isolated room to separate that child from the other
115 children in the facility and to allow him or her to recover from
116 illness or to prevent the spread of a communicable illness.

117 (d) "Mental health clinician" means a licensed
118 psychiatrist,



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Montford) recommended the following:

Senate Substitute for Amendment (569312)

Delete lines 263 - 487

and insert:

985.28 Confinement in detention facilities.-

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

(a) "Child" means a person who is in the custody of the department and who is under the age of 19 years.

(b) "Emergency confinement" means a type of confinement that involves the involuntary placement of a child in an



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isolated room to separate that child from other children in the facility and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.

(c) "Medical confinement" means a type of confinement that involves the involuntary placement of a child in an isolated room to separate that child from other children in the facility to allow the child to recover from illness or to prevent the spread of a communicable illness.

(d) "Mental health clinician" means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician assistant.

(e) "Solitary confinement" means the involuntary placement of a child in an isolated room to separate that child from other children in the facility for any period of time.

(2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child may not be placed in solitary confinement, except as provided in this section.

(3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

(a) A child may be placed in emergency confinement if all of the following conditions are met:

1. A nonphysical intervention with the child would not be effective in preventing harm or danger to the child or others.

2. There is imminent risk of the child physically harming himself or herself, staff, or others or the child is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of the child or others.

3. All less-restrictive means have been exhausted.



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40 (b) Facility staff shall document the placement of a child
41 in emergency confinement. The documentation must include
42 justification for the placement of a child in emergency
43 confinement, in addition to a description of the less-
44 restrictive options that the facility staff exercised before the
45 child was so placed.

46 (c) A mental health clinician shall evaluate a child who is
47 placed in emergency confinement within 1 hour after such
48 placement to ensure that the confinement is not detrimental to
49 the mental or physical health of the child. Following the
50 initial evaluation, a mental health clinician shall conduct a
51 face-to-face evaluation of the child every 2 hours thereafter to
52 determine whether the child should remain in emergency
53 confinement. The mental health clinician shall document each
54 evaluation and provide justification for continued placement in
55 emergency confinement.

56 (d) A child may not be placed in emergency confinement for
57 more than 24 hours unless an extension is sought and obtained by
58 a mental health clinician.

59 1. If a mental health clinician determines that release of
60 the child would imminently threaten the safety of the child or
61 others, the mental health clinician may grant a one-time
62 extension of 24 hours for continued placement in emergency
63 confinement.

64 2. If, at the conclusion of the 48-hour window, a mental
65 health clinician determines that it is not safe for the child to
66 be released from emergency confinement, the facility staff must
67 prepare to transfer the child to a facility that is able to
68 provide specialized treatment to address the child's needs.



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(e) A child who is placed in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to children in the facility.

(f) The use of emergency confinement is strictly prohibited for the purposes of punishment or discipline.

(4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.—

(a) A child may be placed in medical confinement if all of the following conditions are met:

1. Isolation from staff and other children in the facility is required to allow the child to rest and recover from illness or to prevent the spread of a communicable illness.

2. A medical professional deems such placement necessary.

3. The use of other less-restrictive means would not be sufficient to allow the child to recover from illness or to prevent the spread of a communicable illness.

(b) A child may be placed in medical confinement for a period of time not to exceed the time that is necessary for the child to recover from his or her illness or to prevent the spread of a communicable illness to other children or staff in the facility.

(c) Facility staff shall document the placement of a child in medical confinement. The documentation must include a medical professional's justification for the placement.

(d) A medical professional must conduct a face-to-face evaluation of a child who is held in medical confinement at least once every 12 hours to determine whether the child should remain in medical confinement. The medical professional shall document each evaluation and provide justification for continued



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placement in medical confinement.

(e) The use of medical confinement is strictly prohibited for the purposes of punishment or discipline.

(5) IMPLEMENTATION.—

(a) The department and the board of county commissioners of each county that administers a detention facility shall review their policies and procedures relating to disciplinary treatment to determine whether their policies and procedures comply with this section.

(b) The department and the board of county commissioners of each county that administers a detention facility shall certify compliance with this section in a report that the department and the board shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

(c) This section does not supersede any law providing greater or additional protections to a child in this state.

Section 4. Section 985.4415, Florida Statutes, is created to read:

985.4415 Confinement in residential facilities.—

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

(a) "Child" means a person within the custody of the department who is under the age of 19 years.

(b) "Emergency confinement" means a type of confinement that involves the involuntary placement of a child in an isolated room to separate that child from other children in the facility and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.



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(c) "Medical confinement" means a type of confinement that involves the involuntary placement of a child in an isolated room to separate that child from the other children in the facility and to allow him or her to recover from illness or to prevent the spread of a communicable illness.

(d) "Mental health clinician" means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician assistant.

(e) "Solitary confinement" means the involuntary placement of a child in an isolated room to separate that child from the other children in the facility for any period of time.

(2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child may not be placed in solitary confinement, except as provided in this section.

(3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

(a) A child may be placed in emergency confinement if all of the following conditions are met:

1. A nonphysical intervention with the child would not be effective in preventing harm or danger to the child or others.

2. There is imminent risk of the child physically harming himself or herself, staff, or others or the child is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of the child or others.

3. All less-restrictive means have been exhausted.

(b) Facility staff shall document the placement of a child in emergency confinement. The documentation must include justification for the placement of a child in emergency confinement, in addition to a description of the other less-



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restrictive options that the facility staff exercised before the child was so placed.

(c) A mental health clinician shall evaluate a child who is placed in emergency confinement within 1 hour after such placement to ensure that the confinement is not detrimental to the mental or physical health of the child. Following the initial evaluation, a mental health clinician shall conduct a face-to-face evaluation of the child every 2 hours thereafter to determine whether the child should remain in emergency confinement. The mental health clinician shall document each evaluation and provide justification for continued placement in emergency confinement.

(d) A child may not be placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician.

1. If a mental health clinician determines that release of the child would imminently threaten the safety of the child or others, the mental health clinician may grant a one-time extension of 24 hours for continued placement in emergency confinement.

2. If at the conclusion of the 48-hour window a mental health clinician determines that it is not safe for the child to be released from emergency confinement, the facility staff must prepare to transfer the child to a facility that is able to provide specialized treatment to address the child's needs.

(e) A child who is placed in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to children in the facility.



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(f) The use of emergency confinement is strictly prohibited for the purposes of punishment or discipline.

(4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.—

(a) A child may be placed in medical confinement if all of the following conditions are met:

1. Isolation from other children and staff in the facility is required to allow a child to rest and recover from illness or to prevent the spread of a communicable illness.

2. A medical professional deems such placement necessary.

3. The use of other less-restrictive means would not be sufficient to allow the child to recover from illness or to prevent the spread of a communicable illness.

(b) A child may be placed in medical confinement for a period of time not to exceed the time that is necessary for the child to recover from his or her illness or to prevent the spread of a communicable illness to other children or staff in the facility.

(c) Facility staff shall document the placement of a child in medical confinement. The documentation must include a medical professional's justification for the placement.

(d) A medical professional must conduct a face-to-face evaluation of a child who is held in medical confinement at least once every 12 hours to determine whether the child should remain in medical confinement. The medical professional shall document each evaluation and provide justification for continued placement in medical confinement.

(e) The use of medical confinement is strictly prohibited for the purposes of punishment or discipline.

(5) IMPLEMENTATION.—



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214 (a) The department shall review its policies and procedures
215 relating to disciplinary treatment in residential facilities to
216 determine whether its policies and procedures comply with this
217 section.

218 (b) The department shall certify compliance with this
219 section in a report that the department shall submit to the
220 Governor, the President of the Senate, and the Speaker of the
221 House of Representatives by January 1, 2020.

222 (c) This section does not supersede any law providing
223 greater or additional protections to a child in this state.

224 Section 5. Paragraph (s) is added to subsection (1) of
225 section 944.09, Florida Statutes, to read:

226 944.09 Rules of the department; offenders, probationers,
227 and parolees.—

228 (1) The department has authority to adopt rules pursuant to
229 ss. 120.536(1) and 120.54 to implement its statutory authority.
230 The rules must include rules relating to:

231 (s) Youth in confinement in compliance with s.

By Senator Montford

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1 A bill to be entitled
 2 An act relating to youth in solitary confinement;
 3 creating s. 945.425, F.S.; defining terms; prohibiting
 4 the Department of Corrections from placing a youth in
 5 solitary confinement except under certain
 6 circumstances; authorizing a youth to be placed in
 7 emergency confinement if certain conditions are met;
 8 requiring facility staff to document such placement;
 9 requiring that, within a specified timeframe and at
 10 specified intervals, a mental health clinician conduct
 11 certain evaluations of a youth who is in emergency
 12 confinement; limiting the allowable length of time for
 13 emergency confinement; requiring specific treatment
 14 for a youth who is in emergency confinement;
 15 prohibiting the use of emergency confinement for
 16 certain purposes; authorizing a youth to be placed in
 17 medical confinement under certain circumstances;
 18 limiting the allowable length of time for medical
 19 confinement; requiring facility staff to document such
 20 confinement; requiring that, within a specified
 21 timeframe and at specified intervals, a medical
 22 professional conduct certain evaluations of a youth
 23 who is in medical confinement; prohibiting the use of
 24 medical confinement for certain purposes; requiring
 25 the department to review its policies and procedures
 26 relating to youth in solitary confinement; requiring
 27 the department to certify compliance in a report to
 28 the Governor and Legislature by a specified date;
 29 requiring the department to adopt policies and

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30 procedures; providing applicability; amending s.
 31 951.23, F.S.; requiring sheriffs and chief
 32 correctional officers to adopt model standards
 33 relating to youth; creating s. 985.28, F.S.; defining
 34 terms; prohibiting the Department of Juvenile Justice
 35 from placing a child in solitary confinement except
 36 under certain circumstances; authorizing a child to be
 37 placed in emergency confinement if certain conditions
 38 are met; requiring facility staff to document such
 39 placement; requiring that, within a specified
 40 timeframe and at specified intervals, a mental health
 41 clinician conduct certain evaluations of a child who
 42 is in emergency confinement; limiting the allowable
 43 length of time for the use of emergency confinement;
 44 requiring specific treatment for a child who is in
 45 emergency confinement; prohibiting the use of
 46 emergency confinement for certain purposes;
 47 authorizing a youth to be placed in medical
 48 confinement under certain circumstances; limiting the
 49 allowable length of time for medical confinement;
 50 requiring facility staff to document such placement;
 51 requiring that, within a specified timeframe and at
 52 specified intervals, a medical professional conduct
 53 certain evaluations of a child who is in medical
 54 confinement; prohibiting the use of medical
 55 confinement for certain purposes; requiring the
 56 department and the board of county commissioners of
 57 each county that administers a detention facility to
 58 review policies and procedures relating to

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59 disciplinary treatment; requiring the department and
 60 the board of county commissioners of each county that
 61 administers a detention facility to certify compliance
 62 in a report to the Governor and Legislature by a
 63 specified date; providing applicability; creating s.
 64 985.4415, F.S.; defining terms; prohibiting facility
 65 staff from placing a child in solitary confinement,
 66 except under certain circumstances; authorizing a
 67 child to be placed in emergency confinement if certain
 68 conditions are met; requiring facility staff to
 69 document such placement; requiring that, within a
 70 specified timeframe and at specified intervals, a
 71 mental health clinician conduct certain evaluations of
 72 a child who is in emergency confinement; limiting the
 73 allowable length of time for emergency confinement;
 74 requiring specific treatment for a child who is in
 75 emergency confinement; prohibiting the use of
 76 emergency confinement for certain purposes;
 77 authorizing a youth to be placed in medical
 78 confinement under certain circumstances; limiting the
 79 allowable length of time for medical confinement;
 80 requiring facility staff to document such placement;
 81 requiring that, within a specified timeframe and at
 82 specified intervals, a medical professional conduct
 83 certain evaluations of a child who is in medical
 84 confinement; prohibiting the use of medical
 85 confinement for certain purposes; requiring the
 86 department to review policies and procedures relating
 87 to disciplinary treatment; requiring the department to

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88 certify compliance in a report to the Governor and
 89 Legislature by a specified date; providing
 90 applicability; amending s. 944.09, F.S.; authorizing
 91 the Department of Corrections to adopt rules; amending
 92 s. 985.601, F.S.; requiring the Department of Juvenile
 93 Justice to adopt rules; reenacting s. 944.279(1),
 94 F.S., relating to disciplinary procedures applicable
 95 to a prisoner for filing frivolous or malicious
 96 actions or bringing false information before a court,
 97 to incorporate the amendment made to s. 944.09, F.S.,
 98 in a reference thereto; providing an effective date.
 99

100 Be It Enacted by the Legislature of the State of Florida:

101
 102 Section 1. Section 945.425, Florida Statutes, is created to
 103 read:

104 945.425 Youth in solitary confinement.—

105 (1) DEFINITIONS.—As used in this section, the term:

106 (a) "Emergency confinement" means a type of solitary
 107 confinement that involves the involuntary placement of a youth
 108 in an isolated room to separate that youth from the general
 109 inmate population and to remove him or her from a situation in
 110 which he or she presents an immediate and serious danger to the
 111 security or safety of himself or herself or others.

112 (b) "Medical confinement" means a type of solitary
 113 confinement that involves the involuntary placement of a youth
 114 in an isolated room to separate that youth from the general
 115 inmate population to allow him or her to recover from an illness
 116 or to prevent the spread of a communicable illness.

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(c) "Mental health clinician" means a psychiatrist, psychologist, social worker, or nurse practitioner.

(d) "Solitary confinement" means the involuntary placement of a youth in an isolated room to separate that youth from the general inmate population for any period of time.

(e) "Youth" means a person within the custody of the department who is under the age of 19 years.

(2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A youth may not be placed in solitary confinement, except as provided in this section.

(3) PROTECTING YOUTH IN EMERGENCY CONFINEMENT.—

(a) A youth may be placed in emergency confinement if all of the following conditions are met:

1. A nonphysical intervention with the youth would not be effective in preventing harm or danger to the youth or others.

2. There is imminent risk of the youth physically harming himself or herself, staff, or others or the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of the youth or others.

3. All less-restrictive means have been exhausted.

(b) Facility staff shall document the placement of a youth in emergency confinement. The documentation must include justification for the placement, in addition to a description of the less-restrictive options that the facility staff exercised before the youth was so placed.

(c) A mental health clinician shall evaluate a youth who is placed in emergency confinement within 1 hour after such placement to ensure that the confinement is not detrimental to

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the mental or physical health of the youth. Following the initial evaluation, a mental health clinician shall conduct a face-to-face evaluation of the youth every 2 hours thereafter to determine whether the youth should remain in emergency confinement. The mental health clinician shall document each evaluation and provide justification for continued placement in emergency confinement.

(d) A youth may not be placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician.

1. If a mental health clinician determines that release of the youth would imminently threaten the safety of the youth or others, the mental health clinician may grant a one-time extension of 24 hours for continued placement in emergency confinement.

2. If, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the youth to be released from emergency confinement, the facility staff must prepare to transfer the youth to a facility that is able to provide specialized treatment to address the youth's needs.

(e) A youth who is placed in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to youth in the general inmate population.

(f) The use of emergency confinement is strictly prohibited for the purposes of punishment or discipline.

(4) PROTECTING YOUTH IN MEDICAL CONFINEMENT.—

(a) A youth may be placed in medical confinement if all of

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the following conditions are met:

1. Isolation from the general inmate population and staff is required to allow the youth to rest and recover from illness or to prevent the spread of a communicable illness.

2. A medical professional deems such placement necessary.

3. The use of other less-restrictive means would not be sufficient to allow the youth to recover from illness or to prevent the spread of a communicable illness.

(b) A youth may be placed in medical confinement for a period of time not to exceed the time that is necessary for the youth to recover from his or her illness or to prevent the spread of a communicable illness to other inmates or staff in the facility.

(c) Facility staff shall document the placement of a youth in medical confinement. The documentation must include a medical professional's justification for the placement.

(d) A medical professional must evaluate a youth who is held in medical confinement face-to-face at least once every 12 hours to determine whether the youth should remain in medical confinement. The medical professional shall document each evaluation and provide justification for continued placement in medical confinement.

(e) The use of medical confinement is strictly prohibited for the purposes of punishment or discipline.

(5) IMPLEMENTATION.—

(a) The department shall review its policies and procedures relating to youth in solitary confinement to determine whether its policies and procedures comply with this section.

(b) The department shall certify compliance with this

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section in a report that the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

(c) The department shall adopt policies and procedures necessary to administer this section.

(d) This section does not supersede any law providing greater or additional protections to a youth in this state.

Section 2. Paragraph (a) of subsection (4) of section 951.23, Florida Statutes, is amended to read:

951.23 County and municipal detention facilities; definitions; administration; standards and requirements.—

(4) STANDARDS FOR SHERIFFS AND CHIEF CORRECTIONAL OFFICERS.—

(a) ~~There shall be established~~ A five-member working group is established which consists ~~consisting~~ of three persons appointed by the Florida Sheriffs Association and two persons appointed by the Florida Association of Counties to develop model standards for county and municipal detention facilities. At a minimum ~~By October 1, 1996,~~ each sheriff and chief correctional officer shall adopt, ~~at a minimum,~~ the model standards with reference to:

1.a. The construction, equipping, maintenance, and operation of county and municipal detention facilities.

b. The cleanliness and sanitation of county and municipal detention facilities; the number of county and municipal prisoners who may be housed therein per specified unit of floor space; the quality, quantity, and supply of bedding furnished to such prisoners; the quality, quantity, and diversity of food served to them and the manner in which it is served; the

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furnishing to them of medical attention and health and comfort items; and the disciplinary treatment ~~that which~~ may be meted out to them.

Notwithstanding the provisions of the otherwise applicable building code, a reduced custody housing area may be occupied by inmates or may be used for sleeping purposes as allowed in subsection (7). The sheriff or chief correctional officer shall provide that a reduced custody housing area shall be governed by fire and life safety standards which do not interfere with the normal use of the facility and which affect a reasonable degree of compliance with rules of the State Fire Marshal for correctional facilities.

2. The confinement of prisoners by classification and providing, whenever possible, for classifications ~~that which~~ separate males from females, juveniles from adults, felons from misdemeanants, and those awaiting trial from those convicted and, in addition, providing for the separation of special risk prisoners, such as the mentally ill, alcohol or narcotic addicts, sex deviates, suicide risks, and any other classification which the local unit may deem necessary for the safety of the prisoners and the operation of the facility pursuant to degree of risk and danger criteria. Nondangerous felons may be housed with misdemeanants.

3. The confinement of prisoners by classification on the basis of age and a strict prohibition on the use of solitary confinement for prisoners under the age of 19 years, in compliance with s. 945.425.

Section 3. Section 985.28, Florida Statutes, is created to

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read:

985.28 Solitary confinement in detention facilities.—

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

(a) "Child" means a person who is in the custody of the department and who is under the age of 19 years.

(b) "Emergency confinement" means a type of solitary confinement that involves the involuntary placement of a child in an isolated room to separate that child from other children in the facility and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.

(c) "Medical confinement" means a type of solitary confinement that involves the involuntary placement of a child in an isolated room to separate that child from other children in the facility to allow the child to recover from illness or to prevent the spread of a communicable illness.

(d) "Mental health clinician" means a psychiatrist, psychologist, social worker, or nurse practitioner.

(e) "Solitary confinement" means the involuntary placement of a child in an isolated room to separate that child from other children in the facility for any period of time.

(2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child may not be placed in solitary confinement, except as provided in this section.

(3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

(a) A child may be placed in emergency confinement if all of the following conditions are met:

1. A nonphysical intervention with the child would not be effective in preventing harm or danger to the child or others.

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291 2. There is imminent risk of the child physically harming
 292 himself or herself, staff, or others or the child is engaged in
 293 major property destruction that is likely to compromise the
 294 security of the program or jeopardize the safety of the child or
 295 others.

296 3. All less-restrictive means have been exhausted.

297 (b) Facility staff shall document the placement of a child
 298 in emergency confinement. The documentation must include
 299 justification for the placement of a child in emergency
 300 confinement, in addition to a description of the less-
 301 restrictive options that the facility staff exercised before the
 302 child was so placed.

303 (c) A mental health clinician shall evaluate a child who is
 304 placed in emergency confinement within 1 hour after such
 305 placement to ensure that the confinement is not detrimental to
 306 the mental or physical health of the child. Following the
 307 initial evaluation, a mental health clinician shall conduct a
 308 face-to-face evaluation of the child every 2 hours thereafter to
 309 determine whether the child should remain in emergency
 310 confinement. The mental health clinician shall document each
 311 evaluation and provide justification for continued placement in
 312 emergency confinement.

313 (d) A child may not be placed in emergency confinement for
 314 more than 24 hours unless an extension is sought and obtained by
 315 a mental health clinician.

316 1. If a mental health clinician determines that release of
 317 the child would imminently threaten the safety of the child or
 318 others, the mental health clinician may grant a one-time
 319 extension of 24 hours for continued placement in emergency

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320 confinement.

321 2. If, at the conclusion of the 48-hour window, a mental
 322 health clinician determines that it is not safe for the child to
 323 be released from emergency confinement, the facility staff must
 324 prepare to transfer the child to a facility that is able to
 325 provide specialized treatment to address the child's needs.

326 (e) A child who is placed in emergency confinement must be
 327 provided access to the same meals and drinking water, clothing,
 328 medical treatment, contact with parents and legal guardians, and
 329 legal assistance as provided to children in the facility.

330 (f) The use of emergency confinement is strictly prohibited
 331 for the purposes of punishment or discipline.

332 (4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.-

333 (a) A child may be placed in medical confinement if all of
 334 the following conditions are met:

335 1. Isolation from staff and other children in the facility
 336 is required to allow the child to rest and recover from illness
 337 or to prevent the spread of a communicable illness.

338 2. A medical professional deems such placement necessary.

339 3. The use of other less-restrictive means would not be
 340 sufficient to allow the child to recover from illness or to
 341 prevent the spread of a communicable illness.

342 (b) A child may be placed in medical confinement for a
 343 period of time not to exceed the time that is necessary for the
 344 child to recover from his or her illness or to prevent the
 345 spread of a communicable illness to other children or staff in
 346 the facility.

347 (c) Facility staff shall document the placement of a child
 348 in medical confinement. The documentation must include a medical

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professional's justification for the placement.

(d) A medical professional must conduct a face-to-face evaluation of a child who is held in medical confinement at least once every 12 hours to determine whether the child should remain in medical confinement. The medical professional shall document each evaluation and provide justification for continued placement in medical confinement.

(e) The use of medical confinement is strictly prohibited for the purposes of punishment or discipline.

(5) IMPLEMENTATION.—

(a) The department and the board of county commissioners of each county that administers a detention facility shall review their policies and procedures relating to disciplinary treatment to determine whether their policies and procedures comply with this section.

(b) The department and the board of county commissioners of each county that administers a detention facility shall certify compliance with this section in a report that the department and the board shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

(c) This section does not supersede any law providing greater or additional protections to a child in this state.

Section 4. Section 985.4415, Florida Statutes, is created to read:

985.4415 Solitary confinement in residential facilities.—

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

(a) "Child" means a person within the custody of the department who is under the age of 19 years.

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(b) "Emergency confinement" means a type of solitary confinement that involves the involuntary placement of a child in an isolated room to separate that child from other children in the facility and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.

(c) "Medical confinement" means a type of solitary confinement that involves the involuntary placement of a child in an isolated room to separate that child from the other children in the facility and to allow him or her to recover from illness or to prevent the spread of a communicable illness.

(d) "Mental health clinician" means a psychiatrist, psychologist, social worker, or nurse practitioner.

(e) "Solitary confinement" means the involuntary placement of a child in an isolated room to separate that child from the other children in the facility for any period of time.

(2) PROHIBITION ON THE USE OF SOLITARY CONFINEMENT.—A child may not be placed in solitary confinement, except as provided in this section.

(3) PROTECTING A CHILD IN EMERGENCY CONFINEMENT.—

(a) A child may be placed in emergency confinement if all of the following conditions are met:

1. A nonphysical intervention with the child would not be effective in preventing harm or danger to the child or others.

2. There is imminent risk of the child physically harming himself or herself, staff, or others or the child is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the safety of the child or others.

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3. All less-restrictive means have been exhausted.

(b) Facility staff shall document the placement of a child in emergency confinement. The documentation must include justification for the placement of a child in emergency confinement, in addition to a description of the other less-restrictive options that the facility staff exercised before the child was so placed.

(c) A mental health clinician shall evaluate a child who is placed in emergency confinement within 1 hour after such placement to ensure that the confinement is not detrimental to the mental or physical health of the child. Following the initial evaluation, a mental health clinician shall conduct a face-to-face evaluation of the child every 2 hours thereafter to determine whether the child should remain in emergency confinement. The mental health clinician shall document each evaluation and provide justification for continued placement in emergency confinement.

(d) A child may not be placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician.

1. If a mental health clinician determines that release of the child would imminently threaten the safety of the child or others, the mental health clinician may grant a one-time extension of 24 hours for continued placement in emergency confinement.

2. If at the conclusion of the 48-hour window a mental health clinician determines that it is not safe for the child to be released from emergency confinement, the facility staff must prepare to transfer the child to a facility that is able to

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provide specialized treatment to address the child's needs.

(e) A child who is placed in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to children in the facility.

(f) The use of emergency confinement is strictly prohibited for the purposes of punishment or discipline.

(4) PROTECTING A CHILD IN MEDICAL CONFINEMENT.—

(a) A child may be placed in medical confinement if all of the following conditions are met:

1. Isolation from other children and staff in the facility is required to allow a child to rest and recover from illness or to prevent the spread of a communicable illness.

2. A medical professional deems such placement necessary.

3. The use of other less-restrictive means would not be sufficient to allow the child to recover from illness or to prevent the spread of a communicable illness.

(b) A child may be placed in medical confinement for a period of time not to exceed the time that is necessary for the child to recover from his or her illness or to prevent the spread of a communicable illness to other children or staff in the facility.

(c) Facility staff shall document the placement of a child in medical confinement. The documentation must include a medical professional's justification for the placement.

(d) A medical professional must conduct a face-to-face evaluation of a child who is held in medical confinement at least once every 12 hours to determine whether the child should remain in medical confinement. The medical professional shall

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document each evaluation and provide justification for continued placement in medical confinement.

(e) The use of medical confinement is strictly prohibited for the purposes of punishment or discipline.

(5) IMPLEMENTATION.—

(a) The department shall review its policies and procedures relating to disciplinary treatment in residential facilities to determine whether its policies and procedures comply with this section.

(b) The department shall certify compliance with this section in a report that the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

(c) This section does not supersede any law providing greater or additional protections to a child in this state.

Section 5. Paragraph (s) is added to subsection (1) of section 944.09, Florida Statutes, to read:

944.09 Rules of the department; offenders, probationers, and parolees.—

(1) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement its statutory authority. The rules must include rules relating to:

(s) Youth in solitary confinement in compliance with s. 945.425.

Section 6. Paragraph (b) of subsection (9) of section 985.601, Florida Statutes, is amended to read:

985.601 Administering the juvenile justice continuum.—

(9)(b) The department shall adopt rules prescribing standards and requirements with reference to:

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1. The construction, equipping, maintenance, staffing, programming, and operation of detention facilities;

2. The treatment, training, and education of children confined in detention facilities;

3. The cleanliness and sanitation of detention facilities;

4. The number of children who may be housed in detention facilities per specified unit of floor space;

5. The quality, quantity, and supply of bedding furnished to children housed in detention facilities;

6. The quality, quantity, and diversity of food served in detention facilities and the manner in which it is served;

7. The furnishing of medical attention and health and comfort items in detention facilities; ~~and~~

8. The disciplinary treatment administered in detention and residential facilities; and—

9. The strict prohibition on the use of solitary confinement on children under the age of 19 years in compliance with ss. 985.28 and 985.4415.

Section 7. For the purpose of incorporating the amendment made by this act to section 944.09, Florida Statutes, in a reference thereto, subsection (1) of section 944.279, Florida Statutes, is reenacted to read:

944.279 Disciplinary procedures applicable to prisoner for filing frivolous or malicious actions or bringing false information before court.—

(1) At any time, and upon its own motion or on motion of a party, a court may conduct an inquiry into whether any action or appeal brought by a prisoner was brought in good faith. A prisoner who is found by a court to have brought a frivolous or

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malicious suit, action, claim, proceeding, or appeal in any court of this state or in any federal court, which is filed after June 30, 1996, or to have brought a frivolous or malicious collateral criminal proceeding, which is filed after September 30, 2004, or who knowingly or with reckless disregard for the truth brought false information or evidence before the court, is subject to disciplinary procedures pursuant to the rules of the Department of Corrections. The court shall issue a written finding and direct that a certified copy be forwarded to the appropriate institution or facility for disciplinary procedures pursuant to the rules of the department as provided in s. 944.09.

Section 8. This act shall take effect July 1, 2019.



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 624
BILL TITLE:	Youth in Solitary Confinement
BILL SPONSOR:	Senator Montford
EFFECTIVE DATE:	July 1, 2019

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 28, 2019
LEAD AGENCY ANALYST:	Rusty McLaughlin
ADDITIONAL ANALYST(S):	Vicki Newsome, Jeff Bryan, Shana Lasseter
LEGAL ANALYST:	Kyle Magee
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill relates to youth in solitary confinement; prohibits the Department of Corrections (Department or FDC) or a local government body from subjecting a youth to solitary confinement except under certain circumstances; prohibits a youth prisoner from being subjected to emergency cell confinement for more than 24 hours; authorizes youth to be placed in medical confinement under certain circumstances; limiting the allowable length of time for medical confinement; requiring staff to document such confinement; requiring a medical professional to conduct certain evaluations of youth in medical confinement within a certain timeframe; prohibits the use of emergency cell confinement and medical confinement for the purposes of punishment or discipline; requires the department to review its policies and procedures relating to youth in solitary confinement and to certify compliance in a report to the Governor and Legislature by a specified date.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Youthful Offenders

“Youthful offender” means any person who is sentenced as such by the court pursuant to s. 958.04, F.S., or is classified as such by the department pursuant to s. 958.11(4), F.S. The department, pursuant to s. 958.11, F.S., [generally] houses youthful offenders in specifically designated facilities and manages these inmates in programs accordingly. These youthful offender institutions include:

1. Suwannee Correctional Institution and Sumter Annex, which house males, ages 17 and under;
2. Sumter Correctional Institution, which houses males, age 18 only;
3. Lake City Correctional Facility, which houses males, ages 18-24, and;
4. Lowell Correctional Institution, which houses females, ages 14-24.

Due to a small population of youthful offenders, in accordance with s. 958.11(2), F.S., female youthful offenders of all ages are housed together at Lowell C.I.

The youthful offender program, referred to as the “Extended Day Program” (EDP) by the department was developed to comply with s. 958.021, F.S., to provide enhanced program opportunities to youthful offenders in a systematic way. In accordance with Rule 33-601.226, F.A.C., the EDP is a 16-hour daytime program that is designed to provide at least 12 hours of activities. It is structured into three phases and a remedial phase. The remedial phase, if appropriate, is imposed in lieu of disciplinary confinement; however, inmates housed in facilities designated for youthful offenders are subject to the same disciplinary standards as non-youthful offenders. The EDP includes education, including vocational and academic programs, counseling, work assignments, behavior modification, military-style drills, systematic discipline, and other program opportunities aimed at reducing inmate idleness and enhancing the young inmate’s chances of becoming a law-abiding citizen upon re-entry to the community.

“Young adult offender” (YAOs) refers to a select adult offender pursuant to sections 944.1905(5)(a), and (b), F.S.

YAO’s do not meet the criteria outlined in Chapter 958 to be sentenced or classified as youthful offenders; however, because they are under 18 they are housed with youthful offenders until at least age 18. These YAOs are managed like youthful offenders and participate in the EDP. There is statutory provision for such an inmate to remain housed with youthful offenders until age 21 if determined appropriate.

As of June 30, 2018, the department had in its custody 1,239 youthful offenders as defined by s. 958.04, F.S., and s. 958.11(4), F.S. Of these, 94 are males 17 years of age or under, 1,004 are males 18-24 years of age and 141 are females 14-24 years of age.

Approximately 71% of the youthful offender population are serving a commitment for a forcible felony offense, with the highest concentration on inmates having been convicted of the following offenses:

- Robbery with Weapon – 262 inmates
- Burglary of a Dwelling – 204 inmates
- Armed Burglary – 120 inmates

Administrative Confinement

Per Rule 33-602.220, F.A.C., administrative confinement is “the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.” Otherwise the treatment of inmates in administrative confinement is as near to that of the general population as assignment to administrative confinement permits. All inmates, regardless of age, are subject to the same consideration for placement in administrative confinement.

An inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate’s request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.
- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.

Prior to placing the inmate in administrative confinement, the inmate is given a pre-confinement health assessment, which includes a physical and mental health evaluation that is documented in the inmate’s health care record.

The Institutional Classification Team (ICT) reviews inmates in administrative confinement within 72 hours.

Inmates in administrative confinement may be housed with other inmates. However, prior to placing inmates in the same cell, the inmates are interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other. The number of inmates housed in an administrative confinement cell does not exceed the number of bunks in the cell.

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer and a member of the ICT.

An inmate is assessed regularly to determine the appropriateness of placement. Specifically:

- **Mental Health:** Any inmate assigned to administrative confinement for more than 30 days is given a psychological screening assessment by a mental health professional to determine his or her mental condition. The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate’s mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.
- **ICT:** If an inmate is confined for more than 30 days, the ICT interviews the inmate and prepares a formal assessment and evaluation report after each 30 day period in administrative confinement.
- **State Classification Office (SCO):** The SCO reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate’s administrative confinement status.

Inmates in administrative confinement retain certain privileges but some may be more restrictive than the general population. They are provided:

- **Exercise** - Those inmates confined on a 24-hour basis excluding showers and clinic trips may exercise in their cells. However, if confinement extends beyond a 30-day period, an exercise schedule is implemented to ensure a minimum of three hours per week of exercise out of doors.
- **Showers** - At a minimum each inmate in confinement showers three times per week and on days that they work.
- **Meals** - All inmates receive normal institutional meals as are available to the general inmate population. However, if any item on the normal menu creates a security problem in the confinement unit, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.
- **Clothing** – Inmates are provided the same clothing and clothing exchange as the general inmate population unless there are facts to suggest that on an individual basis exceptions are necessary for the welfare of the inmate or the security of the institution.
- **Medical** – Inmates are allowed out of their cells to receive regularly scheduled mental health services as specified unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- **Correspondence** – Inmates have the same opportunities for correspondence that are available to the general inmate population.
- **Telephone privileges** are allowed for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- **Visits** are permitted only when specifically authorized by the warden or his or her designated representative.
- **Legal visits** are allowed and are not restricted except when there is evidence that the visit is a threat to security and order. The warden or his or her designee must approve all legal visits in advance.
- **Legal Access** - Legal materials are accessible to inmates in administrative confinement as to inmates in general population as long as security concerns permit. An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

Disciplinary Confinement

As defined in Rule 33-602.222, F.A.C., "Disciplinary Confinement refers to a form of punishment in which inmates found guilty of committing violations of the department rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct." All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314, F.A.C., Rules of Prohibited Conduct and Penalties for Infractions.

Inmates are given pre-confinement medical evaluations by medical staff prior to being placed in disciplinary confinement. Any inmate currently in another confinement status who received a pre-confinement medical assessment is not be required to have another medical assessment prior to movement to disciplinary confinement.

Inmates in disciplinary confinement may be housed with another inmate. However, prior to placing inmates in the same cell, the inmates are interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other. Inmates are not housed in disciplinary confinement cells in greater number than there are beds in the cells. The only exception to this policy is during an emergency situation as declared by the warden or duty warden.

Staff are required to conduct regular visits to disciplinary confinement. These visits are to be conducted at the same frequency as inmates in administrative confinement, with additional visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.
- As frequently as necessary by the SCO to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.

Inmates in disciplinary confinement status retain certain privileges, but some may be more restrictive than the general population. Privileges for inmates in disciplinary confinement are comparable to those listed above for administrative confinement, and are specified in Rule 33-602.222, F.A.C.

Protective Management

As defined in Rule 33-602.221, F.A.C., protective management is a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible." Protective management is not disciplinary in nature. Inmates in protective management are not being

punished and are not in confinement. The treatment of inmates in protective management is as near that of the general population as the individual inmate's safety and security concerns permit.

Inmates in protective management may be housed with other inmates. However, prior to placing inmates in the same cell, a determination is made by the housing supervisor that none of the inmates constitute a threat to any of the others. The number of inmates housed in protective management housing units does not exceed the number of beds in the cell.

Inmates in protective management status retain certain privileges but some may be more restrictive than the general population. In particular, there are no protective management units specifically designated for "youth". To the extent possible, all less restrictive avenues to address protection needs are employed. However, if a youth is housed in a protective management unit they may be subject to more restrictions than a non-youth inmate for their safety and security. Generally, the privileges provided to inmates in protective management are comparable to those listed above for administrative confinement, and are specified in Rule 33-602.221, F.A.C.

Solitary Confinement

The Department does not have solitary confinement.

The Department utilizes administrative confinement, disciplinary confinement, protective management, close management, and maximum management to separate inmates from the general population. Youth housed in close management or maximum management are housed with other youthful offenders in the same status. Disciplinary confinement is not "solitary confinement". Staff is required to visit the inmate in disciplinary confinement daily and weekly, and although restricted from non-emergency telephone calls, non-legal visitation, and may only have certain items of their personal property, inmates are not completely isolated. Rather, they are in a housing unit with other inmates in disciplinary confinement. They may be in individual cells or may have a cellmate. Staff is always present and is specifically required to visit the inmate, including the warden, assistant wardens, shift supervisor on all shifts, the housing supervisor, the chaplain, mental health professional, and a member of the Institutional Classification Team. Additionally, a correctional officer makes routine checks of each inmate. Each of these visits are specifically documented.

2. EFFECT OF THE BILL:

Chapter 958, F.S., provides an appropriate framework for the incarceration, care, and treatment of youthful offenders sentenced as adults compatible with the state prison system. This chapter provides the department adequate flexibility to ensure the proper care of youthful offenders for varied circumstances. For example, when a youthful offender presents security concerns, is disruptive, uncontrollable, and incorrigible or becomes a danger to him/herself and other youthful offenders, the department must and has the flexibility to remove the offender and place him/her in another youthful offender facility or a non-youthful offender facility. The department may also assign to a youthful offender facility any inmate, except a capital or life felon, whose age does not exceed 19 years but who does not meet the criteria of a youthful offender, if the department determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.

The department does not currently have the resources to comply with this bill. In effect, the bill proposes a separate entity existing within the current adult correctional system, albeit with different management standards, which also contradict current protocols and policies. Compliance with this bill would require:

1. Substantial revisions and additions to Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties for youthful offenders.
2. Additional correctional and mental health staffing and training.
3. Program changes to the Department's Offender Based Information System (OBIS), as well as sufficient fiscal appropriation.

This proposed correctional system would conflict with the current Florida correctional system in that those inmates housed within the department were tried and convicted as adults, generally having exhausted juvenile remedies or having committed a crime determined to merit adult sanctions. Moreover, not only does it limit the department's ability to foster safety and security for these youth, but this bill places the department in a difficult situation in that it minimizes a youth's responsibility to follow rules and regulations, which does include program participation. This would be contrary to the department's reentry mission to provide youth offenders with the means and discipline to become law-abiding citizens.

Additionally, the bill conflicts with the requirements and flexibility provided to the department in s. 958.11, F.S. This section provides that the department may assign a youthful offender to a facility in the state correctional system which is not designated to the care, custody, control, and supervision of youthful offenders. This section further delineates the reasons which include, but are not limited to: (1) If the youthful offender commits a new felony crime; (2) If the youthful offender becomes a serious management or disciplinary problem resulting from serious violations of the rules

of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates, and (3) If the youthful offender needs medical treatment, health services, or other specialized treatment otherwise not available at the youthful offender facility.

1. Lines 102 through 104: create Section 945.425, Florida Statutes: Youth in Solitary Confinement.

(1) Lines 105 through 123 define the following five terms used in the bill:

(a) "Emergency confinement" (Lines 106 through 111) is already defined in Rule 33-601.220, F.A.C. as administrative confinement.

(b) "Medical confinement" (Lines 112 through 116) The proposed bill defines "medical confinement" as a type of solitary confinement that involves the involuntary placement of a youth in an isolated room to separate that youth from the general inmate population to allow him or her to recover from an illness or to prevent the spread of a communicable illness.

(c) "Mental health clinician" (Lines 117 through 118) includes the term "social worker" which is too restrictive and should be "Behavior Specialist" if it is referring to correctional mental health staff. Also, if the department doesn't privatize, the term "psychologist" means our senior behavioral analysts would have to be licensed under Chapter 490, Florida Statutes. The term "nurse practitioner" should be "psychiatric nurse practitioner".

(d) "Solitary confinement" (Lines 119 through 121) is not applicable as the department does not have solitary confinement. Nevertheless, the proposed statute defines "solitary confinement" as "the involuntary placement of a youth in an isolated room to separate that youth from the general inmate population for any period of time." This is a broad definition of "solitary confinement" and potentially includes many types of housing area assignments.

(e) "Youth" (Lines 122 through 123) conflicts with Chapter 958, to be sentenced as a youthful offender, a defendant must be younger than 21 years of age at the time sentence is imposed. If the youthful offender has probation to follow their prison term, and the probation is subsequently revoked, and the defendant is resentenced to prison, they would remain a youthful offender.

Courts have recently explained that although a youthful offender whose probation is revoked for a substantive violation no longer has a sentencing cap of six years, his youthful status must continue because he is still eligible for youthful offender programs in the Department of Corrections. *Long v. State*, 99 So.3d 997 (5th DCA 2012) ("Once a circuit court has imposed a youthful offender sentence, it must continue that status even upon resentencing after a substantive violation of probation. A defendant's status as a youthful offender matters in part because it affects the defendant's classification within the prison system and the programs and facilities to which the defendant can be assigned.") This means that an inmate can be sentenced to prison on a violation of probation as a youthful offender and be well over the age of 24. As a practical matter, the department cannot house these older youthful offenders in a youthful offender facility. However, these inmates may claim that their continued youthful offender status entitles them to the protections proposed in this bill.

This definition also does not include young adult offenders referenced in s. 944.1905(5), F.S. As previously mentioned, the department has a small population of young inmates who do not meet the criteria in Chapter 958 to be sentenced or classified as youthful offenders. However, because of their age, the department is required to house these inmates with youthful offenders until at least age 18. The statute provides for these inmates to remain housed with youthful offenders until age 21 if deemed appropriate. To exclude this population of inmates could create legal issues with the management of this particular population.

Nationally, the Prison Rape Elimination Act (PREA) sets the standard for defining "youth" offenders. The bill language essentially creates another group/class of inmates which the department is not currently prepared to manage.

(2) Lines 124 through 126 establish that a youth may not be placed in solitary confinement, except as provided in this section. The department does not have solitary confinement. The department utilizes administrative confinement, disciplinary confinement, protective management, close management, and maximum management to separate inmates from the general population. Youth housed in close management or maximum management are housed with other youthful offenders in the same status. Disciplinary confinement is not "solitary confinement". On the contrary, a myriad of staff is required to visit the inmate in disciplinary confinement daily and weekly, and although restricted from non-emergency telephone calls, non-legal visitation, and may only have certain items of their personal property, inmates are not completely isolated. Rather, they are in a housing unit with other inmates in disciplinary confinement. They may be in individual cells or may have a cellmate. Staff is always present and is specifically required to visit the inmate, including the warden, assistant wardens, shift supervisor on all shifts, the housing supervisor, the chaplain, mental health professional, and a member of the Institutional Classification Team. Additionally, a correctional officer makes routine checks of each inmate. Each of these visits are specifically documented.

Many aspects of the department's daily operations would be negatively impacted from a cost and staffing standpoint in implementing this bill. The bill essentially creates a new classification and confinement system for "youth prisoners," who would be exempted in many ways from the department's current confinement and special housing rules.

(3) Lines 127 through 172 - Protecting Youth in Emergency Confinement. The department currently exercises the proposed, with the exception of the face-to-face visit by a mental health professional at least one hour after placement and every two hours thereafter. This would require additional mental health staff, including after-hours mental health staff. It is indeterminate as to the required number of staff; a comprehensive workload study would be required to determine staff impact. Additionally, the department has specific procedures in place to address mental health emergencies. However, the department does have various facilities that are equipped with the necessary resources to address mental health emergencies or crises.

Neither "youth" nor "adult" inmates are put in administrative or protective management status unless warranted. All placements are justified and reviewed by more than one staff entity, and all attempts are made for less restrictive options before such placement. Additionally, all staff is trained to closely observe inmate behavior for signs indicating that medical and/or mental health care is needed. Moreover, all inmates are repeatedly informed that they may request such aid at any time. Once a youthful offender is placed in protective management, the inmate's youthful offender status is removed; however, inmates 17 years of age and younger are not placed in protective management.

(4) Lines 173 through 198 - Protecting Youth in Medical Confinement. Medical confinement is not a housing status in which the department places inmates. The bill requires a medical professional to check up on youth at least once every 12 hours. Under current department procedures, when an inmate needs to be isolated from other inmates for medical reasons, he or she is housed in a medical isolation cell within the infirmary area of institution. This is not considered solitary confinement. As indicated in the department's Health Services Bulletin 15.03.26, the infirmary will be staffed twenty-four (24) hours per day by health care personnel; all infirmary inmates must be within sight or sound of staff; and, staff shall make rounds at least every two (2) hours for all patients in the infirmary.

(5) Lines 199 through 210 require the department to review its policies and procedures relating to youth in solitary confinement to determine if they comply with the bill. Generally, the proposed language conflicts with the department's current rules. More specifically, the restriction of certain management tools serves to provide no incentive for the youth to follow rules and regulations, effectively undermining the department's ability to ensure the safety of staff and inmates, the security of the facility, and more specifically, the safety and well-being of the very population this proposed bill seeks to protect.

This section also requires the department to certify compliance via a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

2. Lines 211 through 260: Amend Section 951.23, Florida Statutes. This section pertains to the Department of Juvenile Justice, detention facilities, and has no impact on the FDC.

3. Lines 261 through 371: Create Section 985.28, Florida Statutes. This section pertains to the Department of Juvenile Justice, detention facilities, and has no impact on the FDC.

4. Lines 372 through 479: Create Section 985.4415, Florida Statutes. This section pertains to the Department of Juvenile Justice, detention facilities, and has no impact on the FDC.

5. Lines 480 through 488: provide the department with authority to adopt rules regarding youth in solitary confinement. In addition to promulgating new rules, compliance with this bill will also require the department to substantially revise Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties for youthful offenders.

6. Lines 489 through 511: Amend Section 985.601, Florida Statutes. This section has no impact on the Florida Department of Corrections.

7. Lines 512 through 534: Reenacts subsection (1) of Section 944.279, Florida Statutes. This section has no impact on the Florida Department of Corrections.

8. Line 535: Establishes the effective date of the bill as July 1, 2019. Department compliance with this bill would require: (1) Substantial revisions and additions to Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties for youthful offenders; (2) Additional correctional and mental health staffing and training; (3) Program changes to the department's Offender Based Information System (OBIS), as well as sufficient fiscal appropriation; and, (4) Additional housing.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:

Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☒ N ☐

If yes, provide a description:	Certified compliance report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
Date Due:	January 1, 2020
Bill Section Number(s):	Section 1, Lines 203 through 206

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote	

prior to implementation of the tax or fee increase?	
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2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y ☐ N ☐

Revenues:	Unknown
Expenditures:	The overall impact to the department is indeterminate, but likely significant. The department cannot estimate the number of inmates that will be placed into confinement and exactly when they will be released from such. Although the department is unable to determine additional mental health and correctional staff necessary to perform the increased volume of checks necessitated by this bill, it would be anticipated to be significant.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There will likely be a significant technology impact. There would be a need for the creation of additional systems to comply with the proposed bill, such as new codes within the Department's Offender Based Information System (OBIS) reporting mechanisms, etc.
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	Unknown
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ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	SB 624 (version 3-01084-19) would appear to have legal implications insofar as the bill requirements may conflict with existing FDC rules (see, e.g., rr. 33-602.220-.222, FAC) and policies relating to secure housing, inmate discipline and mental health housing assignments as discussed above.
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2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION

BILL NUMBER:	SB 624
BILL TITLE:	Youth in Solitary Confinement
BILL SPONSOR:	Senator Montford
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Criminal & Civil Justice Appropriations Subcommittee
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	HB 755
SPONSOR:	Representative Alexander

PREVIOUS LEGISLATION

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?

No.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	1/31/19
LEAD AGENCY ANALYST:	Rachel Moscoso, Legislative Affairs Director, (850) 717-2716
ADDITIONAL ANALYST(S):	Sam Kerce, Deputy Legislative Affairs Director
LEGAL ANALYST:	John Mila, Asst. General Counsel
FISCAL ANALYST:	Marti Harkness, Budget Chief

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Prohibits the Department of Corrections and the Department of Juvenile Justice from placing youth in solitary confinement except under certain circumstances. Specifies a timeframe and requirements around the use of emergency confinement and medical confinement including the frequency in which a mental health clinician and medical professional must conduct evaluations on youth in emergency and medical confinement.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Department of Juvenile Justice does not use solitary confinement in its secure detention centers or residential commitment programs. Solitary confinement is the placement of an incarcerated person in a place where they are deprived of, or have extremely limited, contact with other people. The Department does use short-term supervised **confinement, precautionary observation, secure and controlled observation** for youth presenting an immediate danger to themselves or others in its Detention and Residential facilities. **Medical Confinement** is used for youth who present with a communicable disease that may infect others. The use of short-term supervised confinement or observation of a youth is required to be documented. Residential Administrative Rule chapter 63E-7, F.A.C., Detention Administrative Rule chapter 63G-2, F.A.C., and Mental Health Administrative Rule chapter 63N-1, F.A.C., dictate the intervals and specific requirements of each form of documentation.

- 1) **Youth presenting immediate danger to others** –when a youth is presenting a danger to staff, a danger to other youth, or causing major property damage that is compromising the safety and security of the facility.
 - a. **Residential Facilities**– if a youth is presenting an immediate danger to others or to the safety and security of the facility while in their residential program, they will be sent to a room which is deemed safe, secure, and in compliance with Residential Administrative Rule chapter 63E-7, F.A.C (minimum 35 square feet, bed, lights, windows). This is known as **Controlled Observation**. Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior 15-minute intervals.
 - b. **Detention Centers** - if a youth presents an immediate danger to others or the safety and security of the facility while in a detention center, they may be sent to **Confinement**. Once a youth is confined, the juvenile detention officer must document this in a confinement report no later than one hour after confinement was issued. A youth in confinement will have a minimum of standard supervision which includes 10-minute visual checks. The juvenile detention supervisor must review the report within two hours of the youth's confinement and must evaluate and document the youth status every three hours. Staff are expected to work with the youth to continually counsel them and remove them from confinement as soon as they can safely rejoin the population. Confinement may not be used more than 8 hours without the Detention Center Superintendent granting an extension and no more than 24 hours without the Regional Director signing off and notifying the Assistant Secretary of Detention. According to Detention Services' Facility Policy and Procedure, confinement may not exceed 72 hours. The Department is continually striving to minimize the length of time youth are held in confinement.

- 2) **Youth presenting suicidal or harmful behaviors to themselves** –when a youth is presenting a danger to themselves either through action or through verbal threats.
- a. **Residential and Detention** – A youth shall be placed on **Precautionary Observation** if the youth is identified by intake screening or staff observations, as having suicide risk factors (recent suicide attempt, suicide ideation, threat, drawings, preoccupation with death, major loss such of parent, sibling, or friend) or is determined to be a potential suicide risk and the youth is in need of observation and monitoring beyond which is normally provided. Placement on Precautionary Observation, upgrades their supervision to a minimum of Constant Supervision and a “Suicide Risk Alert” is required to be completed in the Department’s Juvenile Justice Information System (JJIS). Constant Supervision is the continuous and uninterrupted observation of a youth by a staff member assigned to monitor the youth who has a clear and unobstructed view of the youth, and unobstructed sound monitoring of the youth at all times. The assigned staff member will document behaviors and actions of the youth every 30 minutes in the Suicide Precautions Observation Log. Youth on Precautionary Observation are permitted to participate in selected activities with other youth, but these activities are limited to the safe housing areas in the facility or program. Safe housing areas are areas that are designed to eliminate or prohibit devices or materials which might aid in self-harm. The safe housing areas shall not limit the youth’s activity to an individual cell, whether locked or unlocked, or a confinement room of any kind, nor shall it restrict a youth to his/her sleeping room as a suicide precaution.

Anytime a suicide alert is entered in JJIS for a youth, an Assessment of Suicide Risk is completed by a Mental Health Clinical Staff person/Licensed Mental Health Professional within 24 hours or immediately if the youth is in crisis. If a youth makes a suicide attempt or attempts serious self-inflicted injury, the youth is assessed immediately or is transported for emergency mental health services (Baker Act). Once a youth has an Assessment of Suicide Risk completed the youth will either continue on Precautionary Observation or can be upgraded to **Secure Observation**. The designated Mental Health Clinician authority and/or other Licensed Mental Health Professional are involved in the decision-making process as to whether Secure Observation is appropriate for a specific youth. The current maximum time allowed for Secure Observation is 8 hours, unless there are extenuating circumstances. In that event, the designated Mental Health Clinician authority/Licensed Mental Health Professional is consulted and must agree to a limited time extension. Secure Observation is not meant as a long-term placement, so a Licensed Mental Health Professional must provide written concurrence for a youth to remain in Secure Observation beyond 24 hours. The Department, in practice, strives to never have youth reach that 24-hour mark and instead will consider transfer to a psychiatric hospital for a youth who is still posing a threat to themselves. When a youth at risk for suicide is placed on Secure Observation they remain on one-to-one supervision at all times. While the Department does not have 24/7 onsite licensed medical or mental health professionals, each facility has on call licensed medical and mental health staff members to provide after hours consultation via telephone.

A youth is kept on Suicide Precautions (Precautionary Observation or Secure Observation) until a licensed mental health professional and facility administration deems it appropriate that they go back onto normal supervision.

- 3) **Medical Confinement**- used for youth who present with a communicable disease that may infect others or to allow the youth to rest and recover from an illness.
- a. **Residential and Detention** – A licensed physician must make the determination to place a youth in Medical Confinement. While the Department does not have 24-hour, 7 day a week medical staff, there is always a physician available by phone to be contacted in order for a youth to be put into Medical Confinement. That physician will make the decision on when a youth is able to leave medical confinement. The use of Medical Confinement is normally voluntary, but can be ordered, as the medical professional works with the youth to explain the circumstances of their Medical Confinement. Every effort will be made to continue the youth's normal routine while confined for medical purposes. The youth will be monitored through normal daily medical rounds with nurses or the physician.

2. EFFECT OF THE BILL:

Section 1 and 2: Not applicable to the Department of Juvenile Justice

Section 3 and 4: Section 3 creates s. 985.28, F.S., to address confinement in detention centers. Section 4 creates s. 985.4415, F.S., to address confinement in residential programs. The bill defines the following:

Child – a youth 19 years of age or younger that is in DJJ custody

Mental Health Clinician – a psychiatrist, psychologist, social worker, or nurse practitioner

Solitary confinement – the involuntary placement of a child in an isolated room to separate that child from other children in the facility for any period of time

Emergency confinement – type of solitary confinement that involves placement of a child in an isolated room to remove them from a situation in which they present an immediate and serious danger to the security or safety of themselves or others

Medical confinement – type of solitary confinement that involves placing the youth in an isolated room to allow the child to recover from illness or to prevent the spread of a communicable illness.

This bill changes the definition of a child to a youth under 19 years old. Youth can be in the Department's custody up until the age of 21. The bill would create different standards for youth in the same facility based solely on age.

The bill prohibits the use of solitary confinement unless it is used for emergency or medical confinement and meets certain criteria, including reporting criteria.

Under the bill, **emergency confinement** could be used if the all of the following criteria are met: A nonphysical intervention with the child would not be effective, there is imminent risk of the child physically harming themselves, staff, or others or if the child is engaged in major property damage that would comprise the safety and security of the facility, and that all less-restrictive means have been exhausted. If all the above criteria are met, then the staff may place the youth in emergency confinement and must document the justification for the placement and describe the less-restrictive options that the facility used prior to placement. Within one hour of a child being placed in emergency confinement a mental health clinician must evaluate the child to ensure that the confinement is not detrimental to the child's mental or physical health. Following the initial evaluation, every two hours the mental health clinician must reevaluate, face-to-face, the youth to determine whether emergency confinement is still needed. Emergency confinement shall not last longer than 24 hours unless a onetime extension of 24 hours is given by the mental health clinician. If after 48 hours the youth is still determined to need emergency confinement, the facility staff must prepare to transfer the youth to a facility that is able to meet the child's needs. The bill also states that a child in emergency confinement must be provided access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to children in the facility.

The term emergency confinement encompasses multiple aspects of Departmental Rule such as controlled observation, precautionary and secure observation and short-term supervised detention confinement. The bill requires a mental health clinician assess youth in emergency confinement every two hours. Currently, a

youth who displays mental distress will receive constant supervision and mental health status checks by licensed mental health providers in intervals that ensure the wellbeing of the youth. In order to meet the requirements of the bill and the Department of Health's licensing requirements for counselors, the Department will need to hire additional licensed mental health professionals with an active license. The fiscal impact to the Department being required to have 24-hour, 7 day a week licensed mental health professional can be found under the fiscal section of this analysis.

The bill further provides that all youth in confinement should receive the same clothing as the youth not in confinement. However, youth in the Department's care on suicide precautions are often required to wear different clothing to ensure they cannot endanger themselves through strangulation or other methods of self-harm.

Medical confinement can be used if isolation from staff and other children in the facility is required to allow the child to rest and recover or to prevent the spread of a communicable disease. The bill states that a medical professional must initiate the medical confinement and must conduct and document a face-to-face evaluation of the child every 12 hours to determine if confinement is still needed. This 12-hour face-to-face check is not currently feasible for the Department. While youth do not go for extensive time periods without medical evaluations, there is not 24-hour, 7 days a week medical staff on site at each facility. The Department instead talks over the phone with a contracted physician to discuss the youth's situation. A youth will be sent to a hospital if disease is found serious enough. The fiscal impact to the Department being required to have a full time medical professional at every facility can be found under the fiscal section of this analysis.

Section 3 provides for a process where the Department and the board of county commissioners of each county that administers a detention facility shall review their policies and procedures relating to disciplinary treatment to determine whether policy complies with this new section of law. The Department and county board shall certify to the Governor, President of the Senate, and Speaker of the House that they are in compliance by January 1, 2020. Section 4 requires the Department to certify compliance of their residential facilities with the new section of law and report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2020.

Section 5: Not applicable to the Department of Juvenile Justice.

Section 6: Amends section 985.601, F.S., to allow the Department to adopt rules on the strict prohibition on the use of solitary confinement on children under the age of 19 years and to ensure compliance with the rest of the bill language.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	DJJ Residential and Detention rules will need to be amended.
Is the change consistent with the agency's core mission?	Y ☒ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	Detention rules would require amendment to accommodate the new nomenclature. The definitions of behavioral confinement and medical confinement in 63G-2.014(7) and (50) will require revision. Rule 63G-2.022(4) ("Confinement") will need substantial revision to accommodate the processes that must govern review and reporting timelines. The Residential rule (63E-7) is currently undergoing amendment. The definition of controlled observation in draft 63E-7.100(22), and the detailed processes in rule 63E-7.107(14) will require extensive amendment.

	The Mental Health rule (63N-1) will need to be amended to accommodate the many changes such as the new definition of Mental Health Clinician and the intervals in which a youth on observation must be evaluated. The Detention and Residential amendments will likely require legislative ratification as the cost of having mental health professionals continuously on-site will exceed the regulatory cost thresholds in section 120.541(3), F.S., (\$1M over the first 5 years).
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4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☒ N ☐

If yes, provide a description:	The Department, along with the board of county commissioners of each county that administers a detention facility must certify compliance with the new section of law and report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2020. The Department must certify compliance of their residential facilities with the new section of law and report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2020.
Date Due:	January 1, 2020.
Bill Section Number(s):	s. 985.28(5)(b) and s. 985.4415(5)(b)

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☒ N ☐

Revenues:	Click or tap here to enter text.
Expenditures:	The total cost for Detention would be \$9,247,056 for the state (please see explanation under fiscal impact to state government). In accordance with Detention Cost Share, all non-fiscally constrained counties will pay for half of their respective detention cost. Half of this cost for local counties would total up to \$4,623,528. The entire half would not be covered due to the fiscally constrained counties. Detention Cost Share is a reimbursement system, meaning the entire \$9,247,052 would need to be allocated to the Department in year one and \$4,623,526 allocated to the Department in the following years for Detention staff increases.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	Click or tap here to enter text.
Expenditures:	<u>Mental Health Clinicians</u> Within one hour of a child being placed in emergency confinement a mental health clinician must evaluate the child to ensure that the confinement is not detrimental to the child's mental or physical health. Following the initial evaluation, every two hours the mental health clinician must reevaluate, face-to-face, the youth to determine whether emergency confinement is still needed. As written, the bill precludes the use of Licensed Mental Health Counselors and Licensed Marriage and Family Therapist for the definition of Mental Health Clinician, which are currently the majority of the Department's mental health staff. Assuming this is an oversight in the bill and that language would be amended to allow for these positions, the Department provides the following analysis based on full time Licensed Mental Health Counselors. <u>Residential cost</u> was estimated by looking at the most recent 5 procured contracts and averaging the salary for a licensed mental health clinician. To ensure there was a mental health clinician on site at all time would require an additional 1.67 FTEs per our 54 facilities,

	totaling 90 FTE. The estimated annual recurring cost for residential is \$7,855,385. <u>Detention cost</u> was estimated for 24 hours coverage by a mental health clinician. Since we currently contract for 40 hours per week with mental health clinicians, the Department would have to provide coverage for an additional 128 hours a week (24/7 a week requires 168 hours of coverage needed). To determine an estimated cost for Detention Centers, this formula was used: 128 hours X 52 weeks X 21 detention centers X \$41 hourly cost of a licensed mental health clinician. The estimated annual recurring cost for detention is \$5,730,816. Mental health clinicians are not qualified to evaluate the <i>physical</i> health of a youth in emergency confinement (lines 303-306). A mental health clinician who attempts to evaluate the physical health of a youth risks losing their license. To evaluate the physical health of a youth in emergency confinement within two hours of placement the Department would need 24-hour, 7 day a week medical staffing. <u>Medical Staff</u> <u>Residential cost</u> was estimated by looking at the most recent 5 procured contracts and averaging the salary for the lowest cost medical staff member, a registered nurse. To ensure there was a medical professional on site at all time would require an additional 1.67 FTEs per our 54 facilities, totaling 90 FTE. The estimated annual recurring cost for residential is \$6,263,622. <u>Detention cost</u> was estimated for 24-hour coverage by a medical staff. Since we currently contract for 76 hours per week with medical professionals, the Department would have to provide coverage for an additional 92 hours a week (168 hours of coverage needed). To determine an estimated cost for Detention Centers, this formula was used: 92 hours X 52 weeks X 21 detention centers X \$35 hourly cost of a licensed nurse practitioner. The estimated annual recurring cost for detention is \$3,516,240. Medical confinement, as written in the bill, requires a youth to be evaluated every 12 hours face-to-face by a medical professional. With the requirement of 24-hour, 7 day a week medical staff to ensure compliance with the evaluations described in emergency confinement, the Department would be able to use those same medical staff to meet the requirements addressed under the Medical Confinement section of the bill. The total cost to the state for fulltime Mental Health Staff and Medical Staff would be \$18,742,535 on an annual recurring basis after year one when counties pay their portion in accordance with Detention Cost Share.
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	Due to the reimbursement system put in place by Detention Cost Share, year one funding for the state would total - \$23,366,063 Note - The above calculations are based on current contracted rates. Going forward the rates may increase as the demand for mental health and medical professionals grow. These rates are also based on normal shift hour rates and can be expected at a higher rate for evening and night time hours.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	No

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	The Department contracts with private providers for both medical and mental health staff. The cost to the state for additional mental health and medical staff would be a revenue for the private sector.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☐

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	Click or tap here to enter text.
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
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ADDITIONAL COMMENTS

The definition of Mental Health Clinician within the bill precludes the use of Licensed Mental Health Counselors (LMHC) and Licensed Marriage and Family Therapists (LMFT). Although this appears to be an oversight, as it is currently written residential and detention centers would be required to replace about 90% of their licensed mental health clinical staff as the majority of the mental health clinicians working in residential and detention centers are LMHC's and LMFT's, not a "Social Worker" as the bill requires. Within the bill a social worker is never identified as an Licensed Clinical Social Worker, which leaves the Department vulnerable because bachelor's level, unlicensed social workers are not qualified to provide counseling services (Chapter 491, FS).

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.
Lines 266 & 377:	The Department can have custody of youth up to 21 years of age. Since the use of confinement will be facility-wide, this could lead to having different types of confinement practices for youth in the same facility.
Lines 265-66 & 358-69:	At least as concerns detention, the bill contains an inconsistency. If "child" is defined as a person under 19 <i>who is in the custody of the department,</i> then county-operated detention facilities (currently Polk and Seminole) are not included, and there is no reason to coordinate with <i>"the board of county commissioners of each county that administers a detention facility"</i> about the implementation of the new confinement restrictions. County-operated juvenile detention facilities are governed, not by any Department rules, but rather by chapter 21 of the Florida Model Jail Standards. Whether and to what extent the Jail Standards are consistent with the bill is irrelevant, given that county-operated juvenile detention facilities are not covered by the bill, as they do not detain a "child" under the bill's definition.
Line 366:	Assuming the definition of "child" is amended to include county-operated detention facilities, the "report" to be submitted by the Department and the board should be independent "reports." The Department and the counties (currently Polk and Seminole) are governed by different rules, with the former governed by Florida Administrative Code chapters 63G-2 and 63E-7, while the latter is governed by the Florida Sheriff's Association Model Jail Standards. A joint "report" concerning one another's compliance would require the Department to interpret the Jail Standards, and the counties to interpret chapter 63G-2. Since these entities are not expert on one another's regulations, neither should be asked to certify the other's compliance in a joint report.



THE FLORIDA STATE UNIVERSITY
COLLEGE OF LAW
Public Interest Law Center
Children in Prison Project
Caitlyn Kio, J.D.
850-645-7900 / ckio@law.fsu.edu

SB 624 Handout from speaker
Karina Flores, FSU Law
Children in Prison Project

YOUTH IN SOLITARY CONFINEMENT

SENATE BILL 624

33%

OF CHILDREN

IN FLORIDA'S ADULT PRISONS

FACED SOLITARY CONFINEMENT IN 2016

- That is 1 in every 3 children in FL adult prisons
- No age restriction for confinement
- No time limitation for confinement
- No DOC procedure for children in confinement
- Extreme deprivation of normal daily activities



ON ANY GIVEN DAY IN FL ADULT PRISONS:

- Approximately 40 children are in solitary confinement -
- Reports show confinement lasts at least 22 hours a day -
- A child in solitary is deprived from constructive activity -

PSYCHOLOGICAL EFFECTS:

- Children are 8x more likely than adult inmates to commit suicide -
- Associated with severe harm to physical and mental health -
- Greater instances of physical, sexual, and psychological abuse -

PUBLIC SAFETY & COMMUNITY RISKS

- Produces higher rates of recidivism
- Aggravates negative behaviors
- Exacerbates pre-existing mental issues
- Enforces poor personal adjustment
- Prevents essential social development



FISCAL INEFFICIENCY:

- Annual housing cost estimated to be over \$19,000 per child
- Studies show solitary confinement is 2-3x MORE expensive than regular housing

powered by

 **PIKTOCHART**

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19
Meeting Date

SB 624
Bill Number (if applicable)

Topic Confinement

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9116 Sunrise Dr
Street

Phone _____

Largo Fl. 33773
City State Zip

Email _____

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.

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)

3.4.19

Meeting Date

624

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

SB624

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Mary Winn

Job Title volunteer

Address 1006 Brookwood Dr.

Street

Tallahassee FL 32308

City

State

Zip

Phone (850) 766-2612

Email kathywinnclan@embargo.mail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/19

Meeting Date

SB 624

Bill Number (if applicable)

Topic Solitary Confinement of Youth

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., Suite 400

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

3-4-2019

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

SB 624

Meeting Date

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Professor Terry Coonan

Job Title Executive Director, FSU Human Rights Center

Address 426 W. Jefferson Street

Phone (950) 644-4550

Street

City

Tallahassee

State

FL

Zip

32301

Email t.coonan@fsu.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FSU Human Rights Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB624

Bill Number (if applicable)

Topic

Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

1747 Orlando Central Pkwy

Phone

407 855 7604

Street

Orlando

FL

32809

City

State

Zip

Email

legislation@floridapta.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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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)

3 / 4 / 2019

Meeting Date

Topic _____

Bill Number 624
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 624

Bill Number (if applicable)

Topic Juvenile solitary confinement

Amendment Barcode (if applicable)

Name Karina FloresJob Title LAW studentAddress W. Jefferson StPhone 850-645-7900

Street

Tallahassee

City

FL

State

32301

Zip

Email kmt17@my.fcu.eduSpeaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing FSU LAW children in prison projectAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/2019

Meeting Date

SB 624

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/4/19

Meeting Date

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

624

Bill Number (if applicable)

Topic YOUTH IN SOLITARY CONFINEMENT

Amendment Barcode (if applicable)

Name RJ MYERS

Job Title LOBBYIST

Address 113 E COLLEGE AVE, SUITE 300

Street

Phone 850/933-0883

TAWAHASSEE

City

FL

State

32301

Zip

Email RJ@SUSKFCONSULTING.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL PUBLIC DEFENDERS ASSOC.

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.

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S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environment and Natural Resources, *Chair*
Education, *Vice Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Education
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR BILL MONTFORD

Minority Leader Pro Tempore
3rd District

February 18, 2019

Senator Keith Perry, Chair
Senate Criminal Justice Committee
316 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Chair,

I respectfully request that the following bills be placed on the next Criminal Justice Committee Agenda.

SB 624 – A bill relating to Youth in Solitary Confinement.

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William J. Montford III

WJM:lc

REPLY TO:

- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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: CS/SB 642

INTRODUCER: Committee on Criminal Justice and Senator Brandes and others

SUBJECT: Criminal Justice

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 642, which is cited as the “Florida First Step Act,” makes changes to a number of provisions related to the criminal justice system, including:

- Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Providing legislative intent language that the Department of Corrections (DOC) should attempt to place an inmate within 300 miles driving distance of his or her primary residence;
- Requiring the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permitting specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Requiring the DOC to notify each inmate or offender of all terms of his or her sentence that are outstanding at the time of release or termination of probation or community control, respectively;
- Requiring county detention facilities to notify each inmate of all terms of his or her sentence that are outstanding at the time of release;
- Authorizing the DOC to develop, within its existing resources, a Prison Entrepreneurship Program (PEP) that includes education with specified curriculum;
- Authorizing an inmate to obtain educational gain-time for participating in the PEP and allowing such gain time to pierce 85 percent in certain instances;

- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control with the judge's concurrence; and
- Requiring the DOC to include in the Florida Crime Information Center system all conditions of probation as determined by the court.

The bill will likely result in a “negative significant” prison bed impact (i.e., a decrease of more than 25 prison beds) as a result of the provisions related to departure from drug trafficking mandatory minimums and the requirement of each circuit to create an Alternative Sanctioning Program (ASP). Additionally, the bill will likely result in an indeterminate fiscal impact to the DOC and local governments associated with additional workload and the need for information technology updates. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

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).¹ The law makes a number of changes to the federal criminal justice system, including changes to the manner with which offenders are sentenced for federal criminal offenses and the services that are available to such offenders once sentenced to federal prison. In part, the First Step Act:

- Directs the Department of Justice to establish, and the Bureau of Prisons (BOP) to implement, a risk and needs assessment system to assess and classify the recidivism risk of prisoners and use such classification to:
 - Guide housing, grouping, and program assignments; and
 - Incentivize and reward participation in and completion of recidivism reduction programs and productive activities.
- Modifies the computation of good time credit.²
- Requires the BOP to place low-risk prisoners on home confinement for the maximum amount of time permitted.

¹ First Step Act of 2018, Pub. L. No. 115-391 (2018).

² The bill provides that inmates who avoid a disciplinary record can currently get credits of up to 47 days per year incarcerated. The law increases the cap to 54, allowing well-behaved inmates to cut their prison sentences by an additional week for each year they're incarcerated. The change applies retroactively, which will allow some prisoners — as many as 4,000, according to supporters — to qualify for an earlier release fairly soon. *Supra*, n. 1; See also Vox, German Lopez, *The First Step Act, explained*, February 5, 2019, available at <https://www.vox.com/future-perfect/2018/12/18/18140973/state-of-the-union-trump-first-step-act-criminal-justice-reform> (last visited February 22, 2019).

- Requires prisoners to be placed within 500 miles of their primary residence, subject to bed availability and the prisoner's security designation.
- Reduces mandatory minimum prison terms for certain nonviolent repeat drug offenses.³
- Broadens the existing safety valve to permit a sentence below the mandatory minimum for certain nonviolent, cooperative drug offenders with a limited criminal history.
- Expands in-prison and post-release employment programming.⁴

The White House stated that “The First Step Act will help prepare inmates to successfully rejoin society and enact commonsense sentencing reforms to make our justice system fairer for all Americans.”⁵

Report on Diverting Low-Risk Offenders from Florida Prisons

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was directed to conduct a review of Florida's sentencing laws and identify policy options to reduce or divert low-risk offenders from entering Florida's prisons.⁶ The OPPAGA released its report in January 2019. The report analyzed prison trends in Florida and discussed tools available to divert low-risk offenders and thereby reduce the prison population.⁷

The OPPAGA, in part, analyzed the trends for the types of offenders being admitted into Florida's prisons currently and reported that drug and property offenders comprise the majority of prison admissions.⁸ Further, offenders admitted for these types of offenses tend to cycle through prison relatively quickly and comprise a smaller portion of the total inmate population, including only 14 percent for drug offenses. The OPPAGA identified lower-level inmates and found that such lower-risk offenders comprised 13 percent of the inmate population,⁹ of which 4,809 inmates were drug offenders.¹⁰ Of the more than 96,000 inmates in state prisons, 5 percent or 4,696 inmates, were serving mandatory minimum sentences for drug offenses.¹¹

³ These reductions were achieved through easing a “three strikes” rule so people with three or more convictions, including for drug offenses, automatically get sentenced to 25 years instead of life, among other changes. It also restricts the current practice of stacking gun charges against drug offenders to add additional years to a term of imprisonment. All of these changes will likely lead to shorter prison sentences in the future.

⁴ *Supra*, n. 1.

⁵ The Jurist, Erin McCarthy Holliday, *President Trump signs criminal justice reform First Step Act into law*, December 21, 2018, available at <https://www.jurist.org/news/2018/12/president-trump-signs-criminal-justice-reform-first-step-act-into-law/>; The Washington Post, John Wagner, *Trump signs bipartisan criminal justice bill amid partisan rancor over stopgap spending measure*, December 21, 2018, available at https://www.washingtonpost.com/politics/trump-to-sign-bipartisan-criminal-justice-bill-amid-partisan-rancor-over-stopgap-spending-measure/2018/12/21/234f9ffc-0510-11e9-b5df-5d3874f1ac36_story.html?utm_term=.fe211312ebb2 (all sites last visited on February 22, 2019).

⁶ Chapter 2018-9, L.O.F.

⁷ The OPPAGA, *Diverting Low-Risk Offenders from Florida Prisons*, Report No. 19-01, at p. 8, January 2019, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf> (last visited on February 22, 2019)(hereinafter cited as “OPPAGA Report”). The report stated that the incarceration rate in Florida is at approximately 500 inmates per 100,000 Floridians.

⁸ *Id.*

⁹ *Id.* The OPPAGA did this analysis by examining inmates' current and prior criminal records.

¹⁰ *Id.* The OPPAGA considered low-risk offenders to be inmates who have never been convicted of any violent or sexual felony and who have never served any sentence of imprisonment prior to their current sentence.

¹¹ *Id.*, at 18. Additionally, the OPPAGA reported that almost half of this group of inmates had been admitted to prison for the first time.

The OPPAGA cited that the Criminal Justice Estimating Conference, with by the Office of Economic and Demographic Research, projects that a reduction of 1,500 inmate beds is equivalent to closing an entire prison, and a cost savings of approximately \$30 million annually.¹²

The OPPAGA further found that “there are lower-level offenders who could be diverted from prison without increasing recidivism.”¹³ The OPPAGA, in part, recommended that the Legislature create a safety valve or modify mandatory minimum terms of imprisonment for drug offenses.¹⁴

Drug Trafficking Sentencing Departure (Sections 1, 2, and 13)

Florida’s Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the “potential for abuse”¹⁵ of the substance and whether there is a currently accepted medical use for the substance in the United States.¹⁶

Drug Trafficking

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily specified quantity. The statute only applies to a limited number of such controlled substances.¹⁷ The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies¹⁸ and are subject to a mandatory minimum term of imprisonment¹⁹ and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.²⁰ For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory

¹² OPPAGA Report, p. 17-18. It should be noted that Florida’s prisons are primarily funded through General Revenue.

¹³ See *Id.*, at 19-21.

¹⁴ *Id.*, at 23.

¹⁵ Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

¹⁶ See s. 893.03(1)-(5), F.S.

¹⁷ See s. 893.135, F.S., for the substances which are included in the offense if drug trafficking.

¹⁸ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

¹⁹ There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from 3 years to life imprisonment.

²⁰ See s. 893.135, F.S.

fine of \$50,000.²¹ Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.²²

Criminal Punishment Code

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.²³ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).²⁴ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.²⁵ Absent mitigation,²⁶ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.²⁷

Mandatory Minimum Sentences and Departures

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."²⁸ As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have "complete discretion" in the charging decision.²⁹ The exercise of this discretion may determine whether a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing.

²¹ Section 893.135(1)(b)1.a., F.S.

²² Section 893.135(1)(b)1.b., F.S.

²³ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

²⁴ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

²⁵ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²⁶ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²⁷ See s. 775.082, F.S.

²⁸ Fla. R. Crim. P. 3.704(d)(26).

²⁹ "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).

Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.³⁰ A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash), if the court “finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.”³¹

Effect of the Bill

The bill provides that it may be cited as the “Florida First Step Act.”

The bill amends s. 893.135, F.S., authorizing a court to depart from a mandatory minimum term of imprisonment and mandatory fine applicable to that offense. The departure is authorized if the court finds on the record, after the state attorney has had the opportunity to make a recommendation, that the person:

- Has not previously been convicted of a:
 - Dangerous crime as defined in s. 907.041, F.S.;³² or
 - Violation specified as a predicate offense for registration as a sexual predator or offender under s. 775.21, F.S.,³³ or s. 943.0435, F.S.,³⁴ respectively;
- Did not use or threaten violence or use a firearm or other dangerous weapon during the commission of the crime;
- Did not cause a death or serious bodily injury; and
- Was not engaged in a continuing criminal enterprise.³⁵

Additionally, the bill requires the defendant to have truthfully provided to the state all information and evidence he or she has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life imprisonment).³⁶

³⁰ Section 958.04, F.S.

³¹ Section 316.027(2)(g), F.S.

³² See s. 907.041, F.S., for a complete list of offenses that are defined as “dangerous crimes.”

³³ See s. 775.21, F.S., for a complete list of offenses that are predicates to registration as a sexual predator.

³⁴ See s. 943.0435, F.S., for a complete list of offenses that are predicates to registration as a sexual offender.

³⁵ Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

³⁶ The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, this threshold, which triggers a mandatory life sentence, is never described as a “mandatory minimum” sentence like the other mandatory minimum sentences imposed by various threshold amounts covered by the statute. Nonetheless, the mandatory life sentence that is required for certain offenses seems to be a mandatory minimum sentence, and thus a sentence to which the bill would apply.

The bill also amends s. 893.03, F.S., conforming a cross-reference to changes made by the bill.

Probation and Community Control (Sections 7-9 and 11)

Forms of Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.³⁷ The DOC supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.³⁸

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.³⁹ There are also specialized forms of supervision such as drug offender probation⁴⁰ and mental health probation.⁴¹ Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Administrative Probation

Section 948.013, F.S., provides that the DOC may establish procedures for transferring an offender to administrative probation. Administrative probation is defined in s. 948.001(1), F.S., to mean a form of no contact, nonreporting supervision to which an offender may be transferred upon the satisfactory completion of certain conditions. Administrative probation is only for offenders that are a low-risk of harm to the community and there are specified underlying offenses that are prohibited from being transferred to administrative probation.⁴²

Community Control

Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.⁴³ The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.⁴⁴ A person on community control (controlee) has an individualized

³⁷ Section 948.01, F.S.

³⁸ The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited February 25, 2019).

³⁹ Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

⁴⁰ Section 948.001(4), F.S., defines “drug offender probation” as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.

⁴¹ Section 948.001(5), F.S., “mental health probation” means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.

⁴² See s. 948.013(2) and (3), F.S.

⁴³ Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

⁴⁴ Section 948.10(1), F.S.

program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.⁴⁵

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply.⁴⁶ A person may be placed on additional terms of supervision as part of his or her community control sentence.⁴⁷

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.⁴⁸ A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.⁴⁹

The offender must be returned to the court granting such probation or community control.⁵⁰ Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.⁵¹

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.⁵² In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.⁵³ The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.⁵⁴

⁴⁵ *Id.*

⁴⁶ See s. 948.101(1), F.S., for the standard conditions of community control.

⁴⁷ Section 948.101(2), F.S.

⁴⁸ Section 948.10(3), F.S.

⁴⁹ Section 948.06(1)(a), F.S.

⁵⁰ *Id.*

⁵¹ Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

⁵² Section 948.06(2)(b), F.S.

⁵³ See s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. See also ch. 2007-2, L.O.F.

⁵⁴ Section 921.0024, F.S.

Alternative Sanctioning Programs

In FY 2017-18 there were a total of 64,672 technical violations reported.⁵⁵ Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.⁵⁶ Prior to 2016, the DOC developed and implemented an alternative sanctioning program (ASP) in twelve counties within six judicial circuits.⁵⁷ An ASP allows for an alternative resolution of technical violations of probation that ensures a swift and certain response without initiating the court process or arresting and booking the offender. Section 948.06, F.S., was amended during the 2016 Legislative Session to codify the ASPs.⁵⁸ The use of such programs has substantially increased since enactment of the ASP option. As of February 2019, 16 circuits (including 49 of 67 counties) have established ASPs by administrative order. These participating jurisdictions have resolved 3,740 violations through ASPs.⁵⁹

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an ASP, in consultation with the State Attorney, Public Defender, and the DOC to address technical VOPs and VOCCs. A technical violation is defined to include any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense⁶⁰ Once an ASP administrative order is signed establishing the terms⁶¹ of the program, the DOC may enforce specified sanctions for certain technical violations with court approval.

Common sanctions issued through the ASP include increased reporting requirements, which can be in person or via phone, community service hours, imposition or modification of a curfew, electronic monitoring, drug evaluation and treatment, employment searches and workforce training.⁶² As of January 2018, two circuits and Brevard County had included short jail sentences as a possible ASP sanction through administrative order.⁶³

⁵⁵ Email from the DOC Staff (February 28, 2019).

⁵⁶ The DOC, *Copy of Tech Violations and Disposition 02-16-18* (on file with the Senate Criminal Justice Committee),

⁵⁷ The DOC, *Agency Analysis for SB 642*, p. 6, February 27, 2019 (hereinafter cited as “The DOC SB 642 Analysis”); See also the DOC, *Agency Analysis HB 1149 (2016)*, p. 2 (January 20, 2016)(all documents on file with the Senate Criminal Justice Committee).

⁵⁸ Ch. 2016-100, L.O.F.

⁵⁹ Email from the DOC Staff (February 26, 2019)(on file with the Senate Criminal Justice Committee). The circuits that have enacted administrative orders include the: Third (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties); Fourth (Duval County); Fifth (Citrus, Hernando, Lake, Marion, and Sumter Counties); Sixth (Pasco and Pinellas Counties); Seventh (Flagler, Putnam, St. Johns and Volusia Counties); Eighth (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties); Tenth (Hardee, Highlands, and Polk Counties); Twelfth (DeSoto, Manatee, and Sarasota Counties); Thirteenth (Hillsborough County); Fourteenth (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties); Fifteenth (Palm Beach County); Eighteenth (Brevard and Seminole Counties); and Nineteenth (Indian River, Martin, Okeechobee, and St. Lucie Counties).

⁶⁰ Section 946.08(2)(h)1., F.S.

⁶¹ Section 948.06(1)(h)2., F.S., provides that the administrative order must address which technical violations are eligible for alternative sanctioning, offender eligibility criteria, permissible sanctions, and the process for reporting technical violations.

⁶² The Third Judicial Circuit, *Administrative Order 2016-003, Criminal Alternative Sanctioning Program*, available at http://www.jud3.flcourts.org/Admin_Orders/All/2016-003-Criminal%20Alternative%20Sanctioning%20Program.pdf Thirteenth Judicial Circuit, *Administrative Order S-2016-019, Alternative Sanctioning Program*, available at <http://www.fljud13.org/Portals/0/AO/DOCS/S-2016-019.pdf?ver=2016-06-07-104033-303> (all sites last visited February 25, 2019).

⁶³ The Eighth and Tenth circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff’s Work Farm. Email and pdf attachment from the DOC Staff (February 22, 2018)(on file with Senate Criminal Justice Staff).

After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may elect to either participate in the program or waive participation.⁶⁴ If the offender waives participation, the violation proceeds through the court resolution process.⁶⁵ If the offender elects to participate, he or she must admit to the technical violation, agree to comply with the probation officer's recommended sanction, and agree to waive the right to:

- Be represented by counsel.
- Require the state to prove his or her guilt.
- Subpoena witnesses and present evidence to a judge in his or her defense.
- Confront and cross-examine witnesses.
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.⁶⁶

Upon the offender admitting to the technical violation and agreeing with the probation officer's recommended sanction, the probation officer must submit the recommended sanction to the court for approval. The submission to the court must include documentation related to the offender's admission to the technical violation and agreement with the recommended sanction. The court may impose the recommended sanction or may direct the DOC to submit a violation report, affidavit, and warrant.⁶⁷

Participation in an ASP is voluntary. Additionally, the offender may elect to waive or discontinue participation in an ASP at any time before the issuance of a court order imposing the recommended sanction. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.⁶⁸

Conditions of Probation in the Florida Crime Information Center

The Florida Crime Information Center (FCIC) is the state's central database for tracking crime related information. Information contained in the FCIC database includes, but is not limited to, statewide information on persons and property, driver's license and registration information, wanted and missing persons, stolen guns, vehicles, and other property, and persons' status files, and computerized criminal history.⁶⁹ It is commonly used by law enforcement officers to gather relevant information when responding to a call for service or engaging in a citizen encounter.

Every criminal justice agency within Florida is eligible for access to the FCIC.⁷⁰ Access is divided into limited access and full access. With limited access, the user is able to run a query in the system. With full access, the user is able to make modifications in the system.⁷¹ Currently, an

⁶⁴ Section 948.06(1)(h)3., F.S.

⁶⁵ Section 948.06(1)(h)3.a., F.S.

⁶⁶ Section 948.06(1)(h)3.b., F.S.

⁶⁷ Section 948.06(1)(h)4. and 5., F.S.

⁶⁸ Section 948.06(1)(h)6. and 7., F.S.

⁶⁹ The Florida Department of Law Enforcement (FDLE), *Criminal Justice Information System, Limited Access Certification Course*, p. 7, available at <http://www.fdle.state.fl.us/Limited-Access/Documents/Limited-Access-v5-2018-1.aspx> (last visited February 26, 2019).

⁷⁰ The FDLE, *FDLE Frequently Asked Questions, What is criminal history information and how do I obtain it?*, available at <http://www.fdle.state.fl.us/FAQ-s/Frequently-Asked-Questions.aspx> (last visited on February 26, 2019).

⁷¹ *Id.*

officer may run a driver license, warrant, or person query in the FCIC and the results will include information on whether the individual is currently on probation.⁷² However, in general, a law enforcement officer will only see that the person is on probation. The FCIC will not include the specific terms of probation.⁷³

The DOC sends a probationer's data electronically to Florida Department of Law Enforcement (FDLE) through a real time direct data pipeline. To include a probationer's conditions, the DOC will enter the information into a "Miscellaneous Field of the Status Record" field available in the FCIC.⁷⁴ However, the DOC reports that it includes a number of special conditions of probation as prioritized by the FDLE, but that the current FDLE system only allows a smaller, specified amount of data and typically does not allot enough space to include all special conditions of probation.⁷⁵

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.⁷⁶ As a result, a probation officer may have permission to allow certain exceptions to conditions of probation on a case-by-case basis. For example, a court may allow a probation officer to give permission to a probationer to stay out past a designated curfew if the reason is for work, school, or health care emergencies. When this occurs, probation officers may not have access to the DOC databases in order to update in real time any exceptions to the individual's probation in the FCIC.⁷⁷

Effect of the Bill

Administrative Probation (Sections 7 and 8)

The bill amends ss. 948.001(1) and 948.013, F.S., relating to administrative probation to restructure the placement of relevant language. These changes do not appear to have a substantive impact on the laws applicable to administrative probation.

Conditions of Probation in the FCIC (Section 9)

The bill requires the DOC to input into the FCIC all of a probationer's specific conditions of probation as determined by the court.

Alternative Sanctioning Programs (Section 11)

The bill amends s. 948.06, F.S., *requiring* each judicial circuit to establish an ASP and providing specific guidelines for the types of technical violations and sanctions that can be provided for in

⁷² *Id.*

⁷³ Email from Florida Sheriffs Association (FSA) Staff (February 22, 2018)(on file with Senate Criminal Justice Committee).

⁷⁴ The DOC SB 642 Agency Analysis, p. 6. *See also* Email from the DOC Staff (February 23, 2018)(on file with the Senate Criminal Justice Committee). The DOC currently includes the specified conditions of probation for each probationer in the data it sends to the FDLE, including, but not limited to: Sex offender curfew; Curfew for non-sex offenders; Remain confined to approved residence; No unsupervised contact with minors; No work or volunteer work with children; Do not live or work within 1,000 feet of school or bus stop; Submit to search; No driving or driver license revoked or suspended; Driving for employment only; No alcohol or illegal drugs; No contact with victim; No pornographic material; Restrictions to enter or leave a city; No employment that involves handling money; No post office box; and No checking account.

⁷⁵ *Id.*

⁷⁶ Section 948.039, F.S.

⁷⁷ The DOC SB 642 Agency Analysis, p. 6.

an ASP. The bill authorizes a court, by administrative order, to define additional sanctions or eligibility criteria and specify the process for reporting technical violations. For each instance that a technical VOP or VOCC is alleged to have been committed, the DOC is required to determine whether such person is eligible for the ASP. If eligible, the probation officer may submit recommended sanctions to the court for its approval in lieu of filing an affidavit of violation with the court. The bill maintains the same definition for technical violations as is in current law and limits ASPs to resolving technical violations.

The bill classifies technical violations eligible for an ASP as low-risk and moderate risk. Specifically:

- A low-risk violation includes:
 - Positive drug or alcohol test result;
 - Failure to report to the probation office;
 - Failure to report a change in address or other required information;
 - Failure to attend a required class, treatment or counseling session, or meeting;
 - Failure to submit to a drug or alcohol test;
 - Violation of curfew;
 - Failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, payment of court costs, or completing community service hours;
 - Leaving the county without permission;
 - Failure to report a change in employment;
 - Associating with a person engaged in criminal activity; or
 - Any other violation as determined by administrative order of the chief judge of the circuit.
- A moderate-risk violation includes:
 - A low-risk violation listed above, which is committed by an offender on community control;
 - Failure to remain at an approved residence by an offender on community control;
 - A third low-risk violation by a probationer within the current term of supervision; or
 - Any other violation as determined by administrative order by the chief judge of the circuit.

The bill excludes certain probationers or offenders on community control from participating in an ASP if any of the following criteria apply:

- The offender is a VFOSC.
- The violation is absconding.
- The violation is of a stay-away order or no-contact order.
- The violation is not identified as low-risk or moderate-risk under the bill or by administrative order.
- He or she has a prior moderate-risk level violation during the current term of supervision.
- He or she has three prior low-risk level violations during the same term of supervision.
- The term of supervision is scheduled to terminate in less than 90 days.
- The terms of the sentence prohibit the use of an ASP.

An eligible person who has committed a first or second low-risk technical violation within his or her current term of supervision may be offered one or more of the following as a sanction:

- Up to five days in a county detention facility;
- Up to 50 additional community service hours;
- Counseling or treatment;
- Support group attendance;
- Drug testing;
- Loss of travel or other privileges;
- Curfew for up to 30 days;
- House arrest for up to 30 days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

An eligible person who has committed a first time moderate-risk violation within the current term of supervision may be offered, provided the probation officer receives approval from his or her supervisor, one or more of the following as a sanction:

- Up to 21 days in the county detention facility;
- Curfew for up to 90 days;
- House arrest for up to 90 days;
- Electronic monitoring for up to 90 days;
- Residential treatment for up to 90 days;
- Any other sanction available for a low-risk violation; or
- Any other sanction as determined by administrative order of the chief judge of the circuit.

The bill retains current law regarding the ability of an offender to enter or waive his or her participation in the program; process for an offender to acknowledge his or her desire to participate in the program, including the specified rights that must be waived; ability of a court to approve the sanction and the effect of a court not approving the probation officer's recommendation; effect of an offender's discontinued participation in the program; and prohibition on the court using a prior admission to a technical violation as evidence in subsequent proceedings.⁷⁸ However, the bill imposes a 90-day deadline for an offender to complete successfully all ordered sanctions from the ASP if the court or probation officer did not specify a timeframe in the imposition of the sanction.

State Inmates Admission Process, Facility Placement, and Available Programming (Sections 3-6, 10, 12, and 14)

Legislative Findings

Section 944.611, F.S., provides various legislative findings applicable to the care of inmates in Florida's prisons. These findings are one part of the framework utilized by the DOC when developing the below-mentioned procedures for determining an inmate's most appropriate placement. These finding include, in part, that:

- It is desirable that each inmate be confined in and released from an institution or facility as close to the inmate's permanent residence or county of commitment as possible, in order to lessen the transportation expense to the public.

⁷⁸ See s. 948.06(1)(h)4.-7., F.S. (2017), for the relevant provisions retained in the bill.

- To the extent possible, an inmate be returned, upon release, to the same area from which the inmate was committed.

General Admission Process

Once sentenced to the DOC, an inmate will first go to a reception center for diagnostic tests and evaluations. During reception, an inmate's custody level is determined, health care, programming needs are assessed, and the rules and regulations of prison life are taught.⁷⁹ All inmates are screened at reception and assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS).⁸⁰ The CINAS is administered to inmates at reception and again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition through the selection of services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.⁸¹

The inmate is then sent to a major institution (prison)⁸² that can accommodate his or her custody level and needs. The custody evaluation is based upon factors such as the sentence structure, outstanding detainers or warrants, age, education, and recent employment history. Background factors such as previous terms of incarceration, previous escapes, and past disciplinary problems also affect the decision. The result of the evaluation is called a custody assignment.⁸³

An inmate's custody assignment is important because it determines the type of institution in which an inmate must be housed. After completing the orientation process at a reception center, inmates are transferred to a "permanent facility." Placement is based on institutional and individual need such as programs, education, health, and availability of bed space.⁸⁴

As the inmate serves his sentence, he or she will be reevaluated whenever something happens that could change the inmate's custody, including positive or negative events. An example of a positive change is earning gain-time that reduces the time remaining to serve. Alternatively, an example of a negative event is an inmate receiving a disciplinary report for a rule violation. When the custody assignment changes, so can the inmate's location and it's possible for an

⁷⁹ See The DOC, *Inmate Orientation Handbook, Reception Center Processing, NI1-091*, p. 2-3, December 2, 2016, available at <http://www.dc.state.fl.us/pub/files/InmateOrientationHandbook.pdf> (last visited February 22, 2019)(hereinafter cited as "Inmate Handbook").

⁸⁰ The DOC, *Agency Analysis for SB 1222 (2018)*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee)(hereinafter cited as "The DOC SB 1222 Analysis").

⁸¹ The DOC SB 1222 Analysis, p. 2. The DOC reports that it matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population.

⁸² All major institutions, or prisons, are similar to small towns in that they have their own academic and vocational schools, places of worship, medical services, maintenance facilities, parks (for visiting family), and often their own water supplies. The DOC, *Annual Report Fiscal Year 2017-18*, p. 13, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited February 22, 2019)(hereinafter cited as "Annual Report").

⁸³ *Id.*

⁸⁴ *Id.*

inmate to be moved to a different prison. When possible, the DOC will assign an inmate to an institution in the vicinity of his/her home to encourage family support.⁸⁵

The DOC reports that 65 percent of its beds are located in Region 1 or Region 2, located in Northwest Florida and Northeast Florida, respectively. In FY 2017-18, the DOC received approximately 27,916 new admissions of which 64 percent were from the Region 3 or Region 4 area, which are the Central and South Florida areas, respectively.⁸⁶

Determining an Inmate's Classification Level

Section 944.1905, F.S., requires each inmate placed in the custody of the DOC to be classified or reclassified based upon the inmate's risk level. An inmate's initial classification is determined by a number of factors including, but not limited to, length of sentence, criminal history, any history of violence, and escape history.⁸⁷ Classification levels impact the facility placement and programming that an inmate is eligible to participate in while incarcerated.⁸⁸

Programming Offered to Inmates in the Custody of the DOC

Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;⁸⁹
- Transitional services;⁹⁰
- Educational and vocational programs;⁹¹ and
- Faith- and character-based programs.⁹²

These services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release. These services are not offered at all prisons, therefore, services that an inmate needs to best provide rehabilitative programming are paramount to placement decisions.⁹³

⁸⁵ The DOC, *Victim Services, What Happens After Sentencing?*, available at <http://www.dc.state.fl.us/vict/index.html> (last visited February 22, 2019).

⁸⁶ The DOC SB 642 Analysis, p. 2. A map of the DOC's regions may be found at <http://www.dc.state.fl.us/ci/index.html> (last visited March 1, 2019).

⁸⁷ Inmate Handbook, at 8; *See also* Section 944.1905(1)-(3), F.S.

⁸⁸ Inmate Handbook, at 7.

⁸⁹ Section 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In FY 2017-18, a total of 10,844 inmates participated in some form of substance abuse treatment. *See Annual Report*, p. 45.

⁹⁰ Sections 944.701-944.708, F.S.

⁹¹ Section 944.801, F.S. In FY 2017-18, the DOC had 16,630 inmates participating in educational programs, 18,734 in academic programs, and 6,328 in vocational programs. *Annual Report*, at 33.

⁹² Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

⁹³ *Annual Report*, at 33.

Education for State Prisoners

Section 944.801(1), F.S., establishes a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC. The duties of the CEP, in part, include:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.⁹⁴
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.⁹⁵
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.⁹⁶
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.⁹⁷
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.⁹⁸

Prison Entrepreneurship Programs

In 2011, the University of Virginia's Darden School of Business implemented a prison entrepreneurship program at Virginia's Dillwyn Correctional Center, a medium-security prison housing more than 1,000 inmates. The program focuses on entrepreneurship skills, ethics, and business strategy. Students must complete math testing, develop a personal business plan, and complete a final exam.⁹⁹

Similar programs have had success in other states. Texas has a prison entrepreneurship program at the Cleveland Correctional Facility in Houston and approximately 800 inmates graduate from the program annually. Of its graduates, 106 have founded businesses and the recidivism rate of those inmates is less than 7 percent.¹⁰⁰ Though not statutorily mandated, the DOC partners with several educational institutions to offer inmates job training and readiness skills, including, but not limited to, Stetson University, Florida State University, University of Central Florida, and

⁹⁴ Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.

⁹⁵ Section 944.801(3)(d), F.S.

⁹⁶ Section 944.801(3)(e), F.S.

⁹⁷ *Id.*

⁹⁸ Section 944.801(3)(g), F.S.

⁹⁹ University of Virginia, UVA Today, Carlos Santos, *Second Chances: Darden's Fairchild Launches Prison Entrepreneurship Program*, January 4, 2013, available at <https://news.virginia.edu/content/second-chances-darden-s-fairchild-launches-prison-entrepreneurship-program> (last visited February 22, 2019).

¹⁰⁰ *Id.* See also The Prison Entrepreneurship Program, *Releasing Potential*, available at <http://www.pep.org/releasing-potential/> (last visited February 22, 2019).

University of West Florida.¹⁰¹ Additionally, the DOC operates an entrepreneurship education program at Hardee Correctional Institution.¹⁰²

Reentry and Transitional Services

The DOC is required to provide a wide range of transitional services, including in the areas of employment, life skills training, job placement, for the purpose of increasing the likelihood of the inmate's successful reentry into society thereby reducing recidivism.¹⁰³

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.¹⁰⁴ Release orientation must include instruction addressing:

- Employment skills;
- Money management skills;
- Personal development and planning;
- Special needs;
- Community reentry concerns;
- Community reentry support; and
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.¹⁰⁵

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups.¹⁰⁶

Additionally, s. 944.705(6), F.S., requires the DOC to notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.¹⁰⁷

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.¹⁰⁸ An inmate is not eligible to

¹⁰¹ Email and attachments from the DOC Staff (February 22, 2018)(on file with Senate Criminal Justice Committee).

¹⁰² *Id.*

¹⁰³ See ss. 944.701-708, F.S.

¹⁰⁴ Sections 944.703 and 944.7031, F.S., provide that all inmates released from the custody of the DOC are eligible to receive transition services. However, the law instructs the DOC to give priority for these services to substance abuse addicted inmates. The law provides that inmates released from private correctional facilities should be informed of and provided with the same level of transition assistance services as provided by the DOC for an inmate in a state correctional facility.

¹⁰⁵ Section 944.705(2), F.S.

¹⁰⁶ Section 944.705(5), F.S.

¹⁰⁷ Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not be required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.

¹⁰⁸ Section 944.275(1), F.S. Further, s. 944.275(4)(f), F.S., 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

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.¹⁰⁹

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, 1994.¹¹⁰ The only forms of gain-time that can currently be earned are:

- Incentive gain-time, which 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;¹¹¹
- Meritorious gain-time, which 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;¹¹² and
- Educational achievement gain-time, which 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.¹¹³

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.¹¹⁴ 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.¹¹⁵

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.¹¹⁶ 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.¹¹⁷

Effect of the Bill

Limitation on the Distance of Placement (Section 4)

The bill amends the legislative findings in s. 944.611, F.S., requiring the DOC secretary to designate the place of each inmate's confinement and place, or transfer, each inmate in an institution or facility as close as practicable to within 300 driving miles of the inmate's primary

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.

¹⁰⁹ Section 944.275(4)(f), F.S.

¹¹⁰ Chapter 93-406, L.O.F.

¹¹¹ Section 944.275(4)(b), F.S. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

¹¹² Section 944.275(4)(c), F.S. 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.

¹¹³ Section 944.275(4)(d), F.S.

¹¹⁴ Section 944.275(3)(c), F.S.

¹¹⁵ Section 944.275(2)(a), F.S.

¹¹⁶ Section 944.275(3)(a), F.S.

¹¹⁷ *Id.* See also s. 944.275(4)(b), F.S.

residence, unless the safety of department employees or inmates requires other placement. The findings also provide that such a limitation on the distance of a placement are subject to:

- Bed availability; and
- The inmate's security designation, programmatic needs, and mental and medical health needs.

Release Orientation Program (Section 5)

The bill amends s. 944.705, F.S., requiring that each inmate receive a comprehensive community reentry resource directory organized by the county to which the inmate is being released with specified information related to providers and portals of entry.¹¹⁸

The DOC must allow a nonprofit faith-based or professional business, or a civic or community organization, to apply to be registered under this section to provide inmate reentry services. The DOC must also adopt policies and procedures for screening, approving, and registering an organization that applies to be registered to provide inmate reentry services. The DOC may deny approval and registration of an organization or a representative from an organization if it determines that the organization or representative does not meet such policies or procedures. The bill defines reentry services as services that include, but are limited to counseling; providing information on housing and job placement; money management assistance; and programs addressing substance abuse, mental health, or co-occurring conditions.

The bill also authorizes the DOC to contract with a public or private educational institution's Veteran's Advocacy Clinic or Veteran's Legal Clinic to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

Prison Entrepreneurship Program (Section 6)

The bill amends s. 944.801, F.S., authorizing the CEP to develop a Prison Entrepreneurship Program (PEP). The PEP must include at least 180 days of in-prison education with curriculum that includes a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and post release continuing education services. The bill provides transitional and post release continuing education services may be offered to graduate student inmates on a voluntary basis and are not required for completion of the PEP.

The PEP must be funded within existing resources and the DOC is required to enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program. The bill provides rulemaking authority and authority to adopt procedures for admitting student inmates.

Gain-Time (Section 3)

Lastly, the bill expands the educational gain-time award category by including the PEP as a program that, when completed, may result in the award of educational achievement gain-time. The bill still limits educational gain-time to one 60-day award, regardless of if the inmate

¹¹⁸ The directory must include the name, address, telephone number and a description of services offered of each provider and also include the name, address, and telephone number of existing portals of entry.

completes more than one type of educational activity included in the provision. The bill authorizes an award of educational achievement gain-time to reduce the inmate's sentence to less than 85 percent of the sentence imposed. The bill prohibits the sentence of an inmate who is serving a sentence for a dangerous crime or for a predicate offense to registration as a sexual predator or sexual offender from being reduced below the 85 percent.

Written Notification of Outstanding Terms (Sections 5, 10, and 12)

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence. The bill amends s. 944.705, F.S., and creates s. 948.041, F.S., requiring the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control. The bill includes a list of potential terms of sentence that must be included in the written notification, including, but not limited to:

- A term of supervision and any conditions required upon release from imprisonment;
- Uncompleted conditions; or
- Unpaid:
 - Restitution;
 - Court costs;
 - Fees; or
 - Fines.

The bill creates s. 951.30, F.S., requiring all county detention facilities to notify a prisoner in writing upon the discharge of all outstanding terms of the prisoner's sentence similar to the notification mentioned above.

For inmates being released from imprisonment with the DOC or county detention facilities, the bill provides that written notification does not have to be given if the inmate or prisoner is being released to a term of supervision by the DOC.

Effective Date (Section 14)

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires all county detention facilities to notify a prisoner in writing upon the discharge of all outstanding terms of the prisoner's sentence at the time of release, unless the prisoner is being discharged to the custody or control of the DOC. It is possible that the requirements of the bill related to notification of outstanding terms of sentence will result in an increased workload or expenditures by the local governments. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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:

Drug Trafficking Sentencing Departure (Section 2)

The Criminal Justice Impact Conference (CJIC) heard CS/CS/SB 1218 (2018), which had a provision substantially similar to the sentencing departure included in this bill, and estimated that the provisions relating to departure from drug trafficking mandatory minimum sentences would have a “negative significant” prison bed impact (i.e., a decrease of more than 25 prison beds).¹¹⁹

Probation Provisions (Sections 9 and 11)

The CJIC considered HB 7089 (2018), which included the identical provisions relating to probation, on February 19, 2018, and determined that creating statewide ASPs will have a negative significant impact on the prison population (i.e. decrease of more than 25 prison beds). The CJIC reports that in FY 2016-17, 5,443 technical violators were sentenced to prison.¹²⁰ The ASP would apply to certain technical violators and result in greater non-prison sanctions for these violators.

¹¹⁹ 2018 Conference Results (through February 12, 2018), CJIC, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls> (last visited on February 26, 2019).

¹²⁰ Economic and Demographic Research (EDR), CJIC, February 19, 2018, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf> (last visited February 26, 2019).

However, one of the ASP sanctions included in the bill is up to 5 days incarceration in a county detention facility for a low-risk violation and up to 21 days for a moderate-risk violation. This section will likely result in increased costs on local government, but such increase is indeterminate.

HB 7089 (2018) required, as does this bill, the DOC to submit additional information to the FCIC if the court modifies conditions of probation. The DOC reported in its analysis for HB 7089 (2018) that this requirement would cost a nonrecurring amount of \$6,800 to modify their existing data feed to the FDLE and a nonrecurring amount of \$13,600 to modify the OBIS. The DOC reported that it anticipated that these fiscal impacts could be absorbed within existing resources.¹²¹

Reentry Provisions (Sections 3, 5, 6, 10, and 12)

Release Orientation Program

The DOC reports that it does not have the existing programming capability to provide an application method for specified businesses or organizations to be registered to provide inmate reentry services. In order to accomplish this, the DOC provides that a new system/web portal would need to be created or purchased. The DOC indicates that the cost to create a new system/web portal is indeterminate and may require a procurement to identify possible solutions. Additionally the DOC provides that it will likely need two FTE Government Operations Consultant I positions.¹²²

Prison Entrepreneurship Program

The DOC is authorized in the bill to develop an entrepreneurship program. If the DOC elects to do so, the bill requires the program to be implemented within existing resources. The DOC states that it will likely not be able to develop the program without adequate funding resources, which may include the need to have one Correctional Services Consultant to coordinate program services. The DOC estimates that the entire fiscal impact for this provision, including contracted staff, materials, and supplies is \$200,000 per location.¹²³

Educational Gain-Time

The DOC estimates that this provision will likely result in an average daily population reduction of 66 inmates during the first year of implementation and a 40 inmate reduction in the average daily population for subsequent years, which equates to a cost savings of \$482,764 and \$292,584, respectively.¹²⁴

Notification of Outstanding Terms of Sentence

The DOC reports that it does not track various costs associated with an inmate's resolved case, with the exception of certain inmates in various forms of paid employment, such as

¹²¹ The DOC, *Agency Analysis of HB 7089 (2018)*, p. 8 (February 20, 2018)(on file with Senate Criminal Justice Committee).

¹²² The DOC SB 642 Analysis, p. 5.

¹²³ *Id.*

¹²⁴ The DOC SB 642 Analysis, p. 4 and 7.

work release, prison industries, etc. To comply with the requirements, the DOC will have to research clerk of court records prior to release for updated information on what an inmate, who is not being released to supervision, presently owes in regard to each case for which sentence was imposed. Additionally, the DOC states that this will be a significant workload increase as it could generate a significant volume of contacts to the clerks to determine the current status of various assessed costs. The DOC estimates it will need additional FTE to achieve this requirement of the bill.¹²⁵

Additionally, there will likely be an increased workload on the county detention facilities who are also required to notify prisoners of the outstanding terms of sentence as these entities will need to research information in a similar manner as the DOC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.135, 944.275, 944.611, 944.705, 944.801, 948.001, 948.013, 948.03, 948.06, and 893.03.

The bill creates the following sections of the Florida Statutes: 948.041 and 951.30.

IX. Additional Information:

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

CS by Criminal Justice on March 4, 2019:

The Committee Substitute:

- Modifies the intent language providing that the DOC must attempt to place an inmate 300 miles, rather than 150 miles, from their primary residence.
- Clarifies the types of businesses offering reentry services that may register with the DOC to provide such services.
- Requires the DOC and county detention facilities to provide written notification of all outstanding terms of an offender's sentence upon release from imprisonment, probation, or community control.

¹²⁵ The DOC SB 642 Agency Analysis, p. 5.

B. Amendments:

None.

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



739966

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 185 - 225
and insert:
institution or facility as close as practicable to within 300
driving miles of the inmate's primary residence, unless the
safety of department employees or inmates requires other
placement. Subject to bed availability and the inmate's security
designation, the department shall transfer an inmate to an



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institution or facility that is as close as practicable to within 300 driving miles of the inmate's primary residence, unless the inmate chooses to remain at his or her current institution or facility.

(b)~~(a)~~ To the extent possible, an inmate be returned, upon release, to the same area from which the inmate was committed.

(c)~~(b)~~ An inmate being released from a community work-release program is not eligible for the provision of transportation.

(d)~~(c)~~ Transportation provided for an eligible inmate upon release shall be to one of the following points:

1. The county where parole placement has been approved and supervision is to commence.

2. Another state.

3. The county of employment within the state.

4. The county of legal residence within the state.

5. The county of original commitment within the state.

(e)~~(d)~~ Each releasee who is eligible for the provision of transportation shall be escorted to the site of embarkation by an officer of the correctional facility, who shall remain until the releasee has departed.

Section 5. Present subsections (3), (4), and (5) of section 944.705, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, present subsection (6) of that section is amended, and new subsection (3) and subsections (7), (8), (9), and (11) are added to that section, to read:

944.705 Release orientation program.—

(3) Before an inmate's release, the department shall provide the inmate with a comprehensive community reentry



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resource directory organized by county which includes the name,
address, and telephone number of each provider and a description
of the services offered by each provider. The directory must
also include the name, address, and telephone number of existing
starting points for using such resources.

(7) A nonprofit faith-based or professional business, or a
civic or community organization, may apply for registration with

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

And the title is amended as follows:

Delete lines 24 - 25

and insert:

authorizing a nonprofit faith-based or professional
business or a civic or community organization to



615712

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 242 - 261
and insert:

(10)(6)(a) The department shall notify every inmate, ~~in no less than 18-point type~~ in the inmate's release documents:7

(a) Of all outstanding terms of the inmate's sentence at the time of release, including, but not limited to, a term of supervision and any conditions required upon release from imprisonment or unpaid restitution, court costs, fees, or fines.



615712

This paragraph does not apply to inmates who are being released from the custody of the department to any type of supervision monitored by the department.

(b)1. In no less than 18-point type, that the inmate may be sentenced pursuant to s. 775.082(9) if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

2. ~~(b)~~ Nothing in This section does not preclude precludes the sentencing of a person pursuant to s. 775.082(9), and ~~nor~~ ~~shall~~ evidence that the department failed to provide this notice does not prohibit a person from being sentenced pursuant to s. 775.082(9). The state is ~~shall~~ not ~~be~~ required to demonstrate that a person received any notice from the department in order for the court to impose a sentence pursuant to s. 775.082(9).

(11) The department shall adopt rules to implement this section.

Section 6. Section 948.041, Florida Statutes, is created to read:

948.041 Notification of outstanding terms of sentence upon termination of probation or community control.—Upon the termination of an offender's term of probation or community control, the department shall notify the offender in writing of all outstanding terms of the offender's sentence at the time of termination, including, but not limited to, uncompleted conditions, unpaid restitution, court costs, fees, or fines.

Section 7. Section 951.30, Florida Statutes, is created to read:

951.30 Notification of outstanding terms of sentence upon



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release.—

(1) A county detention facility shall notify a prisoner in writing upon the discharge of such prisoner of all outstanding terms of the prisoner's sentence at the time of release, including, but not limited to, a term of supervision and any conditions required upon release from imprisonment or unpaid restitution, court costs, fees, or fines. Such notification shall be included in the documentation provided to the prisoner at release.

(2) This section does not apply to prisoners who are discharged from a county detention facility to the custody or control of the Department of Corrections.

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

And the title is amended as follows:

Delete lines 37 - 38
and insert:

documents; providing an exception to the notification requirement for inmates who are released to any type of supervision monitored by the Department of Corrections; requiring the department to adopt certain rules; creating s. 948.041, F.S.; requiring the department to provide notification in writing to an offender, upon the termination of his or her term of probation or community control, of all outstanding terms of sentence; creating s. 951.30, F.S.; requiring each county detention facility to notify a prisoner in writing, upon such prisoner's release, of all outstanding terms of sentence; providing an exception



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69 to the notification requirement for prisoners who are
70 released into the custody or control of the Department
71 of Corrections; amending s. 944.801, F.S.; authorizing
72 the

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to criminal justice; providing a short
 3 title; amending s. 893.135, F.S.; requiring that the
 4 court impose, for an offense relating to trafficking
 5 in certain substances, a sentence pursuant to the
 6 Criminal Punishment Code and without regard to any
 7 statutory minimum sentence if the court makes
 8 specified findings under certain circumstances;
 9 amending s. 944.275, F.S.; requiring an education
 10 program manager to recommend, and authorizing the
 11 Department of Corrections to grant, an award of a
 12 specified amount of incentive gain-time to an inmate
 13 who has completed the Prison Entrepreneurship Program;
 14 revising circumstances under which certain inmates are
 15 not eligible for certain types of gain-time in amounts
 16 that would cause a sentence to end or require a
 17 release prior to serving a minimum percentage of a
 18 sentence; amending s. 944.611, F.S.; providing
 19 legislative intent with respect to the location of an
 20 inmate's confinement; amending s. 944.705, F.S.;
 21 requiring that the department provide an inmate with a
 22 comprehensive community reentry resource directory
 23 organized by county before an inmate's release;
 24 authorizing a nonprofit faith-based business or a
 25 professional, civic, or community organization to
 26 apply for registration with the department to provide
 27 inmate reentry services; requiring the department to
 28 adopt certain policies and procedures; authorizing the
 29 department to deny approval and registration of an

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30 organization or representative of an organization
 31 under certain circumstances; authorizing the
 32 department to contract with a public or private
 33 educational institution's Veterans Advocacy Clinic or
 34 Veterans Legal Clinic for certain purposes; requiring
 35 the department to include notification of all
 36 outstanding terms of sentence in an inmate's release
 37 documents; requiring the department to adopt certain
 38 rules; amending s. 944.801, F.S.; authorizing the
 39 Correctional Education Program to establish a Prison
 40 Entrepreneurship Program and adopt procedures for
 41 admitting student inmates; providing requirements for
 42 the program; authorizing transitional and postrelease
 43 continuing educational services to be offered under
 44 certain circumstances; requiring the department to
 45 enter into certain agreements to implement the
 46 program; requiring that the program be funded with
 47 existing resources; amending s. 948.001, F.S.;
 48 redefining the term "administrative probation";
 49 amending s. 948.013, F.S.; authorizing the department
 50 to transfer an offender to administrative probation
 51 under certain circumstances; amending s. 948.03, F.S.;
 52 requiring the department to include in the Florida
 53 Crime Information Center system all conditions of
 54 probation as determined by the court for each
 55 probationer; amending s. 948.06, F.S.; requiring a
 56 probation officer to determine whether a probationer
 57 or offender on community control who commits a
 58 technical violation is eligible for a certain

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59 alternative sanctioning program; authorizing the
 60 probation officer to take certain actions if such
 61 probationer or offender is eligible; defining the term
 62 "technical violation"; requiring that judicial
 63 circuits establish an alternative sanctioning program;
 64 authorizing the chief judge of each judicial circuit
 65 to issue specified administrative orders; requiring a
 66 probation officer to submit to the court for approval
 67 any recommended sanctions against a probationer or
 68 offender determined to be eligible for the program to
 69 the court for approval; defining the terms "low-risk
 70 violation" and "moderate-risk violation"; specifying
 71 circumstances under which a probationer or offender on
 72 community control is not eligible for an alternative
 73 sanction; authorizing a probation officer to offer an
 74 eligible probationer one or more specified alternative
 75 sanctions for a first or second low-risk violation;
 76 authorizing a probation officer, under certain
 77 circumstances, to offer an eligible probationer or
 78 offender on community control one or more specified
 79 alternative sanctions for a first moderate-risk
 80 violation; providing that the participation of a
 81 probationer or offender on community control in the
 82 alternative sanctioning program is voluntary, subject
 83 to certain requirements; specifying actions that a
 84 probationer or offender on community control may take
 85 if he or she is eligible for an alternative
 86 sanctioning program; providing that a probation
 87 officer, under certain circumstances, submit a

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88 recommended sanction to the court; authorizing the
 89 court to impose the recommended sanction or direct the
 90 department to submit a violation report, affidavit,
 91 and warrant to the court; authorizing a probation
 92 officer to submit a violation report, affidavit, and
 93 warrant to the court under certain circumstances;
 94 prohibiting certain evidence in subsequent
 95 proceedings; amending s. 893.03, F.S.; conforming a
 96 cross-reference; providing an effective date.
 97
 98 Be It Enacted by the Legislature of the State of Florida:
 99
 100 Section 1. This act may be cited as the Florida First Step
 101 Act.
 102 Section 2. Present subsections (6) and (7) of section
 103 893.135, Florida Statutes, are redesignated as subsections (7)
 104 and (8), respectively, and a new subsection (6) is added to that
 105 section, to read:
 106 893.135 Trafficking; mandatory sentences; suspension or
 107 reduction of sentences; conspiracy to engage in trafficking.—
 108 (6) Notwithstanding any other provision of law, for an
 109 offense under this section the court shall impose a sentence
 110 pursuant to the Criminal Punishment Code under chapter 921 and
 111 without regard to any statutory minimum sentence, if the court
 112 finds at sentencing, after the state attorney has been afforded
 113 the opportunity to make a recommendation, all of the following:
 114 (a) The defendant has not previously been convicted of a
 115 dangerous crime as defined in s. 907.041, or a violation
 116 specified as a predicate offense for registration as a sexual

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predator under s. 775.21 or for registration as a sexual offender under s. 943.0435.

(b) The defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon, or induce another participant to do so, in connection with the offense.

(c) The offense did not result in death or serious bodily injury to any person.

(d) The defendant was not engaged in a continuing criminal enterprise, as defined in s. 893.20.

(e) By the time of the sentencing hearing, the defendant has truthfully provided to the state all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan. The fact that the defendant has no other relevant or useful information to provide or that the state is already aware of the information does not preclude a determination by the court that the defendant has complied with this requirement.

Section 3. Paragraphs (d) and (f) of subsection (4) of section 944.275, Florida Statutes, are amended to read:

944.275 Gain-time.—

(4)

(d) Notwithstanding the monthly maximum awards of incentive gain-time under subparagraphs (b)1., 2., and 3., the education program manager shall recommend, and the Department of Corrections may grant, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is, or has been

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during the current commitment, awarded a high school equivalency diploma or vocational certificate, or has completed the Prison Entrepreneurship Program. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section.

(f) An inmate who is subject to subparagraph (b)3. is not eligible to earn or receive gain-time under paragraph (a), paragraph (b), or paragraph (c), ~~or paragraph (d)~~ or any other type of gain-time other than under paragraph (d) in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. An inmate who is currently serving a sentence for or has been previously convicted of a dangerous crime as defined in s. 907.041, or a violation specified as a predicate offense for registration as a sexual predator under s. 775.21 or for registration as a sexual offender under s. 943.0435, is not eligible to earn or receive gain-time under paragraphs (a) through (d), or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this paragraph, credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this section, a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their

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175 natural lives, unless granted pardon or clemency.

176 Section 4. Subsection (2) of section 944.611, Florida
177 Statutes, is amended to read:

178 944.611 Legislative intent.—The Legislature finds and
179 declares that:

180 (2) It is the intent of the Legislature that:

181 (a) The secretary shall designate the place of each
182 inmate's confinement and shall, subject to bed availability and
183 the inmate's security designation, programmatic needs, and
184 mental and medical health needs, place each inmate in an
185 institution or facility as close as practicable to within 150
186 driving miles of the inmate's primary residence, unless the
187 safety of department employees or inmates requires other
188 placement. Subject to bed availability and the inmate's security
189 designation, the department shall transfer an inmate to an
190 institution or facility that is as close as practicable to
191 within 150 driving miles of the inmate's primary residence,
192 unless the inmate chooses to remain at his or her current
193 institution or facility.

194 (b)(a) To the extent possible, an inmate be returned, upon
195 release, to the same area from which the inmate was committed.

196 (c)(b) An inmate being released from a community work-
197 release program is not eligible for the provision of
198 transportation.

199 (d)(e) Transportation provided for an eligible inmate upon
200 release shall be to one of the following points:

201 1. The county where parole placement has been approved and
202 supervision is to commence.

203 2. Another state.

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204 3. The county of employment within the state.

205 4. The county of legal residence within the state.

206 5. The county of original commitment within the state.

207 (e)(d) Each releasee who is eligible for the provision of
208 transportation shall be escorted to the site of embarkation by
209 an officer of the correctional facility, who shall remain until
210 the releasee has departed.

211 Section 5. Present subsections (3), (4), and (5) of section
212 944.705, Florida Statutes, are redesignated as subsections (4),
213 (5), and (6), respectively, present subsection (6) of that
214 section is amended, and new subsection (3) and subsections (7),
215 (8), (9), and (11) are added to that section, to read:

216 944.705 Release orientation program.—

217 (3) Before an inmate's release, the department shall
218 provide the inmate with a comprehensive community reentry
219 resource directory organized by county which includes the name,
220 address, and telephone number of each provider and a description
221 of the services offered by each provider. The directory must
222 also include the name, address, and telephone number of existing
223 starting points for using such resources.

224 (7) A nonprofit faith-based business or a professional,
225 civic, or community organization may apply for registration with
226 the department to provide inmate reentry services. Reentry
227 services include, but are not limited to, counseling; providing
228 information on housing and job placement; money management
229 assistance; and programs that address substance abuse, mental
230 health, or co-occurring conditions.

231 (8) The department shall adopt policies and procedures for
232 screening, approving, and registering an organization that

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applies under subsection (7). The department may deny approval and registration of the organization or a representative of the organization if it determines that the organization or representative does not meet the department's policies or procedures.

(9) The department may contract with a public or private educational institution's Veterans Advocacy Clinic or Veterans Legal Clinic to assist qualified veteran inmates in applying for veteran's benefits upon release.

(10)(6)(a) The department shall notify every inmate, in no less than 18-point type in the inmate's release documents:

(a) Of all terms of the inmate's sentence which are outstanding at the time of release, including, but not limited to, a term of supervision and any conditions required upon release from imprisonment or unpaid restitution, court costs, fees, or fines.

(b)1. That the inmate may be sentenced pursuant to s. 775.082(9) if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

~~2.(b) Nothing in~~ This section does not preclude ~~precludes~~ the sentencing of a person pursuant to s. 775.082(9), and ~~nor~~ ~~shall~~ evidence that the department failed to provide this notice does not prohibit a person from being sentenced pursuant to s. 775.082(9). The state is ~~shall~~ not be required to demonstrate that a person received any notice from the department in order for the court to impose a sentence pursuant to s. 775.082(9).

(11) The department shall adopt rules to implement this section.

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Section 6. Present subsections (4), (5), and (6) of section 944.801, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, and a new subsection (4) is added to that section, to read:

944.801 Education for state prisoners.—

(4) The Correctional Education Program may establish a Prison Entrepreneurship Program and adopt procedures for admitting student inmates. If the department elects to develop the program, it must include at least 180 days of in-prison education. The program curriculum must include a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and postrelease continuing educational services. Transitional and postrelease continuing educational services may be offered to graduate student inmates on a voluntary basis and are not a requirement for completion of the program. The department shall enter into agreements with public or private colleges or universities or other nonprofit entities to implement the program. The program must be funded with existing resources.

Section 7. Subsection (1) of section 948.001, Florida Statutes, is amended to read:

948.001 Definitions.—As used in this chapter, the term:

(1) "Administrative probation" means a form of no contact, nonreporting supervision that may be imposed by order of the court or transfer by the Department of Corrections as provided in s. 948.013 ~~in which an offender who presents a low risk of harm to the community may, upon satisfactory completion of half the term of probation, be transferred by the Department of~~

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291 ~~Corrections to this type of reduced level of supervision, as~~
 292 ~~provided in s. 948.013.~~

293 Section 8. Subsection (1) of section 948.013, Florida
 294 Statutes, is amended to read:

295 948.013 Administrative probation.—

296 (1) The Department of Corrections may transfer an offender
 297 to administrative probation if he or she presents a low risk of
 298 harm to the community and has satisfactorily completed at least
 299 half of his or her probation term. The department ~~of Corrections~~
 300 may establish procedures for transferring an offender to
 301 administrative probation. The department may collect an initial
 302 processing fee of up to \$50 for each probationer transferred to
 303 administrative probation. The offender is exempt from further
 304 payment for the cost of supervision as required in s. 948.09.

305 Section 9. Subsection (3) is added to section 948.03,
 306 Florida Statutes, to read:

307 948.03 Terms and conditions of probation.—

308 (3) The Department of Corrections shall include in the
 309 Florida Crime Information Center system all conditions of
 310 probation as determined by the court for each probationer.

311 Section 10. Present paragraphs (c) through (g) of
 312 subsection (1) of section 948.06, Florida Statutes, are
 313 redesignated as paragraphs (d) through (h), respectively,
 314 present paragraph (h) of that subsection is amended, a new
 315 paragraph (c) is added to that subsection, and subsection (9) is
 316 added to that section, to read:

317 948.06 Violation of probation or community control;
 318 revocation; modification; continuance; failure to pay
 319 restitution or cost of supervision.—

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320 (1)

321 (c) If a probationer or offender on community control
 322 commits a technical violation, the probation officer shall
 323 determine whether the probationer or offender on community
 324 control is eligible for the alternative sanctioning program
 325 under subsection (9). If the probation officer determines that
 326 the probationer or offender on community control is eligible,
 327 the probation officer may submit recommended sanctions to the
 328 court for its approval in lieu of filing an affidavit of
 329 violation with the court. For purposes of this section, the term
 330 "technical violation" means an alleged violation of supervision
 331 that is not a new felony offense, misdemeanor offense, or
 332 criminal traffic offense.

333 ~~(h)1. The chief judge of each judicial circuit, in~~
 334 ~~consultation with the state attorney, the public defender, and~~
 335 ~~the department, may establish an alternative sanctioning program~~
 336 ~~in which the department, after receiving court approval, may~~
 337 ~~enforce specified sanctions for certain technical violations of~~
 338 ~~supervision. For purposes of this paragraph, the term "technical~~
 339 ~~violation" means any alleged violation of supervision that is~~
 340 ~~not a new felony offense, misdemeanor offense, or criminal~~
 341 ~~traffic offense.~~

342 ~~2. To establish an alternative sanctioning program, the~~
 343 ~~chief judge must issue an administrative order specifying:~~

344 ~~a. Eligibility criteria.~~

345 ~~b. The technical violations that are eligible for the~~
 346 ~~program.~~

347 ~~c. The sanctions that may be recommended by a probation~~
 348 ~~officer for each technical violation.~~

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d. The process for reporting technical violations through the alternative sanctioning program, including approved forms.

3. If an offender is alleged to have committed a technical violation of supervision that is eligible for the program, the offender may:

a. Waive participation in the alternative sanctioning program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with this section; or

b. Elect to participate in the alternative sanctioning program after receiving written notice of an alleged technical violation and a disclosure of the evidence against the offender, admit to the technical violation, agree to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agree to waive the right to:

(I) Be represented by legal counsel.

(II) Require the state to prove his or her guilt before a neutral and detached hearing body.

(III) Subpoena witnesses and present to a judge evidence in his or her defense.

(IV) Confront and cross-examine adverse witnesses.

(V) Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

4. If the offender admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court as well as documentation reflecting the offender's admission to the technical violation and agreement with the recommended sanction.

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5. The court may impose the recommended sanction or may direct the department to submit a violation report, affidavit, and warrant to the court in accordance with this section.

6. An offender's participation in an alternative sanctioning program is voluntary. The offender may elect to waive or discontinue participation in an alternative sanctioning program at any time before the issuance of a court order imposing the recommended sanction.

7. If an offender waives or discontinues participation in an alternative sanctioning program, the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with this section. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.

(9) (a) Each judicial circuit shall establish an alternative sanctioning program as provided in this subsection. The chief judge of each judicial circuit may, by administrative order, define additional sanctions or eligibility criteria and specify the process for reporting technical violations through the alternative sanctioning program. Any sanctions recommended for imposition through an alternative sanctions program must be submitted to the court by the probation officer for approval prior to imposing the sanction.

(b) When committed by a probationer, a "low-risk violation" as used in this subsection means any of the following:

1. A positive drug or alcohol test result.

2. Failure to report to the probation office.

3. Failure to report a change in address or other required information.

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- 407 4. Failure to attend a required class, treatment or
 408 counseling session, or meeting.
 409 5. Failure to submit to a drug or alcohol test.
 410 6. A violation of curfew.
 411 7. Failure to meet a monthly quota on any required
 412 probation condition, including, but not limited to, making
 413 restitution payments, paying court costs, or completing
 414 community service hours.
 415 8. Leaving the county without permission.
 416 9. Failure to report a change of employment.
 417 10. Associating with a person engaged in criminal activity.
 418 11. Any other violation as determined by administrative
 419 order of the chief judge of the circuit.
 420 (c) A "moderate-risk violation" as used in this subsection
 421 means any of the following:
 422 1. A violation listed in paragraph (b) when committed by an
 423 offender on community control.
 424 2. Failure to remain at an approved residence by an
 425 offender on community control.
 426 3. A third violation listed in paragraph (b) by a
 427 probationer within the current term of supervision.
 428 4. Any other violation as determined by administrative
 429 order of the chief judge of the circuit.
 430 (d) A probationer or offender on community control is not
 431 eligible for an alternative sanction if:
 432 1. He or she is a violent felony offender of special
 433 concern as defined in paragraph (8)(b);
 434 2. The violation is a felony, misdemeanor, or criminal
 435 traffic offense;

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- 436 3. The violation is absconding;
 437 4. The violation is of a stay-away order or no-contact
 438 order;
 439 5. The violation is not identified as low-risk or moderate-
 440 risk under this subsection or by administrative order;
 441 6. He or she has a prior moderate-risk level violation
 442 during the current term of supervision;
 443 7. He or she has three prior low-risk level violations
 444 during the same term of supervision;
 445 8. The term of supervision is scheduled to terminate in
 446 less than 90 days; or
 447 9. The terms of the sentence prohibit alternative
 448 sanctioning.
 449 (e) For a first or second low-risk violation, as defined in
 450 paragraph (b), within the current term of supervision, a
 451 probation officer may offer an eligible probationer one or more
 452 of the following as an alternative sanction:
 453 1. Up to 5 days in the county jail.
 454 2. Up to 50 additional community service hours.
 455 3. Counseling or treatment.
 456 4. Support group attendance.
 457 5. Drug testing.
 458 6. Loss of travel or other privileges.
 459 7. Curfew for up to 30 days.
 460 8. House arrest for up to 30 days.
 461 9. Any other sanction as determined by administrative order
 462 of the chief judge of the circuit.
 463 (f) For a first moderate-risk violation, as defined in
 464 paragraph (c), within the current term of supervision, a

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probation officer, with a supervisor's approval, may offer an eligible probationer or offender on community control one or more of the following as an alternative sanction:

1. Up to 21 days in the county jail.
2. Curfew for up to 90 days.
3. House arrest for up to 90 days.
4. Electronic monitoring for up to 90 days.
5. Residential treatment for up to 90 days.
6. Any other sanction available for a low-risk violation.
7. Any other sanction as determined by administrative order of the chief judge of the circuit.

(g) The participation of a probationer or an offender on community control in the program is voluntary. The probationer or offender on community control may waive or discontinue participation in the program at any time before the court imposes a recommended sanction.

(h)1. If a probationer or offender on community control is eligible for the alternative sanctioning program under this subsection, he or she may:

a. Waive participation in the program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court; or

b. Elect to participate in the program after receiving written notice of an alleged technical violation and disclosure of the evidence against him or her, admitting to the technical violation, agreeing to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agreeing to waive the right to:

(I) Be represented by legal counsel.

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(II) Require the state to prove his or her guilt before a neutral and detached hearing body.

(III) Subpoena witnesses and present to a judge evidence in his or her defense.

(IV) Confront and cross-examine adverse witnesses.

(V) Receive a written statement from a judge as to the evidence relied on and the reasons for the sanction imposed.

2. If the probationer or offender on community control admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court with documentation reflecting the probationer's admission to the technical violation and agreement with the recommended sanction.

(i) The court may impose the recommended sanction or direct the department to submit a violation report, affidavit, and warrant to the court.

(j) If a probationer or offender on community control waives or discontinues participation in the program or fails to successfully complete all alternative sanctions within 90 days after imposition or within the timeframe specified in the agreed upon sanction, the probation officer may submit a violation report, affidavit, and warrant to the court. A prior admission by the probationer or offender on community control to a technical violation may not be used as evidence in subsequent proceedings.

Section 11. Paragraph (c) of subsection (3) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated

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in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are

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not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined

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581 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

582 Section 12. This act shall take effect July 1, 2019.

Cox, Ryan

From: Nimer, Jenny <Jenny.Nimer@fdc.myflorida.com>
Sent: Thursday, February 28, 2019 4:08 PM
To: Cox, Ryan; Torres, Jared
Cc: Vaughan, Scotti; Winkler, Joe; Nimer, Jenny
Subject: RE: ASP status

Ryan – Total number of technical violation reports completed in FY 17-18 - 64,672. Total number of technical revocations – 18,593. Thank you

From: Cox, Ryan <Cox.Ryan@flsenate.gov>
Sent: Thursday, February 28, 2019 3:26 PM
To: Nimer, Jenny <Jenny.Nimer@fdc.myflorida.com>; Torres, Jared <Jared.Torres@fdc.myflorida.com>
Cc: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Subject: RE: ASP status

Jenny,

I greatly appreciate that and all the work you do to help us!

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

From: Nimer, Jenny <Jenny.Nimer@fdc.myflorida.com>
Sent: Thursday, February 28, 2019 3:25 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>; Torres, Jared <Jared.Torres@fdc.myflorida.com>
Cc: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Subject: RE: ASP status

I'll send in a few minutes.

From: Cox, Ryan <Cox.Ryan@flsenate.gov>
Sent: Thursday, February 28, 2019 3:07 PM
To: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Cc: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>; Nimer, Jenny <Jenny.Nimer@fdc.myflorida.com>
Subject: RE: ASP status

Did you all ever find the total number of technical violations that occurred in FY 17-18?

Sincerely,

Ryan C. Cox

Senior Attorney

Senate Committee on Criminal Justice
(850) 487-5192

From: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Tuesday, February 26, 2019 10:12 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Cc: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>; Nimer, Jenny <Jenny.Nimer@fdc.myflorida.com>
Subject: ASP status

Ryan,

See below chart detailing ASP status and which circuits are involved. In total, 49 counties currently participate.

(Regarding your question from a prior email this evening: Which circuits are the ones that have established ASPs? I am trying to figure out how many counties are using them out of 67.)

Thanks,

Jared

Region	Circuit	County	Effective Date	# ASP's since effective date – as of 02/14/19	
3	12	Sarasota & Desoto	2/1/13	886 circuit total	
3	12	Manatee	3/1/13		
3	18	Seminole	4/10/13	427 circuit total	
3	18	Brevard	6/19/13		
4	15	Palm Beach	5/2/13	124	
3	06	Pinellas	12/23/14	274	
		Pasco	9/9/16		
2	08	Alachua	5/27/15	275 circuit total	
		All remaining (5) counties	5/19/16		
2	07	All 4 counties	7/1/15	274	
3	13	Hillsborough	7/1/16	198	
2	03	All 7 counties	7/1/16	119	
3	10	All 3 counties	6/27/16	550	
1	14	All 6 counties	7/29/16	146	

4	19	All 4 counties	1/3/17	17	
2	04	Duval	9/1/17	96	
3	05	All 5 counties	1/1/18	46	
3	09	Orange & Osceola	2/12/18	55	
4	17	Broward	3/5/18	217	
4	11	Dade	4/1/18	36	
	16 total	49 total		3740 total	

Florida Department of Corrections

Bureau of Research & Data

Technical Violations Completed in FY15-16 & FY16-17

Prepared: February 22, 2018

Requestor: Ryan Cox, Senate Committee on Criminal Justice

Request: Ryan called also. She amended the below request: she needs the number of violations and also how those Technical violations are normally resolved.

Can you all also send me the number of technical violations you had the last two FYs? Thanks!

INVESTIGATION TYPE VIOLATION OF SUPERVISION-TECHNICAL BY FISCAL YEAR

VIOLATION DISPOSITION REASON	VIOLATION DISPOSITION CODE													
	LOSS TO NEW FELONY		LOSS TO NEW MISD		LOSS TO TECHNICAL		LOSS TO DEATH		LOSS TO COURT/FCOR		LOSS TO OTHER STATE		REMOVE PENDING	
	FY 2015/2016	FY 2016/2017	FY 2015/2016	FY 2016/2017	FY 2015/2016	FY 2016/2017	FY 2015/2016	FY 2016/2017	FY 2015/2016	FY 2016/2017	FY 2015/2016	FY 2016/2017	FY 2015/2016	FY 2016/2017
STATE PRISON	1,759	1,430	536	508	7,098	6,327	.	.	81	102	.	.	.	.
COUNTY JAIL TIME	1,263	1,245	635	640	9,807	8,786	.	.	114	112	.	.	.	.
PROBATION	87	133	33	37	654	666	.	.	.	.	.	.	.	.
COMMUNITY CONTROL	134	127	43	48	1,360	1,298	.	.	.	.	.	.	.	.
RELEASED	-	.	.	1	7	4	.	.	12	10	.	.	.	.
DRUG OFFENDER PROBATION	119	125	21	26	784	837	.	.	.	.	.	.	.	.
ADMINISTRATIVE PROBATION	1	3	1	1	30	27	.	.	.	.	.	.	.	.
FINE	.	.	.	.	2	10	.	.	.	1	.	.	.	.
FEDERAL CUSTODY	.	1	.	.	.	.	.	.	.	.	.	.	.	.
21	.	.	.	.	.	.	.	.	74	58	.	.	.	.
RED TO ADMIN/PROB/FPC	.	.	.	.	.	.	.	.	79	62	.	.	6	4
SENTENCE VACATED	.	.	.	.	.	.	.	.	9	13	.	.	.	.
RETURN TO SA (PTI)	4	4	6	5	686	707	.	.	683	550	.	.	240	297
NO ACTION ON COPS/CRT NTFY	9	11	13	7	210	192	.	.	.	.	.	.	.	.
PRISON SPLIT W/SUPV TO FOLLOW SAME CMPNT	16	7	6	1	75	24	.	.	.	.	.	.	.	.
JAIL SPLIT W/SUPV TO FOLLOW SAME CMPNT	19	6	3	3	91	81	.	.	.	.	.	.	.	.
SPVN ON NEW CASE	17	21	3	2	7	19	.	.	.	.	.	.	.	.
PRISON SPLIT W/SPVN ON NEW CASE	23	11	.	.	7	5	.	.	.	.	.	.	.	.
JAIL SPLIT W/SPVN ON NEW CASE	5	2	.	1	9	4	.	.	.	.	.	.	.	.
SEX OFFENDER PROBATION	.	1	.	.	5	10	.	.	.	.	10	.	.	.
SEX OFFENDER COMMUNITY CONTROL	1	.	.	.	2	2	.	.	.	.	.	.	.	.
TIME SERVED	.	.	.	.	.	.	.	.	155	155	.	.	.	.
UNSUCCESSFUL TERMINATION	.	.	.	.	.	.	.	.	1,086	860	.	.	.	.
TERM/COMP OF SPEC REQUIREMENTS	.	.	.	.	.	.	.	.	14	15	.	.	.	.
COMMIT/MENTAL HEALTH FACILITY	.	.	.	.	.	.	.	.	2	1	.	.	.	.
REDUCED TO CIVIL LIEN	.	.	.	.	.	.	.	.	195	181	.	.	.	.
IN VIOL/NO ACTION	.	.	.	.	.	.	.	.	.	.	.	.	1,992	2,143
NOT IN VIOL/NO ACTION	.	.	.	.	.	.	.	.	.	.	.	.	1,930	2,067
AFFDVT/WARR DISMISSED	.	.	.	.	.	.	.	.	.	.	.	.	3,505	3,024
DISMISSED AFFDVT	.	.	.	.	.	.	40	55	1,120	1,038	.	.	1,562	1,668
IN VIOA/TERMINATED	.	.	.	.	.	.	2	3	658	754	.	.	.	.
NOT IN VIOL/TERMED	.	.	.	.	.	.	7	6	402	379	.	.	.	.
IN VIOL/ADJ/TERMED	.	.	.	.	.	.	.	1	135	160	.	.	.	.
REF TO SIGN WARRANT	.	.	.	.	.	.	.	.	.	.	.	.	280	268
IN VIOL/MOD SENT	.	.	.	.	.	.	.	.	.	.	.	.	16,320	16,059
OTHER STATE VOP	.	.	.	.	.	.	.	.	.	.	337	285	585	524
Total	3,457	3,127	1,300	1,280	20,834	18,999	49	65	4,819	4,451	337	285	26,420	26,054



2016 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Corrections

BILL INFORMATION

BILL NUMBER:	HB 1149
BILL TITLE:	Relating to Alternative Sanctioning
BILL SPONSOR:	Representative Spano
EFFECTIVE DATE:	July 1, 2016

COMMITTEES OF REFERENCE

1) Criminal Justice Subcommittee
2) Justice Appropriations Committee
3) Judiciary Committee
4)
5)

CURRENT COMMITTEE

--

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	SB 1256
SPONSOR:	Senator Brandes

Is this bill part of an agency package?

Yes.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 14, 2016
LEAD AGENCY ANALYST:	Jenny Nimer
ADDITIONAL ANALYST(S):	Shari Britton, Sibyle Walker
LEGAL ANALYST:	Paul Vazquez
FISCAL ANALYST:	Suzanne Hamilton

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill authorizes the chief judge of each judicial circuit, in consultation with the state attorney, public defender and the Florida Department of Corrections (FDC) to establish an alternative sanctioning program that permits the Department to report certain alleged technical violations and enforce court-approved sanctions when the terms of the

administrative order have been met. Participation in the program is voluntary. Offenders that elect to participate must admit to the violation, agree to comply with the recommended sanction, and waive specified rights.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently, if an offender supervised by the FDC does not comply with a condition of supervision, the alleged violation is generally reported to the court via violation report, affidavit and warrant. There are two types of violations – new law violations and technical violations. Technical violations involve non-compliance with one or more conditions of supervision (i.e., an offender has not committed a new criminal offense). Examples of technical violations include, but are not limited to, not reporting as required, positive drug test, not attending treatment, etc.

When a violation report, affidavit and warrant are submitted by the FDC to a judge to report alleged non-compliance with the conditions of supervision, the court generally signs a violation of probation warrant and the offender is arrested. In some instances, the judge may agree to a “Notice to Appear” hearing in lieu of issuing a warrant for the offender’s arrest.

During fiscal year 2014/2015, approximately 94,000 violation reports were submitted due to probation violations, with approximately 61,777 (66%) of these submitted due to technical violations. Due to overcrowded court dockets, it often takes weeks and multiple hearings for an offender to be sentenced as the result of a violation of probation hearing. If the offender is being charged with a technical violation, these hearings often result in the court reinstating the offender on supervision or modifying the probation with additional sanctions imposed, which may include substance abuse treatment, curfew, etc. If the offender is held in jail pending a violation hearing, this may lead to loss of employment and other hardships on the offender and his/her family, as well as the inability to pay victim restitution, attend treatment and comply with other conditions of supervision. The current violation process takes a long time to address offender non-compliance, involves offender arrests, periods of incarceration in jail and multiple violation hearings. This is a huge workload on law enforcement, probation officers and the courts, and is costly to the public.

In an effort to improve the overall violation process, in 2012 the FDC’s Office of Community Corrections developed the Alternative Sanctions Program based on a culmination of research and studies that showed positive results in reducing recidivism for supervised offenders by utilizing collaborative efforts between courts, probation and law enforcement. The research indicated that future violations are prevented when there is little time delay between behavior and response; compliance increases when responses are viewed as impartial and logical by the offender; and the response to a violation should be graduated and based on the violation severity. Using these principles, the Alternative Sanctions Program was developed to offer the courts and the Department an alternative method of reporting and resolving specified technical violations in an efficient, administrative manner, in lieu of submitting a violation report, affidavit and warrant and requiring a formal violation hearing for disposition of technical violations.

The program allows a technical violation to be addressed and resolved immediately with the offender and the courts through an administrative process where the technical violation is reported to the court by the probation officer via a form that includes the offender’s waiver of a violation hearing, admission of the violation and acceptance of sanction selected from the pre-approved violation/sanction matrix approved by the court for the program. The court responds by signing an order that either approves the offender’s participation in the program and the sanction recommended or disapproves the offender’s participation in the program and directs the Department to submit a violation report, affidavit and warrant. This process takes days for the court to respond in comparison to the lengthy process described above.

The Alternative Sanctions Program requires an administrative order to be issued by the chief judge in the circuit and includes the offender eligibility criteria, reporting process, specific technical violations that may be addressed through the Alternative Sanctions Program, and the pre-approved sanctions for each technical violation. An example is attached from Circuit 12, which was the first administrative order issued (effective February 1, 2013) authorizing the Alternative Sanctions Program in Sarasota and Desoto Counties. As of October 2015, circuit court judges in 12 counties within 6 judicial circuits have agreed to implement the Alternative Sanctions Program via administrative order, including Sarasota, Desoto, Manatee, Seminole, Brevard, Palm Beach, Pinellas, Alachua, Flagler, Putnam, St. Johns and Volusia.

In addition to the positive outcomes in changing offender behavior and reducing recidivism, the Alternative Sanctions Program has the potential to offer many benefits to both Florida’s communities and our partners in the criminal justice system, including:

- A reduction in court dockets for probation violations on technical violations;
- A reduction in prosecutor/public defender resources dedicated to technical violations;

- A reduction in law enforcement resources utilized to serve violation warrants;
- A reduced jail population; and
- A continuation of the offender's employment/education/etc. while complying with imposed sanctions

1. EFFECT OF THE BILL:

Section 1

Amends s. 948.60(1)(h), F.S., to authorize the chief judge of each judicial circuit, in consultation with the state attorney, public defender and the FDC, to establish an alternative sanctioning program that permits the Department to report certain alleged technical violations and enforce court-approved sanctions when the terms of the administrative order have been met. The administrative order must specify:

- Offender eligibility criteria;
- The alleged technical violations that are eligible for the program;
- The sanction that may be recommended by a probation officer for each technical violation; and
- The process for reporting technical violations.

If an offender is alleged to have committed a technical violation of probation that is eligible for the program, the offender may elect not to participate, in which case the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with current law.

If the offender elects to participate (after receiving written notice of the alleged technical violation and a disclosure of the evidence against them), the offender must admit to the violation, agree to comply with the recommended sanction, and waive the right to:

- Be represented by counsel;
- Require the State of Florida to prove his/her guilt before a neutral and detached hearing body;
- Subpoena witnesses and present to a judge evidence in his/her defense;
- Confront and cross-examine adverse witness; and
- Receive a written statement from a fact finder as to the evidence relied on and the reasons for the sanction imposed.

After the offender admits to the violation and waives his or her rights, the probation officer must, before imposing the sanction, submit the recommended sanction to the court as well as documentation reflecting the offender's admission to the violation and agreement with the recommended sanction. The court may then impose the recommended sanction or direct the department to submit a violation report, affidavit, and warrant to the court in accordance with current law.

The offender may elect to waive or discontinue participation in the program at any time before the issuance of a court order imposing the recommended sanction. If an offender waives or discontinues participation in the program, the probation officer may submit a violation report, affidavit, and warrant to the court in accordance with current law. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.

Section 2

Provides an effective date of July 1, 2016.

Comments/Impact:

FDC is committed to providing a continuum of services to meet the needs of those entrusted to our care. It is critical to the success of the agency, and those under the FDC's supervision, to employ innovative, strategic and data-driven programs that reduce recidivism, increase offender accountability, improve supervision outcomes, and build safer communities.

Therefore, the FDC supports the implementation of alternative sanctioning programs statewide and believes that addressing technical violations quickly, fairly, and consistently will assist in changing offender behavior and improving supervision outcomes, which ultimately will lead to a reduction in victimization and recidivism. The process is innovative, holds offenders accountable, and provides the FDC with a fair, efficient method of reporting specified technical violations to the court.

It is possible that codifying a judicial circuit's authority to create an alternative sanctioning program may result in more judicial circuits creating such programs. This, in turn, would likely result in a range of benefits for the entire criminal justice system. These benefits include reduced court dockets for technical violation hearings, reduced workload for prosecutors

and defense attorneys involved in technical violation hearings, reduced workload on law enforcement related to serving technical violation warrants, a reduced population of offenders in jail waiting for a technical violation hearing and this bill may have the possibility to reduce the prison population.

2. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	No.
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	

3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	Many members of the judiciary, state attorneys, and public defenders are proponents of this program. Many past and current offenders are proponents as well. The Department of Corrections is a proponent.
Provide a summary of the proponents' and opponents' positions:	There are judges in 12 counties in the State of Florida who support this program and have issued Administrative Orders authorizing the Alternative Sanctions Program in their courts for the Department to use to report specified technical violations of eligible offenders.

4. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	No.
Date Due:	
Bill Section Number:	

5. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?

Board:	N/A
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	N/A
Expenditures:	Alternative sanctioning programs may decrease expenditures by reducing law enforcement arrests, jail incarceration of offenders pending technical violation hearings, probation officer time spent at these violation hearings, and court personnel involved in the violation hearing process.
Does the legislation increase local taxes or fees?	No.
If yes, does the legislation provide for a local referendum or local governing body public vote	

prior to implementation of the tax or fee increase?	
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2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	N/A
Expenditures:	There will be no technology impact. Although there is currently a code (ASP) in place for the handling of documentation as stated in Section 2 of the analysis, there may be a need for a change to the current code.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	N/A
Expenditures:	N/A
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	No.
Does the bill decrease taxes, fees or fines?	No.
What is the impact of the increase or decrease?	N/A
Bill Section Number:	

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No.
If yes, describe the anticipated impact to the agency including any fiscal impact.	

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No.
If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	N/A
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2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 642
BILL TITLE:	Criminal Justice
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2019

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 705
SPONSOR:	Representative Donalds

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 27, 2019
LEAD AGENCY ANALYST:	Lee Adams
ADDITIONAL ANALYST(S):	Sibyle Walker, Jennifer Rechichi, Joe Winkler, Jami Dunsford
LEGAL ANALYST:	Daniel Burke, Kyle Magee, Maria Dinkins, Philip Fowler
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill requires courts to impose drug trafficking sentences irrespective of mandatory minimums under certain circumstances, adds to the program list that qualifies for 60 days incentive gain time, authorizes some inmates to satisfy more than 15% of their sentence by gain time upon completion of educational programs, requires the Florida Department of Corrections (FDC or Department) to house inmates within 150 miles of their home to the extent possible, modifies release orientation programming, authorizes the Department to develop an entrepreneurship program, requires the Department to provide to the Florida Crime Information Center (FCIC) all conditions of probation, and expands and clarifies the administrative sanction process for technical violations of supervision.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Criminal Punishment Code (CPC) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998 (s.921.002, F.S.). The code assigns a score based on a variety of sentencing factors including the offense before the court for sentencing and prior record. Pursuant to s. 921.0024(2) F.S., "The lowest permissible sentence is any non-state prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceed 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent." If the criminal statute includes a minimum mandatory penalty that is greater than the lowest permissible sentence, the mandatory term takes precedence (Fla. R. Crim. P. 3.701(d)(9)). The court may sentence a defendant up to the statutory maximum. Section 921.002(3) F.S. provides for downward departures as follows: "A court may impose a departure below the lowest permissible sentence based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026, F.S."

S. 893.135, F.S. prohibits trafficking in specified quantities of various substances and upon conviction requires imposition of minimum terms of imprisonment, based on the type of drug and the quantity trafficked. All of the trafficking crimes in the section are at least level 7 offenses, which score 56 points on the CPC, and at least first degree felonies, which are punishable by up to 30 years in prison.

S. 893.135(3), F.S., provides, "Notwithstanding the provisions of s. 948.01, F.S., with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section."

S. 893.135(4), F.S., provides that, "The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances." Under current law the trial court may not impose less than the mandatory without the state's recommendation.

S. 944.275(4)(d), F.S., authorizes the Department to award 60 days of incentive gain time to an inmate who completes requirements for and is awarded a high school equivalency diploma or vocational certificate. This gain time award does not allow an inmate sentenced for a crime committed on or after October 1, 1995 to serve less than 85% of the sentence as set forth in s. 944.275(4)(f), F.S.

S. 944.611, F.S., provides, "It is desirable that each inmate be confined in and released from an institution or facility as close to the inmate's permanent residence or county of commitment as possible, in order to lessen the transportation expense to the public."

65% of the Department's beds are located in Region 1 (Northwest Florida and surrounding counties) or Region 2 (Northeast Florida and surrounding counties). A map of the Department's regions may be found here: <http://www.dc.state.fl.us/ci/index.html>. In Fiscal Year 2017/2018, the Department received approximately 27,916 new admissions. Of the admissions received, 18,055 (64%) were from the Region 3 or 4 area. Considering all of these inmates have a sentence of at least 1 year and 1 day or more since they are sentenced to a state prison sanction and Department custody, it is not logistically possible to place all of these offenders within 150 miles of home since 64% of new admissions in FY 2017-2018 are from Central and South Florida and the majority of Florida's prisons are located in Northwest and Northeast Florida. However, the Department does have a procedure, 601.219, which provides well-adjusted inmates to achieve a transfer closer to home.

S. 944.701-708, F.S., is entitled the Transition Assistance Program Act. These statutes require the Department to provide a transition assistance specialist at each major facility to coordinate, develop and help deliver post-release planning and assistance, including assistance with obtaining job placement information, however, the Transition Specialist position has not been funded since 2003. As part of the release planning process, inmates are interviewed by release officers between 140 and 180 days prior to release. Through this interview, along with a review of the inmate's record, the post-release needs of the inmate in areas including education, vocational training, substance abuse, and housing, are identified. The release officer accesses a resource directory to locate appropriate service providers in the community where the inmate will be released and at the time of release provides the inmate information about community resources responsive to the identified needs.

S. 944.705(6), F.S., requires the Department to notify every inmate being released, in at least 18-point type, that commission of any felony described in s. 775.082(9), F.S., within three years of release may result in sentencing as a "prison release reoffender". In addition, prior to release the Department notifies inmates of their obligations regarding post-release supervision, criminal registration, career offender and sexual offender/predator registration, on forms for that purpose.

Under s.944.801, F.S., the Department is authorized to operate the Correctional Education Program. Development of an entrepreneurship program is not among the specific enumerated duties under this statute. However, the Department holds active agreements and contracts with community providers, universities, and colleges to provide entrepreneurship frameworks within training courses to replicate integral components of the Prison Entrepreneurship Program (PEP). Lessons include writing a business plan, industry and competitor analysis, developing an effective business model, and preparing the proper ethical and legal foundation. It is important to note that funding limitations may impact progress toward enhanced development, expansion, and replication.

S. 948.001(1), F.S., defines "administrative probation" as, "a form of no contact, nonreporting supervision in which an offender who presents a low risk of harm to the community may, upon satisfactory completion of half the term of probation, be transferred by the Department of Corrections to this type of reduced level of supervision, as provided in s. 948.013, F.S."

In 2005 at the request of the Florida Department of Law Enforcement (FDLE), the Department began electronically transmitting certain sex offender special conditions to FDLE. The Department and FDLE use a real time direct data pipe line to each other's agency to send and receive probationer's data. The Department's Offender Based Information System (OBIS) houses many on-line screens to capture the probationer's data with real time entry by FDC probation officers. This data is sent to FDLE who then in-turn sends the data to NCIC within seconds. There are many times when Probation Officers give case specific permission to offenders to deviate for certain situations, but the officer may not have access to OBIS to be able to make an immediate update.

Currently a judge or other sentencing/releasing authority may authorize the Department to report certain technical violations through an administrative process developed by the Department called the Alternative Sanctioning Program (ASP). Unless otherwise specified by the court or releasing authority, the Alternative Sanctioning Program is intended to be limited to technical violations for non-violent offenders. The Alternative Sanctioning Program offers the court an administrative method of resolving specified technical violations in an efficient manner which allows for the noncompliance or deviant behavior to be swiftly addressed. The difference between the Alternative Sanctioning Program and the Technical Violation Notification letter is that Alternative Sanctioning Program allows the offender's sentence to be modified with an additional sanction imposed. An offender's participation in the alternative sanctions program is voluntary.

2. EFFECT OF THE BILL:

Section 1 states, the act may be cited as the Florida First Step Act.

Section 2 requires that sentences imposed for violation of s.893.135, F.S., drug trafficking, are "pursuant to the Criminal Punishment Code (CPC)" without regard to the mandatory minimums, if the court finds that: the defendant has not been previously convicted of a dangerous crime as defined by s. 907.041,F.S., or a crime that would require registration under s. 775.21, F.S., or s. 943.0435, F.S., as a sexual predator or offender; the defendant did not use violence, threats or possess a firearm or dangerous weapon during the crime; the offense did not result in death or injury; the defendant was not engaged in a continuing criminal enterprise; the defendant truthfully provided all known information and evidence concerning the offense. The bill's language is mandatory, "Notwithstanding any other provision of law, for an offense under this section the court shall impose a sentence pursuant to the Criminal Punishment Code under chapter 921."

The impact of this section is indeterminate. To begin with, keep in mind that all of the trafficking crimes in s.893.135, F.S. are at least level 7 offenses, which score 56 points on the CPC. This means a prison term must be imposed. Also these trafficking offenses at least first degree felonies, which are punishable by up to 30 years in prison. Of about 1,270 sentences for drug trafficking imposed in FY17/18, only 18 were more than 30 years.

The bill requires sentences in accordance with the CPC. The CPC sets a sentencing floor, but the maximum statutory penalty for the crime establishes the sentencing ceiling and this is at least 30 years for drug trafficking crimes. Thus, requiring a sentence under the CPC does not mean courts must impose shorter sentences under the bill than they have in the past. With the statutory maximum of trafficking crimes, courts could fully comply with the requirement that the CPC is followed and still impose far greater sentences than in prior years. This is not to say that every court will impose a statutory maximum sentence, but there is nothing in the law or the bill that would prevent it and there is no way to know how future courts would impose sentences under the bill's provisions.

Second, there were about 249 probation sentences imposed for drug trafficking offenses in FY17/18. Every one of these sentences was imposed below the drug trafficking minimum as well as below the CPC minimum. This is because all of the trafficking offenses are at least level 7 offenses, which score a presumptive mandatory prison term under the CPC. So, if sentencing must be in accordance with the CPC, these 249 supervision admissions will become prison admissions under the bill, unless the court finds a way around that outcome.

Third, about 222 of the prison sentences for drug trafficking offenses in FY17/18 were less than what the CPC score would have required. So again, so some prison sentences could increase under the bill required adherence to the CPC. (Also, the CPC minimum for about 320 of the prison sentences would be greater than the drug trafficking minimum mandatory). So simply mandating sentencing in accordance with the CPC could produce results not consistent with the bill's intent.

In sum, when the bill is compared to current sentencing practices and the way the CPC operates, it is unknown how its provisions would alter sentencing. Simply requiring imposition in accordance with the CPC may not produce the expected results.

Section 3 authorizes a one-time award of 60 days of incentive gain time for completion of a "Prison Entrepreneurship Program". It also authorizes the release date of an inmate who earns the gain time for educational achievement under s. 944.275(4)(d), F.S., to be 60 days less than the 85% minimum service date required by s. 944.275(4)(f), F.S.

To provide an immediate impact on the prison system while preventing the arbitrary and unfair outcome that would result under a prospective application of this provision (benefit based solely on the happenstance of when a qualifying program was completed in relation to the effective date of the bill), the Department would apply the benefit to the status population. The Department estimates that this would result in an average daily population reduction of 66 inmates during the first year of implementation, and a 40 inmate reduction in the average daily population for years 2, 3, 4 and beyond.

Section 4 requires the Department to place inmates as close as practicable to within 150 miles of their primary residence, subject to bed availability, security concerns, program needs and health care needs.

The Department already tries to allow inmates to serve their sentences close to home but the disparity between where the majority of prison beds are versus where the majority of inmates reside places a premium on Central and South Florida locations. This has forced the Department to incentivize transfers by requiring good behavior over time to obtain transfers to these areas. Since bill recognizes the limitations placed on the housing of inmates by various factors including bed space and security designation, the bill is not expected to alter current practices a great deal. The Department does however anticipate litigation revolving around this new statutory language, and it is unknown how courts may reconcile the bill's language and agency limitations in light of Amendment VI to the State constitution which prohibits judicial deference to agency interpretations of statute.

Section 5 reorganizes s. 944.705 F.S., adding new subsections. Under s. 944.705(3), F.S., the Department will be required to provide each releasing inmate a comprehensive resource directory which must also include the name, address, and telephone number of existing starting points for using such resources. It is important to note that the Department currently operates a user friendly, statewide resource directory to assist staff in the inmate/offender re-entry planning process. The resource directory is a searchable website that contains over 6,000 community, state, and local organizations that provide services to those returning home. These resources are verified on a routine basis to ensure the most up-to-date information is being provided. The resource directory can be accessed at <http://www.dc.state.fl.us/resourcedirectory/Search.aspx>.

The bill does not define an "existing starting point". When inmates are released they receive information about community resources in proximity to their residence. The bill would increase release costs by requiring the Department to provide a state-wide resource directory to every inmate. This would entail giving out information that may not be of value because of the distance from the inmate's home to the resources. A recommended alternative would be to provide the inmate with a local provider list, which includes the name, address and telephone number of providers and a description of the services offered by each provider, as is the current practice, and provide information on accessing the web site for additional information in the event the inmate relocated after initial release.

The bill creates subsections s. 944.705(7), and (8), F.S., adding language to s. 944.705, F.S., allowing a nonprofit faith-based business or a professional, civic, or community organization to apply for registration with the Department

to provide inmate re-entry services. It requires that the Department adopt policies and procedures for screening, approving and registering an organization to provide these services. It also allows the Department to deny approval and registration to organizations that do not meet the Department's policies or procedures. Currently, the Department does not have existing capability of an automated web portal for such entities to apply electronically. Development or purchase of an automated web portal would be required. The cost and/or resource estimate for the creation of a new system/web portal is indeterminate at this time and would likely require a procurement to identify possible solutions. Additionally, to ensure proper implementation and management of this provision of the bill, the addition of two (2) Government Operations Consultant I positions would likely be required.

The bill creates new subsection s. 944.705(9), F.S., adding language allowing the Department to contract with a public or private educational institution Veterans Advocacy Clinic or Veterans Legal Clinic to assist qualified veteran inmates in applying for veteran's benefits upon release. This language allows the Department to utilize, via a contractual relationship, specific type organizations to assist releasing or released veteran inmates with applying for veteran's benefits. This would be in addition to the existing Memorandum of Agreement (Agreement A4471) with United States Department of Veterans Affairs' Veterans Integrated Service Networks.

The bill creates new subsection s. 944.705(10), F.S., which requires the Department to notify each inmate being released, in 18-point type or larger, "Of all terms of the inmate's sentence which are outstanding at the time of release, including, but not limited to, a term of supervision and any conditions required upon release from imprisonment or unpaid restitution, court costs, fees, or fines."

To implement this, current forms utilized to inform inmates about post-release requirements will have to be re-formatted into 18-point type. In addition, probation orders which are found in the Rules of Criminal procedure will have to be set in the 18-point type. Also, because monetary obligations play no role in setting inmate release dates, the Department does not track these costs for inmates in custody, with the exception of approximately 5,000 inmates in various forms of paid employment (work release, prison industries). The bill will require the Department to research clerk of court records prior to release for updated information on what the inmate presently owes in regard to each case for which sentence was imposed. This will apply even to the thousands of inmates released to supervision each year, for whom costs are part of the supervision terms that are monitored by the probation officer and which will be discussed with the officer upon reporting for supervision. This will be a significant workload increase on Department release officers and possibly to the clerks of court, as it could generate a significant volume of contacts to the clerks to determine the current status of various assessed costs. The Department estimates it will need a minimum of six (6) Data Entry Operator positions to implement this provision.

To facilitate the necessary exchange of information, it may be helpful to amend s. 944.17(5)(i), F.S., regarding providing information to the Department after the defendant is delivered to state custody, as follows: "After a prisoner is admitted into the state correctional system, the department may request such additional records relating to the prisoner as it considers necessary from the clerk of the court, the Department of Children and Families, or any other state or county agency for the purpose of determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs, or status of monetary obligations."

This section requires the agency to adopt rules to implement its provisions.

Section 6 Although the bill grants the authority for the Department to provide an entrepreneurship program, it also provides that it must be *managed with existing resources*. The Department would likely not be able to develop the program without adequate funding resources. However, (for informational purposes only), if the Department were to develop the program, to ensure proper implementation and management, it would likely require the addition of one (1) Correctional Services Consultant position. This coverage permits a Central Office coordinator to ensure critical development steps are satisfied and conduct proper contract monitoring.

Because entrepreneurship programs rely heavily on community business owners and volunteers to facilitate events related to the development and delivery of business plans, the Department's Central Office and regional levels would need to develop agreements with eligible entities, including community business owners to act as facilitators and professional mentors. For informational purposes, the Department would likely require contractual funding to procure these services, to include development, implementation, and provision of services. The estimated fiscal impact, to include contracted staff, materials, and supplies, is estimated at \$200,000 per location.

Sections 7 and 8 amends s. 948.001, F.S., regarding Administrative Probation, however there is no anticipated impact as language deleted from s. 948.001, F.S., is added to s. 948.013, F.S.

Section 9 adds to s.948.03, F.S., by requiring the Department to submit all conditions of probation to the FCIC database. As part of implementation, the Department would likely establish a policy document to address the methodology to be used for providing the data elements to FDLE. This policy document would also provide for timeframes under which the Department would strive to send the data to FDLE in a timely manner once the conditions of probation have been finalized by the court. The Department estimates an extended implementation timeframe for this section of the bill which would likely be outside of the current listed effective date. Please also note that there are

challenges when entering all conditions of supervision into the Offender Based Information System (OBIS) for upload into FCIC and/or the National Crime Information Center (NCIC). In 2005 at the request of FDLE, the Department began electronically transmitting certain sex offender special conditions to FDLE. The Department and FDLE use a real time direct data pipe line to each other's agency to send and receive probationer's data. The Offender Based Information System houses many on-line screens to capture the probationer's data with real time entry by FDC probation officers. This data is sent to FDLE who then in-turn sends the data to NCIC. There are many times when Probation Officers give case specific permission to offenders to deviate for certain situations, but the officer may not have access to OBIS to be able to make an immediate update. Many offenders have a curfew imposed at the time of sentencing; however, the probation officer may be given discretion to modify the curfew hours under certain circumstances. In these situations, OBIS may not be updated by the officer due to the permission given after working hours or due to other extenuating circumstances. If the offender has contact with a law enforcement officer during the normal curfew hours, a warrantless arrest may occur causing an undue hardship of the offender.

Section 10 expands the Alternative Sanctions Program (ASP) for handling technical supervision violations to all judicial circuits. It also modifies the framework of the ASP, creating a two-tier violation system for low and moderate risk violations, with authorized sanctions for each violation level.

The Department does not anticipate significant operational impact from expanding this program to the remaining 4 judicial circuits (it already operates in 16 circuits) and working with the local courts to implement the changes in the program authorized in the bill. Impact from the expansion and the changes on the Violation of Probation (VOP) case load and the number of revocations is indeterminate at this time.

It should be noted, however, that the sanctions authorized by the bill could result in an increase in referrals for counseling and drug testing. Also, one authorized sanction is residential treatment for up to 90 days, however, the Department's residential treatment model is at least 6 months.

There would also be a likely technology impact associated with the requirements in s. 948.03, F.S. Technology programming updates to the Department's Offender Based Information System (OBIS) would be required as well as the need to modify the existing data feed to FDLE for the creation of special conditions codes. Please note that FDLE would also likely need to modify their process, including the ability for a larger file, in order to accept the new file format from the Department.

Section 11 updates a citation in s. 893.03, F.S., based on the bill's amendment of s. 893.135, F.S.

Section 12 provides a July 1, 2019 effective date.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	Section 5 of the bill requires the Department to adopt rules.
Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	33-601.504, Transition Assistance Program

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

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6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☐ N ☐

Revenues:	Unknown.
Expenditures:	Unknown.
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	Unknown.																			
Expenditures:	The below fiscal is provided for various aspects of the bill: Section 3 – The Department estimates that this would result in an average daily population reduction of 66 inmates during the first year of implementation, and a 40 inmate reduction in the average daily population for years 2, 3, 4 and beyond. When inmate population is impacted in small increments statewide, the inmate variable per diem of \$20.04 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Per Diem /Ratio</th> <th style="text-align: center;">Year 1</th> <th style="text-align: center;">Year 2</th> <th style="text-align: center;">Year 3</th> </tr> </thead> <tbody> <tr> <td>ADP (rounded)</td> <td></td> <td style="text-align: center;">66</td> <td style="text-align: center;">40</td> <td style="text-align: center;">40</td> </tr> <tr> <td>Prison Impact - Variable Per Diem</td> <td style="text-align: center;">20.04</td> <td style="text-align: center;">(482,764)</td> <td style="text-align: center;">(292,584)</td> <td style="text-align: center;">(292,584)</td> </tr> </tbody> </table>						Per Diem /Ratio	Year 1	Year 2	Year 3	ADP (rounded)		66	40	40	Prison Impact - Variable Per Diem	20.04	(482,764)	(292,584)	(292,584)
	Per Diem /Ratio	Year 1	Year 2	Year 3																
ADP (rounded)		66	40	40																
Prison Impact - Variable Per Diem	20.04	(482,764)	(292,584)	(292,584)																

Sections 5 and 6 – Workload associated with Implementation and Management of Automated Web Portal and Notification to Inmates released in 18 points or larger is projected to require additional staff costs as follows:

Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs
Government Operations Consultant I	2234	57,865	2	115,730
Data Entry Operator	2000	37,071	6	222,426
Total salaries & benefits ⁽¹⁾			8	338,156
Recurring expense - Professional Light Travel		\$ 3,378		6,756
Recurring expense - Clerical		\$ 2,188		13,128
Non-recurring expense - Professional Light Travel		\$ 4,429		8,858
Non-recurring expense - Clerical		\$ 3,639		21,834
Total expenses ⁽²⁾				50,576
Human Resource Services		\$ 329		2,632
Total			8	\$ 391,364

Summary of FTE Costs

Recurring	\$ 360,672
Non-recurring	30,692
Total	\$ 391,364

In addition, it is anticipated there will need to be changes to the gain time screens and the calculator for both Institution and Community Corrections, estimated non-recurring cost is \$26,100.

Total Fiscal Summary	Year 1	Year 2	Year 3
Recurring	(122,092)	68,088	68,088
Non-recurring	56,792		
Total	(65,300)	68,088	68,088

Does the legislation contain a State Government appropriation?

Not at this time.

If yes, was this appropriated last year?

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☐

Revenues:	Unknown.
Expenditures:	

Other:	
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4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There would likely be technology impact associated with the requirements in s. 948.03, F.S. Technology programming updates to the Department's Offender Based Information System (OBIS) would be required as well as the need to modify the existing data feed to FDLE for the creation of special conditions codes. There will likely be technology impact. There will need to be changes to gain time screens and the calculator for both Institution and Community Corrections. Cost Estimate Estimated Hours: 300 Estimated Cost Per Hour: \$ 87.00 Total Estimated Cost: \$26, 100
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
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ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Implementation of SB 642 may result in increased inmate litigation against the Florida Department of Corrections relating to two main effects of the bill: the assignment of inmates within 150 miles of their primary residence and the potential changes to inmate educational-incentive gain time awards. With respect to facility assignments, the bill does not provide a definition for the term "primary residence" and lines 188-193 might be misinterpreted to provide inmates with a right of denial of transfer when circumstances otherwise would require a transfer. With respect to educational-incentive gain time awards, there appears to be a potential for educational-incentive gain time awards under the bill to authorize some sentence reductions below the current 85% minimum sentence standard. Further, with respect to crimes addressed in s. 907.041, F.S., the gain time language appears to apply retroactively.
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Cox, Ryan

From: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Tuesday, February 26, 2019 10:12 PM
To: Cox, Ryan
Cc: Vaughan, Scotti; Nimer, Jenny
Subject: ASP status

Ryan,

See below chart detailing ASP status and which circuits are involved. In total, 49 counties currently participate.

(Regarding your question from a prior email this evening: Which circuits are the ones that have established ASPs? I am trying to figure out how many counties are using them out of 67.)

Thanks,
Jared

Region	Circuit	County	Effective Date	# ASP's since effective date – as of 02/14/19	
3	12	Sarasota & Desoto	2/1/13	886 circuit total	
3	12	Manatee	3/1/13		
3	18	Seminole	4/10/13	427 circuit total	
3	18	Brevard	6/19/13		
4	15	Palm Beach	5/2/13	124	
3	06	Pinellas	12/23/14	274	
		Pasco	9/9/16		
2	08	Alachua	5/27/15	275 circuit total	
		All remaining (5) counties	5/19/16		
2	07	All 4 counties	7/1/15	274	
3	13	Hillsborough	7/1/16	198	
2	03	All 7 counties	7/1/16	119	
3	10	All 3 counties	6/27/16	550	

1	14	All 6 counties	7/29/16	146	
4	19	All 4 counties	1/3/17	17	
2	04	Duval	9/1/17	96	
3	05	All 5 counties	1/1/18	46	
3	09	Orange & Osceola	2/12/18	55	
4	17	Broward	3/5/18	217	
4	11	Dade	4/1/18	36	
	16 total	49 total		3740 total	

**THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 4.16**

CIRCUIT-WIDE CRIMINAL ALTERNATIVE SANCTIONS PROGRAM

In order to provide for successful completion of community supervision and reduce victimization and recidivism; and

WHEREAS, there is a substantial number of technical violations of probation that do not involve a new arrest or other serious violations; and

WHEREAS, arresting and incarcerating certain non-violent offenders for minor violations of probation or community control is expensive and counterproductive; and

WHEREAS, there is research that supports that recidivism can be reduced by utilizing collaborative efforts among the courts, probation and law enforcement to hold the offender accountable and apply swift and certain sanctions for technical violations of probation or community control; and

WHEREAS, an administrative option for processing technical violations has the potential to offer benefits including reducing court dockets for probation and community control violation hearings, reducing the workload of prosecutors and defense attorneys involved in technical violation hearings, reducing law enforcement time required to serve violation warrants for certain technical violations, and reducing jail population for offenders waiting for technical violation hearings, and

WHEREAS, offering the offender an alternative to a violation hearing in court permits the offender to remain employed, in school, or in treatment, and further allows the offender to accept immediate responsibility for his/her actions; it is therefore

ORDERED:

I. ALTERNATIVE SANCTIONS PROGRAM

There is created in the Eighth Judicial Circuit a program that shall be known as the Criminal Alternative Sanctions Program.

II. ELIGIBILITY

To be eligible for the program, offenders must be placed on probation or community control by the court, be under the supervision of the Department of Corrections, have strong community ties, and have a stable residence in a county within the Eighth Judicial Circuit. The program is offered only to those offenders who have committed technical violations as addressed in the Alternative Sanctions Program Violation/Sanction Matrix included in Section III of this order.

The offender's threat to public safety is the most important factor in determining his/her eligibility. Offenders with a lengthy or violent criminal history, including sex offenders, are not eligible, nor are offenders who have committed new law violations, are absconders, or have violated a "no contact" condition of supervision. Any offender having three or more previous violations is not eligible.

III. QUALIFYING TECHNICAL VIOLATIONS AND APPROVED SANCTIONS

The following matrix lists the specific qualifying technical violations that may be addressed through the Alternative Sanctions Program process. Each technical violation includes a list of sanctions determined and approved by the Court for the probation officer to select from when reporting these technical violations, based on the individual offender's circumstances at the time of the violation.

ALTERNATIVE SANCTIONS PROGRAM VIOLATION/SANCTION MATRIX

VIOLATION	APPROVED LIST OF SANCTIONS
Condition (1): Reported late; failed to report as instructed (Probation and DOP Cases)	1. Report twice a month for 60 days 2. Three days work crew 3. Ten days work crew

Condition (2): Failed to pay Cost of Supervision (COS)	1. No recreational travel 90 days 2. Three days work crew 3. Ten days work crew
Condition (3): Failed to report changes in residence or employment without first procuring the officer's consent (or notifying immediately if evicted from residence or laid off from job)	1. No recreational travel 90 days 2. Three days work crew 3. Ten days work crew
Condition (3): Failed to request permission prior to leaving the county	1. No recreational travel 90 days 2. Three days work crew 3. Ten days work crew
Condition (6): Found to be associating with person(s) engaged in criminal activity	1. Curfew from 10pm to 6am for 90 days (probation officer can modify for treatment/work purposes) 2. Three days work crew 3. Ten days work crew
Condition (7): Positive drug test for non-prescribed drugs (first occurrence)	1. Drug evaluation and successfully complete treatment determined necessary 2. Re-evaluation to determine if more intensive treatment including residential is recommended 3. Two weekends in jail
Condition (8): Failure to maintain employment and failure to comply with adequate job searches.	1. Mandatory registration and participation in employment agency programs 2. Three days work crew 3. Ten days work crew
Condition (10): Failure to pay restitution or court costs (monetary obligations)	1. If unemployed, daily job search and workforce registration 2. Successfully complete budgeting and finance classes 3. No recreational travel/events
Condition (11): Failure to submit to random testing as directed	1. Three days work crew 2. Ten days work crew 3. Two weekends county jail
Special Condition (1): Failure to attend treatment evaluation or treatment session as scheduled	1. Curfew from 10pm to 6am until evaluation completed (probation officer can modify for treatment/work) 2. No recreational travel events 3. AA/NA daily and weekly drug testing until in compliance.

Special Condition (8): Failure to complete community service hours as instructed	1. Curfew from 10pm to 6 am until full compliance (probation officer can modify for treatment/work) 2. No recreational travel until in full compliance. 3. One weekend county jail
Special Condition (9): Failure to remain at residence during curfew period	1. Three days work crew 2. Ten days work crew 3. Two weekends county jail
Community Control Condition (16): Failure to maintain approved schedule – unapproved absence from required location (negligence in getting home late, stopping at store on way home without permission)	1. Three days work crew 2. Ten days work crew 3. Two weekends county jail

IV. ALTERNATIVE SANCTIONS PROGRAM PROCESS

The probation or community control officer shall inform offenders who have committed violations enumerated in Section III that they may participate in the Alternative Sanctions Program for administrative disposition of the violation. No offender is required to participate in the program and may opt for a formal violation of probation or community control hearing in Circuit Court.

If the offender admits the violation, agrees to accept the administrative sanction(s) recommended by the probation officer, and agrees to waive his/her formal violation hearing to modify his/her sentence, the probation officer will prepare an "Alternative Sanctions Program Technical Violation Notification," which will provide details of the circumstances of the technical violation that occurred and the probation officer's recommended sanction, based on the sanctions listed in the approved matrix. If the offender agrees to participate in the Alternative Sanctions Program, he/she will sign the second section of the form entitled "Alternative Sanctions Program Waiver of Formal VOP/VOCC Hearing, Admission of Violation, and Acceptance of Sanctions," which will be submitted to the Court once it has been signed and dated by the probation officer.

The judge shall review the "Alternative Sanctions Program Technical Violation Notification" and waiver form submitted and, if the judge agrees that the technical violation should be addressed via the Alternative Sanctions Program and agrees with the recommended sanction, the judge will sign the "Order - Alternative Sanctions Program." If the judge does not support the sanction recommended by the probation officer or does not agree that the technical violation should be addressed via the Alternative Sanctions Program, the judge shall include further instructions on the order.

Upon approval by the Court, the probation officer will review the sanction with the offender, and inform the offender that failure to complete the imposed sanction as instructed will result in a violation report, affidavit and warrant being submitted to the Court.

V. ADMINISTRATION

The Criminal Alternative Sanctions Program shall be administered by the Circuit Court and the Florida Department of Corrections.

VI. EFFECTIVE DATE

The effective date of this Order is May 19, 2016.

This Order replaces Administrative Order 4.16 (v1), "Criminal Alternative Sanctions Program," dated May 27, 2015.

ORDERED ON this 10th day of June, 2016.



Toby S. Monaco., Acting Chief Judge

**IN THE TENTH JUDICIAL CIRCUIT COURT
FOR HARDEE, HIGHLANDS, AND
POLK COUNTY, FLORIDA**

ADMINISTRATIVE ORDER NO. 2-79.0

IN RE: ALTERNATIVE SANCTIONING PROGRAM

WHEREAS, in order to provide for successful completion of community supervision and reduce victimization and recidivism; and

WHEREAS, there are a substantial number of technical violations that do not involve a new arrest or other serious violations; and

WHEREAS, arresting and incarcerating certain non-violent offenders for minor violations of probation or community control is both expensive and nonproductive; and

WHEREAS, there is research to support that recidivism may be reduced by utilizing collaborative efforts among the courts, probation and law enforcement to hold the offender accountable and apply swift and certain sanctions for technical violations of probation or community control; and

WHEREAS, an administrative option for processing technical violations will have the potential to offer benefits including:

- Reducing the court docket of probation and community control violation hearings;
- Reducing the workload of prosecutors and defense attorneys involved with many technical violation hearings;
- Reducing law enforcement resources required to serve violation warrants for certain technical violations;
- Reducing jail population for offenders pending violation hearings; and
- Offering the offender an alternative to a violation hearing in court, which will allow the offender to remain engaged in employment, school, treatment, etc. and allow the offender to take immediate responsibility for his/her actions and consequences of those actions; and

WHEREAS, the Florida Legislature recognizes the value of an alternative sanctioning program for technical violations of probation and community control and has authorized trial court chief judges, in consultation with the state attorney, public defender, and the Department of Corrections to establish a local alternative sanctioning program. Ch. 2016-100, § 1, Laws of Fla.; and

WHEREAS, by the power vested in the chief judge under article V, section 2(d), Florida

Constitution; sections 43.26 and 948.06(1)(h), Florida Statutes; and Florida Rule of Judicial Administration 2.215(b)(2), it is therefore **ORDERED** that:

1. **ALTERNATIVE SANCTIONING PROGRAM.** There is created in Hardee, Highlands, and Polk County, Florida, a program that shall be known as the Alternative Sanctions Program.

2. **ELIGIBILITY.** To be eligible for the program, offenders must have been placed on probation or community control under the supervision of the Department of Corrections by a judge in Hardee, Highlands or Polk County, Florida, have stable community ties, and have a stable residence in Hardee, Highland, or Polk County, Florida. Offenders who are eligible for the program include probation offenders, drug offenders, and community control supervision offenders. The program only applies to offenders who have committed certain technical violations addressed in the Alternative Sanctions Program Violation/Sanction Matrix included in section (3) of this order. The threat an offender poses to public safety is the most important factor in determining eligibility. Offenders with a lengthy or violent criminal history, including sex offenders, are not eligible to be in the program. Additionally, offenders who have new law violations, are absconders, or have violated a "no contact" condition of supervision are not eligible for the program. No offender who has three or more previous violations is eligible for the program.

3. **QUALIFYING TECHNICAL VIOLATIONS AND APPROVED SANCTIONS.** The following matrix lists the specific technical violations that may be addressed through the Alternative Sanctions Program process for offenders who were sentenced in Hardee, Highlands, or Polk County, Florida. Each technical violation includes a list of sanctions determined and approved by the court for the probation officer to select from when reporting these technical violations, based on the individual offender's circumstances at the time of the violation.

ALTERNATIVE SANCTIONS PROGRAM VIOLATION/SANCTION MATRIX

VIOLATION	APPROVED LIST OF SANCTIONS
Condition (3): Failed to report changes in residence or employment without first procuring the officer's consent (or notifying immediately if evicted from residence or laid off from job)	1. Increase monthly reporting to twice a month for up to three (3) months. 2. Up to sixteen (16) hours of community service work as directed by the probation officer. 3. One (1) day Sheriff's work crew within 30 days. 4. Refer to Day Reporting Center.
Condition (7): Positive drug test for non-prescribed drugs (first occurrence)	1. Obtain drug evaluation as directed and successfully complete treatment as determined by the treatment provider.

	2. Obtain a drug re-evaluation (if treatment previously completed) and successfully complete treatment as determined by the treatment provider, to include residential treatment. 3. Attend three (3) support groups per week for 60 days that focuses on alcohol and/or narcotic use.
Condition (8): Failure to maintain employment and failure to comply with adequate job searches.	1. Mandatory registration and participation in employment agency programs and maintain contact with Department of Correction's employment specialist. 2. 10 (ten) job searches per week. 3. Refer to Day Reporting Center. 4. Up to sixteen (16) hours of community service work as directed by the probation officer.
Special Condition (1): Failure to attend treatment evaluation or treatment session as scheduled	1. Curfew from 7 pm to 7 am (probation officer can modify for treatment/work) until in compliance as determined by the treatment provider. 2. Weekly drug testing until in compliance with obtaining treatment evaluation. 3. Attend three (3) support groups per week for 60 days that focuses on alcohol and/or narcotic use until in compliance with treatment evaluation. 4. Refer to Day Reporting Center.
Special Condition (8): Failure to complete community service hours as instructed	1. Curfew from 7 pm to 7 am (probation officer can modify for treatment/work) until full compliance with condition. 2. No recreational travel until in full compliance with condition. 3. Full compliance with condition within 60 days or officer may increase the total hours originally ordered by up to an additional 16 hours. 4. Refer to Day Reporting Center.
Special Condition (9): Failure to remain at residence during curfew period	1. Up to sixteen (16) hours Sheriff's work crew. 2. Modify curfew to 7pm – 7am until offender demonstrates compliance (probation officer can modify for treatment/work). 3. Two (2) weekends county jail or four (4)

	days. 4. Refer to Day Reporting Center.
Community Control Condition (16): Failure to maintain approved schedule – unapproved absence from required location (negligence in getting home late, stopping at store on way home without permission)	1. Up to sixteen (16) hours of community service work as directed by the probation officer. 2. Two (2) days Sheriff's work crew within 30 days. 3. Two (2) weekends county jail or four (4) days. 4. Refer to Day Reporting Center.

4. ALTERNATIVE SANCTIONS PROGRAM PROCESS

A. The probation or community control officer shall inform offenders who have committed violations enumerated in section 3 that they may participate in the Alternative Sanctions Program for administrative disposition of the violation. No offender is required to participate in the Alternative Sanctions Program and may opt for a formal violation of probation or community control proceeding in circuit court.

B. If the offender admits the violation, agrees to accept the administrative sanction(s) recommended by the probation officer, and agrees to waive his/her formal violation hearing, the probation officer will prepare an "Alternative Sanctions Program Technical Violation Notification", which will provide details of the circumstances of the technical violation that occurred and the probation officer's recommended sanction, based on the sanctions listed in the approved matrix. If the offender agrees to participate in the Alternative Sanctions Program, he/she will sign the second section of this form titled "Alternative Sanctions Program Waiver of Formal VOP/VOCC Hearing, Admission of Violation, and Acceptance of Sanctions", which will be submitted to the Court once the probation officer signs and dates the form. *The offender's admission to the technical violation shall not be used as evidence in subsequent proceedings.*

C. The judge shall review the "Alternative Sanctions Program Technical Violation Notification" and waiver form submitted and, if the judge agrees that the technical violation should be addressed via the Alternative Sanctions Program and agrees with the recommended sanction, the judge will sign the "Order - Alternative Sanctions Program". If the judge does not agree with the particular sanction recommended by the officer or does not agree that the technical violation should be addressed via the Alternative Sanctions Program, the judge shall reflect further instructions on the order.

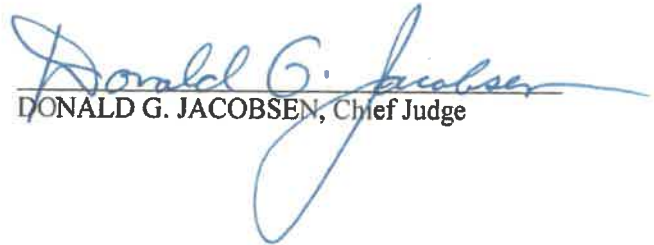
D. Upon court approval, the probation officer will instruct the offender on the sanction imposed by the court and instruct the offender to take actions necessary to ensure the sanction is executed immediately. Failure to complete the imposed sanction as instructed will result in a violation report, affidavit and Warrant and/or Notice to Appear

being submitted to the court *for the original technical violation. Failure to complete the agreed to alternative sanctions shall not be a part of any violation.*

5. **ADMINISTRATION.** The Alternative Sanctions Program shall be administered by the Tenth Judicial Circuit Court and the Florida Department of Corrections.

6. **EFFECTIVE DATE.** This order shall take effect upon entry.

DONE and ORDERED in chambers at Bartow, Polk County, Florida, on this 27th day of June, 2016.


DONALD G. JACOBSEN, Chief Judge

Copies furnished to:

All Judges

Polk County Clerk of Courts

Hardee County Clerk of Courts

Highlands County Clerk of Courts

Office of the State Attorney

Office of the Public Defender

Office of Regional Conflict Counsel

Department of Corrections

Electronic Bar Mailing

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY,
FLORIDA.

ADMINISTRATIVE ORDER NO:
16-17-B
SUPERSEDES 13-27-B

IN RE: CRIMINAL - ALTERNATIVE SANCTIONS PROGRAM

Whereas, there is a substantial number of technical violations that do not involve a new arrest or other serious violations; and,

Whereas, arresting and incarcerating certain non-violent offenders for minor violations of probation or community control is both expensive and nonproductive; and,

Whereas, there is research to support that recidivism may be reduced by utilizing collaborative efforts among the courts, probation and law enforcement to hold the offender accountable and apply swift and certain sanctions for technical violations of probation or community control; and

Whereas, an administrative option for processing technical violations will have the potential to offer benefits including:

- Reducing the court docket of probation and community control violation hearings;
- Reducing the workload of prosecutors and defense attorneys involved with many technical violation hearings;
- Reducing law enforcement resources required to serve violation warrants for certain technical violations;
- Reducing jail population for offenders pending violation hearings; and
- Offering the offender an alternative to a violation hearing in court, which will allow the offender to remain engaged in employment, school, treatment, etc. and allow the offender to take immediate responsibility for his/her actions and consequences of those actions

NOW, THEREFORE, IT IS ORDERED:

1. **ALTERNATIVE SANCTIONS PROGRAM:** There is created in Brevard County a program that shall be known as the Alternative Sanctions Program.
2. **ELIGIBILITY:** To be eligible for the program, offenders must have been placed on probation or community control under the supervision of the Department of Corrections

by a judge in Brevard County, have stable community ties, and have a stable residence in Brevard County, Florida. Offenders who are eligible for the program include probation offenders, drug offenders, and community control supervision offenders. The program only applies to offenders who have committed certain technical violations addressed in the Alternative Sanctions Program Violation/Sanction Matrix included in this order. The threat an offender poses to public safety is the most important factor in determining eligibility. Offenders with a lengthy or violent criminal history, including sex offenders, are not eligible to be in the program. Additionally, offenders who have new law violations, are absconders, or have violated a "no contact" condition of supervision are not eligible for the program. No offender who has three or more previous violations is eligible for the program.

3. **QUALIFYING TECHNICAL VIOLATIONS AND APPROVED SANCTIONS:** The following matrix lists the specific technical violations that may be addressed through the Alternative Sanctions Program process for offenders who were sentenced in Brevard County, Florida. Each technical violation includes a list of sanctions determined and approved by the court for the probation officer to select from when reporting these technical violations, based on the individual offender's circumstances at the time of the violation.

ALTERNATIVE SANCTIONS PROGRAM VIOLATION/SANCTION MATRIX

VIOLATION	APPROVED LIST OF SANCTIONS
Condition (1): Reported late; failed to report as instructed	1. Weekly call in for 6 weeks 2. Daily call in for 30 days 3. Report 2x a month for 60 days 4. Thinking for Change program through DOC 5. Attend Good will job club class
Condition (3): Failed to report changes in residence or employment without first procuring the officer's consent (or notifying immediately if evicted from residence or laid off from job)	1. Weekly call in for 6 weeks 2. Twice a month reporting for 3 months 3. Weekly reporting for 6 weeks 4. Attend Good will Job club class 5. Attend a Lifeskills class as directed by DOC 6. Thinking for Change program through DOC 7. Participate in 3 sessions with DOC Employment Specialist.
Condition (3): Failed to request permission prior to leaving the county	1. Weekly call in for 6 weeks 2. Twice a month reporting for 60 days 3. Weekly reporting for 6 weeks at discretion of PO. 4. Participate in one weekend at the Brevard County Sheriff's Office work farm.*
Condition (6): Found to be associating with person(s) engaged in criminal activity	1. Curfew from 8 p.m. to 6 a.m. for 90 days (can be modified by PO for treatment or work purposes) 2. Weekly call in for 6 weeks 3. 25 hours public service work 4. Thinking for Change class through DOC 5. Attend a Lifeskills class as directed by DOC 6. Attend the GED program if deemed

	appropriate through PO 7. Participate in 3 sessions with DOC Employment Specialist 8. Attend Good will job club class 9. Participate in 2 weekends at the Brevard County Sheriff's Office work farm.*
Condition (7): Positive drug test for non-prescribed drugs (first occurrence)	1. Drug evaluation and successfully complete treatment determined necessary 2. Increase level of treatment program up to and including residential 3. Curfew from 8 p.m. to 6 a.m. for 90 days (can be modified by PO for treatment or work purposes) 4. Thinking for Change class through DOC 5. Attend a Lifeskills class as directed by DOC 6. Participate in 2 weekends at the Brevard County Sheriff's work farm *
Condition (7): Positive drug test for non-prescribed drugs (second occurrence)	1. Drug evaluation and successfully complete treatment determined necessary 2. Increase level of treatment program up to and including residential 3. Curfew from 8 p.m. to 6 a.m. for 90 days (can be modified by PO for treatment or work purposes) 4. Thinking for Change class through DOC 5. Attend a Lifeskills class as directed by DOC 6. Participate in 2 weekends at the Brevard County Sheriff's work farm*
Condition (8): Failure to maintain employment	1. Weekly reporting with Job Search logs until employed 2. Daily reporting with job search logs until employed 3. Curfew from 8 p.m. to 6 a.m. for 90 days (can be modified by PO for treatment or work purposes) 4. Attend 3 sessions with the DOC Employment Specialist 5. Attend the Good will job club class 6. Thinking for Change class through DOC 7. Participation in the GED program through DOC 8. Attend a Lifeskills class as directed by DOC 9. Participate in 3 weekends at the Brevard County Sheriff's office work farm.*
Condition (9): Failure to comply with officer's instructions (depending on nature of instruction and reason for not complying, consequence will vary)	1. Weekly call in for 4 weeks 2. 8 hours Community service work 3. Thinking for Change class through DOC 4. Attend a Lifeskills class as directed by DOC 5. If employment related, participate in three sessions with DOC Employment Specialist

	6. Attend Step Forward/Job Skills class 7. Participate in 1 weekend at the Brevard County Sheriff's work farm *
Condition (10): Failure to pay monthly monetary obligations as stipulated by the Court	1. If unemployed-daily job search 2. If employed-monthly budgeting 3. Curfew from 8 p.m. to 6 a.m. (can be modified by PO for treatment or work purposes) 4. Weekly call in until monetary obligations are current 5. Extend probation to auto term upon completion of all conditions* 6. Attend Lifeskills class as directed by DOC. 7. Participate in three sessions with DOC Employment Specialist 8. Participation in GED program as directed by PO 9. Attend Good will job club class
Condition (11): Failure to submit to random testing as directed	1. Weekly reporting by 11 am 2. Reporting 3 times per week by 11 am 3. Curfew from 8 p.m. until 6 a.m. for 90 days (can be modified by PO for treatment or work purposes) 4. Attend Lifeskills class as directed by DOC 5. Substance abuse evaluation and treatment determined necessary 6. Thinking for Change class through DOC
Special Condition (1): Failure to attend treatment evaluation or treatment session as scheduled	1. Curfew from 8 p.m. to 6 a.m. until evaluation is completed 2. Weekly reporting until evaluation is completed 3. Daily call in until evaluation is completed 4. Thinking for Change class through DOC
Special Condition (8): Failure to complete community service hours as instructed	1. Daily reporting until community service hours completed/current, if unemployed 2. Weekly reporting until community service hours completed/current, if employed 3. Enrollment in Thinking for Change class through DOC
Special Condition (9): Failure to remain at residence during curfew period	1. Weekly reporting for three months 2. Electronic Monitoring for 30 days 3. Participate in 2 weekends at the Brevard County Sheriff's work farm*
Community Control Condition (16): Failure to maintain approved schedule – unapproved absence from required location (negligence in getting home late, stopping at store on way home without permission)	1. Electronic Monitoring for 30 days 2. 10 Hours Community Service work 3. 20 Hours Community Service work 4. Thinking for Change class through DOC 5. Attend Lifeskills class as directed by DOC. 6. Participate in 2 weekends at the Brevard County Sheriff's work farm*

*Weekends at the work farm are to be considered a Saturday and Sunday at a minimum of 8 hours each day.

4. **ALTERNATIVE SANCTIONS PROGRAM PROCESS**

- A. The probation or community control officer shall inform offenders who have committed violations enumerated in section 3 that they may participate in the Alternative Sanctions Program for administrative disposition of the violation. No offender is required to participate in the Alternative Sanctions Program and may opt for a formal violation of probation or community control proceeding in Circuit Court.
- B. If the offender admits the violation, agrees to accept the administrative sanction(s) recommended by the probation officer, and agrees to waive his/her formal violation hearing to modify his/her sentence, the probation officer will prepare an "Alternative Sanctions Program Technical Violation Notification", which will provide details of the circumstances of the technical violation that occurred and the probation officer's recommended sanction, based on the sanctions listed in the approved matrix. If the offender agrees to participate in the Alternative Sanctions Program, he/she will sign the second section of this form titled "Alternative Sanctions Program Waiver of Formal VOP/VOCC Hearing, Admission of Violation, and Acceptance of Sanctions", which will be submitted to the Court once the probation officer signs and dates the form.
- C. The judge shall review the "Alternative Sanctions Program Technical Violation Notification" and waiver form submitted and, if the judge agrees that the technical violation should be addressed via the Alternative Sanctions Program and agrees with the recommended sanction, the judge will sign the "Order - Alternative Sanctions Program". If the judge does not agree with the particular sanction recommended by the officer or does not agree that the technical violation should be addressed via the Alternative Sanctions Program, the judge shall reflect further instructions on the order.
- D. Upon court approval the probation officer will instruct the offender on the sanction imposed by the court and instruct the offender to take actions necessary to ensure the sanction is executed immediately. Failure to complete the imposed sanction as instructed will result in a violation report, affidavit and warrant being submitted to the court.

5. **ADMINISTRATION.** The Alternative Sanctions Program shall be administered by the Brevard County Circuit Court and the Florida Department of Corrections.

DONE and ORDERED this 7th day of June, 2016.

JOHN D. GALLUZZO
JOHN D. GALLUZZO
CHIEF JUDGE

Distribution:

All Circuit and County Judges (Brevard County)
Court Administration (Brevard and Seminole Counties)
Clerk of Court (Brevard County)
State Attorney (Brevard County)
Public Defender (Brevard County)
Sheriff (Brevard County)
Bar Association (Brevard County)
Law Library (Brevard County)
Department of Corrections

Cox, Ryan

From: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Sent: Thursday, February 22, 2018 1:54 PM
To: Cox, Ryan
Cc: Torres, Jared; Taylor, Chris
Subject: FW: Alternative sanctioning data
Attachments: SKM_C36818010512560.pdf

Ryan,
We are still waiting on the other information, but will get it to you as soon as possible.

Do any of the circuits offer jail for an option in the ASP?

- 2 Circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff's Work Farm.

45 or 46 counties?

- 45 is the correct number

Thanks,
Scotti

From: Vaughan, Scotti [<mailto:Scotti.Vaughan@fdc.myflorida.com>]
Sent: Wednesday, February 21, 2018 4:44 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Cc: Torres, Jared <Jared.Torres@fdc.myflorida.com>; Taylor, Chris <WillardChris.Taylor@fdc.myflorida.com>
Subject: FW: Alternative sanctioning data

Ryan,

See below per your request. Miami-Dade, Orange, Osceola and Broward should be effective by the end of March. The Department is waiting for signed administrative orders.

Thanks!

Region	Circuit	County	Effective Date	# ASP's since effective date – as of 02/15/2018
3	12	Sarasota & Desoto	2/1/13	735 circuit total
3	12	Manatee	3/1/13	
3	18	Seminole	4/10/13	315 circuit total
3	18	Brevard	6/19/13	
4	15	Palm Beach	5/2/13	101
3	06	Pinellas Pasco	12/23/14 9/9/16	172
2	08	Alachua	5/27/15	220 circuit total

		All remaining (5) counties	5/19/16	
2	07	All 4 counties	7/1/15	175
3	13	Hillsborough	7/1//16	130
2	03	All 7 counties	7/1/16	107
3	10	All 3 counties	6/27/16	314
1	14	All 6 counties	7/29/16	79
4	19	All 4 counties	1/3/17	9
2	04	Duval	9/1/17	14
3	05	All 5 counties	1/1/18	
	13 total	45 total		2371 total

Thanks,

Scotti

Scotti P. Vaughan
Deputy Legislative Affairs Director
Florida Department of Corrections
Office: 850.717.3041
Cell: 850.688.7432
Email: scotti.vaughan@fdc.myflorida.com

Begin forwarded message:

From: "Cox, Ryan" <Cox.Ryan@flsenate.gov>
Date: February 21, 2018 at 1:36:14 PM EST
To: "Jared.Torres@fdc.myflorida.com" <Jared.Torres@fdc.myflorida.com>
Subject: Alternative sanctioning data

Jared,

Can you send me the numbers for, or point me to the direction of a report/document, the number of technical violations you all had the last two FYs, the number of those that went through ASP, and how many counties

have implemented an ASP?

Thanks!

Sent from my iPhone

Our Vision: "Inspiring success by transforming one life at a time."

Our Vision: "Inspiring success by transforming one life at a time."

Cox, Ryan

From: Tabitha Krol <tkrol@flsheriffs.org>
Sent: Friday, February 23, 2018 9:43 PM
To: Cox, Ryan; Matt Dunagan
Subject: Re: Fiscal Impact

That is the correct fiscal impact. Have a great weekend!

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Cox, Ryan" <Cox.Ryan@flsenate.gov>
Date: 2/23/18 7:05 PM (GMT-05:00)
To: Matt Dunagan <mdunagan@flsheriffs.org>
Cc: Tabitha Krol <tkrol@flsheriffs.org>
Subject: RE: Fiscal Impact

Thank you very much! Have a great weekend.

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

From: Matt Dunagan [mailto:mdunagan@flsheriffs.org]
Sent: Friday, February 23, 2018 7:05 PM
To: Cox, Ryan <Cox.Ryan@flsenate.gov>
Cc: Tabitha Krol <tkrol@flsheriffs.org>
Subject: RE: Fiscal Impact

Ryan,

I am copying Tabitha to this email. She sent a brief statement to the House and I have included it below. Tabitha can also confirm if this was the final statement we sent to the House.

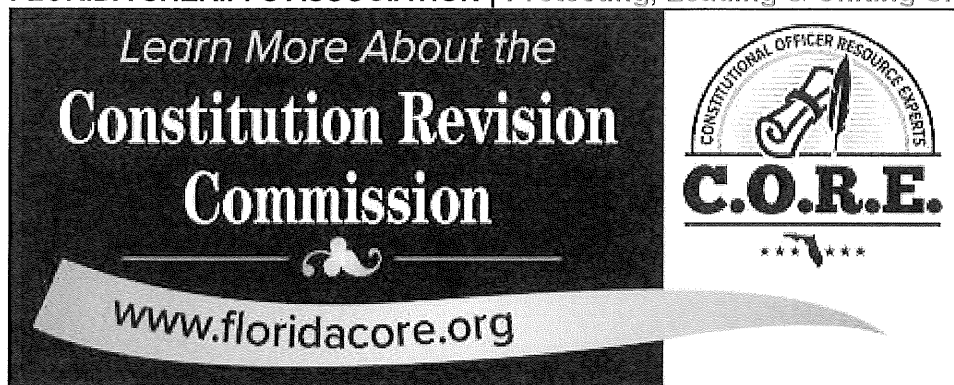
HB 7071 would have a significant indeterminate fiscal impact for sheriffs' offices across the state. Jail information management systems differ for all jails. Each system may not currently collect all of the data HB 7071 requires. Some systems may need to be updated in order to collect the data required. In addition, interfacing the jail management systems with FDLE will also be problematic as each system is different. Sheriffs' offices with databases using Microsoft Access or other commercially available templates may need to manually submit data or face other interfacing issues. These offices may need to hire an additional FTE to input the data weekly or require additional funding to create a new system for the data collection required by HB 7071. Most sheriffs' offices have several units within their jails that would collect a portion of this data, but a smaller agency would likely need a dedicated FTE to perform this duty.

Matt Dunagan, Deputy Executive Director of Operations

(850) 877-2165 x. 212 (office)

(850) 274-3599 (cell)

FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.



From: Cox, Ryan [<mailto:Cox.Ryan@flsenate.gov>]

Sent: Friday, February 23, 2018 7:02 PM

To: Matt Dunagan <mdunagan@flsheriffs.org>

Subject: RE: Fiscal Impact

Good evening. Sorry to bother so late, but did you all prepare an analysis on HB 7071 or HB 7089? I see a citation to a fiscal impact statement from FSA in some of the data collection portions of the House analysis, but nothing is uploaded to ABARS. Can you please send it to me? Thanks.

Sincerely,

Ryan C. Cox

Senior Attorney

Senate Committee on Criminal Justice

(850) 487-5192

From: Matt Dunagan [<mailto:mdunagan@flsheriffs.org>]

Sent: Friday, February 23, 2018 9:33 AM

To: Cox, Ryan <Cox.Ryan@flsenate.gov>; Tabitha Krol <tkrol@flsheriffs.org>

Cc: (Pinellas) Sheriff Bob Gualtieri <rgualtieri@pcsonet.com>

Subject: RE: Fiscal Impact

Ryan,

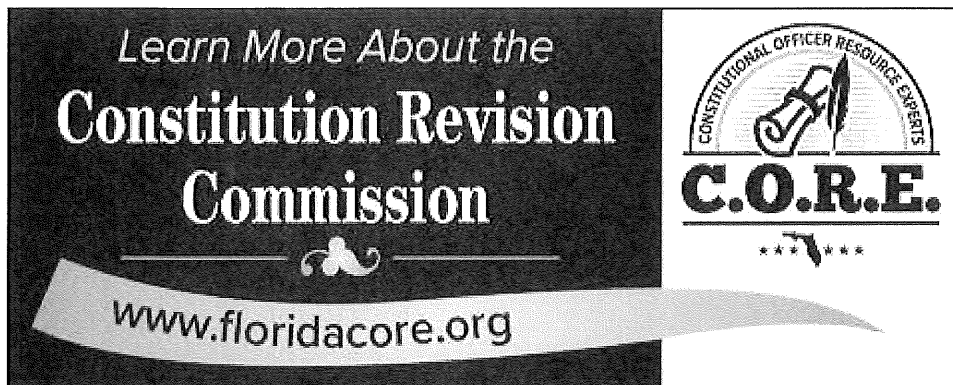
Yes, I was able to confirm that a deputy can run a driver license, warrant, or person query in FCIC and the results will include information on whether the individual is currently on state probation. FCIC will not include the specific terms of probation unless DOC uploaded those terms into the system.

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FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.



From: Cox, Ryan [<mailto:Cox.Ryan@flsenate.gov>]

Sent: Thursday, February 22, 2018 10:27 PM

To: Tabitha Krol <tkrol@flsheriffs.org>; Matt Dunagan <mdunagan@flsheriffs.org>

Subject: Fiscal Impact

Can you please discuss the fiscal impacts for the data collection pieces and the FCIC probation conditions provision and the courthouse security provision, if any. Thank you.

Sincerely,

Ryan C. Cox

Senior Attorney

Senate Committee on Criminal Justice

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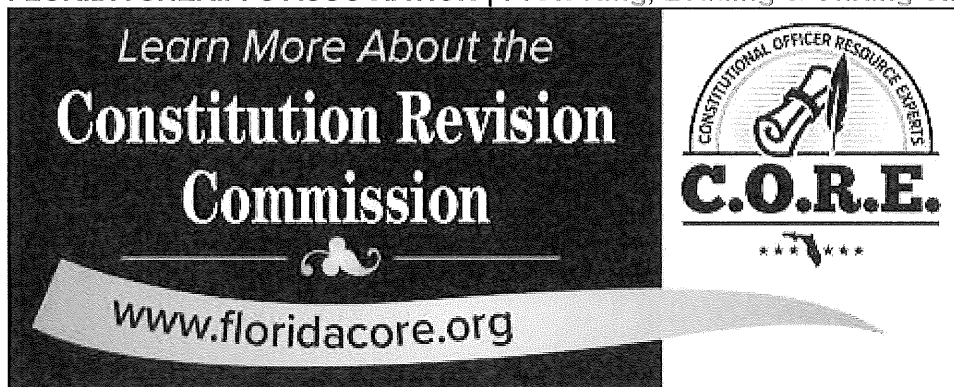
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To: Cox, Ryan <Cox.Ryan@flsenate.gov>; Tabitha Krol <tkrol@flsheriffs.org>

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Subject: RE: Fiscal Impact

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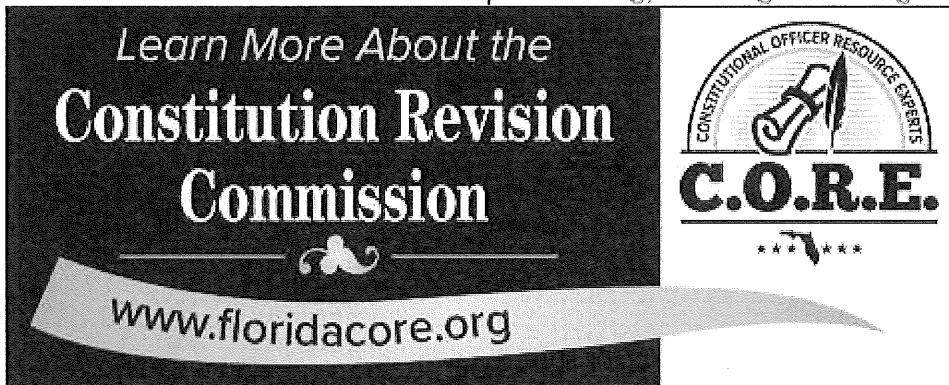
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Sent: Thursday, February 22, 2018 10:27 PM

To: Tabitha Krol <tkrol@flsheriffs.org>; Matt Dunagan <mdunagan@flsheriffs.org>

Subject: Fiscal Impact

Can you please discuss the fiscal impacts for the data collection pieces and the FCIC probation conditions provision and the courthouse security provision, if any. Thank you.

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192

Cox, Ryan

From: Roberts, Gregory <Gregory.Roberts@fdc.myflorida.com>
Sent: Friday, February 23, 2018 1:37 PM
To: Cox, Ryan
Cc: Vaughan, Scotti
Subject: FW: FCIC Special Conditions

Ryan,

Below is the first 18 conditions by priority that goes to FDLE to be put on the FCIC.

The DOC currently includes the specified conditions of probation for each probationer in the data it sends to FDLE. :

- Sex offender curfew;
- Drug offender curfew;
- Curfew for non-sex offenders;
- Remain confined to approved residence;
- No unsupervised contact with minors;
- No work or volunteer work with children;
- Do not live or work within 1,000 feet of school or bus stop;
- Submit to search;
- No driving or drivers license revoked or suspended;
- Driving for employment only;
- No bars or places sell alcohol by the drink;
- No alcohol or illegal drugs;
- No contact with victim or victim's family;
- No pornographic material;
- Restrictions to enter or leave a city;
- No employment that involves handling money;
- No post office box;



2018 AGENCY LEGISLATIVE BILL ANALYSIS

BILL NUMBER:	SB 1222
BILL TITLE:	Inmate Reentry Program
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2018

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 18, 2018
LEAD AGENCY ANALYST:	Kerensa Lockwood
ADDITIONAL ANALYST(S):	Maggie Agerton, Lee Adams, Amy Datz, David Ensley, Sibyle Walker
LEGAL ANALYST:	Ryan Padgett
FISCAL ANALYST:	Greg Holcomb

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill requires the Department of Corrections (FDC or Department) to develop a reentry program for nonviolent, low-risk inmates with substance use, mental health, or co-occurring disorders. The reentry program must include in-prison treatment and community aftercare. Participants must be recommended by the sentencing court and appear in the sentencing orders. The Department is required to develop eligibility criteria for participation, consider court recommendations, and provide written notification of the inmate's admission to the sentencing court. The bill requires the Department to develop a post-release treatment plan before the inmate completes the in-prison treatment.

The bill stipulates that inmates who successfully complete the in-prison treatment portion of the program will be immediately transitioned to the community on drug-offender-mental health probation. The Department may still collect cost of supervision and requires the inmate to comply with all conditions of release. If available and willing, the Department will attempt to transfer cases to drug or mental health courts in the county of the releasee.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Department's reentry strategies provide a holistic approach including but not limited to educational programs, vocational training, and substance abuse/mental health treatment while maintaining a commitment to public safety.

Presently, inmates are assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS). CINAS is based on the Risk-Needs-Responsivity Principle (RNR). The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of needⁱ. Criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions is provided that target the specific crime producing needs of offenders who are higher risk.

The Department's use of CINAS allows for development and implementation of programs that increase the likelihood of successful transition. The Department matches factors that influence an inmate's responsiveness to different type of services with programs that are proven to be effective within an inmate population. This involves selecting services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.ⁱⁱ By applying this principle, the Department avoids focusing resources on individuals who may not be equipped to handle specific behavior problems, and ensures the most appropriate treatment-setting possible is being assigned, based on an inmate's characteristics.

CINAS is designed to allow for a flow of information between the Department's Office of Community Corrections and Department's Office of Institutions. For instance, when an inmate is received at a Reception Center, the staff has access to detailed information about prior supervision history. Likewise, if an inmate is released to community supervision, Probation Officers will have access to an offender's incarceration history and relevant release information. This information will be used to better serve the offender and prepare them for successful transition back into the community.

CINAS is administered twice during an inmate's incarceration depending on sentence length – once when they are received at their initial parent institution and once again at 42 months from release. Updates are conducted every 6 months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs.

The Florida Supreme Court in Gibson v FDC, 885 So.2d 376 (Fla. 2004), identified 6 statutory sentencing options in Florida: (1) a period of confinement (jail or prison); (2) a "true split sentence" consisting of a total period of confinement with a portion of the confinement period suspended and the defendant placed on probation for that suspended portion; (3) a "probationary split sentence" consisting of a period of confinement, none of which is suspended, followed by a period of probation; (4) a *Villery* sentence, consisting of a period of probation preceded by a period of confinement imposed as a special condition; and (5) straight probation; (6) a "reverse split sentence", a period of probation followed by a period of incarceration.

There are also existing statutes that allow courts to modify sentences to probation terms upon completion of in-prison programming. Both involve youthful offenders: s. 958.045, F.S., (completion of basic training program, "boot camp")

and ss. 958.04(2)(d), F.S., (completion of youthful offender program). Each of these options require a court order to bring to an end the prison term and initiate probation. The term of supervision and the conditions are specified by the court. In addition, the Department can extend the limits of an inmate's confinement to allow a sentence to continue being served outside of a prison setting (s. 945.091, F.S.).

Presently, the Department provides inmates with comprehensive health care services including mental health care and substance use treatment through separate contracts with different service providers.

2. EFFECT OF THE BILL:

The bill creates a reentry program specifically designed to focus on nonviolent offenders' substance use and/or mental health needs. The program would provide an individual with a period of incarceration and treatment followed by drug offender probation for the remaining 24 months of their court ordered sentence. The sentencing court will provide recommendations for offender participation in the program (lines 85-90). It is difficult to project how often the court will recommend offenders that are subsequently approved by the Department. The reentry program is split into two phases:

1. The nonviolent, low-risk offender begins the program while in prison and must have satisfactory performance in the treatment phase of the program before participation may begin in the second phase;
2. Upon satisfactory performance in the first phase, the offender's sentence is modified from the original sentence imposed to place the offender on drug offender-mental health probation subject to successful completion of the last 24 months of their sentence.

Currently, there are approximately 2,568 inmates that would likely meet the eligibility criteria providing the inmate is approved by the Department for the reentry program, based on those in need of substance use or mental health treatment, in minimum or community custody status, and criminal history criteria (lines 103-109 and 128-142).

The bill grants the Department discretion to decline to put an inmate in the program, "for good cause" (lines 149-151), but the bill also says the court "orders" participation as part of the sentence (line 88). The bill also refers to a court "recommendation" for the program (line 99). Once the inmate completes the program, he/she must be "immediately transitioned" to community supervision (line 180). No additional court order is necessary to be transitioned to community supervision. These separate statements need to be reconciled for the sake of clarity. For the Department to release an inmate from a sentence, there needs to be an order issued at some point in the process, not just a recommendation. The order can be a part of the initial sentence, or it can be issued after program completion, but the court's intent needs to be clear.

The bill contains a confusing statement in regard to credit for time under supervision satisfying an 85% minimum service date required by s.944.275(4)(b)3. Section 948.06(3) provides, "No part of the time that the defendant is on probation or in community control shall be considered as any part of the time that he or she shall be sentenced to serve." The bill, on the other hand, at lines 212-214, states, "Time spent on probation as part of the reentry program shall be considered in-custody time in calculating the 85 percent requirement of s. 944.275." By making time on supervision count as "in-custody time" toward the 85% date, which is a date calculated in relation to a prison sentence, this provision blurs the lines between supervision time and prison time, contrary to current law.

If time on supervision counts toward the 85% minimum time to serve in prison, a violator can make a plausible claim that the probation time also counts against a sentence imposed following revocation of supervision. This could significantly diminish the penalty associated with a violation since the prison term imposed could be partially served while in the community under supervision. The Department will follow the established law and decline to make apply time under supervision against any prison term imposed for a violation, but this given the language in the bill this will likely be litigated.

Another phrase in the bill also confuses prison time and probation time. The bill speaks of probation "*during* the last 2 years of the sentence" (lines 89-90). This suggests that the sentence continues during probation (i.e., prison as a condition of probation). If supervision occurs "*during* the sentence", it would logically end on the tentative release date (TRD) when the sentence ends. The TRD is the release date with gain time factored in. But that date may not allow for service of the intended 2 years of supervision. Thus, the interaction between gain time earned in prison and the supervision term date needs to be clarified. Additionally, clarification as to whether gain time will be earned on supervision is also likely required.

Overall, there would be an increase in work load for the Department's Bureau of Admission and Release, classification officers, institutional release officers, and probation officers. The impact would depend on the number of inmates reviewed for participation, and the number of program participants granted sentence modification by the courts. At this time, the Department is unable to determine the potential need for additional substance use and

mental health counselors due to the variables requiring judiciary recommendation and the availability of in-prison substance use slots and mental health program services. Additionally, the bill may increase the amount of court ordered referrals to Department funded community based residential and outpatient programs. The Department has limited funding for community based treatment programs and the waiting lists for these programs may increase depending on the number of inmates whose sentence is modified with conditions of supervision that include program participation.

Lines 85-96: The bill outlines that “an eligible, nonviolent, low-risk inmate, who poses a minimal foreseeable risk to the public and for whom the reentry program has been ordered as part of his or her sentence, may be transitioned into the community during the last 2 years of the sentence. The reentry program consists of at least 90 days of participation in an in-prison treatment program for substance use, mental health, or co-occurring disorders, followed by a community-based aftercare treatment program. In-prison treatment may be operated in secure areas within or adjacent to an adult institution, a community residential facility, or a work release center.” There is no defined or stated size for this reentry program. The bill does not state that it will be held at a specific number of facilities nor are there a specific number of slots mandated.

Presently, the Department provides inmates with comprehensive health care services including mental health care and substance use treatment through separate contracts with different service providers. While the Department does have mental health, mental health aftercare, and substance use treatment services separately, there is not currently an integrated program for co-occurring disorders. Evidence-based practices for a co-occurring treatment programs include *integrated* services – one clinical chart, one treatment plan that addresses both mental health and substance use needs and one professional specializing in both area working with the client. Presently, the Department does not have a program like this and implementing one would require additional resources in addition to new procurement and/or modification of health care contracts.

Lines 90-93: The bill sets forth a minimum time limit necessary to complete the program, 90 days, but does not otherwise define successful completion. Currently, the Department’s intensive substance use treatment ranges from 120 to 180 days’ dependent upon the individual inmates needs and progress in the program.

Lines 104-109: The type of inmate targeted for placement into this program is in conflict with the type of inmate targeted for current program placements. As stated in the present situation, the Department currently targets inmates who are moderate to high risk of reoffending for programming. Inmates that meet the criteria for this reentry program fall outside the targeted moderate to high risk inmates currently prioritized for programming.

Line 89-90 & Line 180-182: These lines seem to contradict one another. The first reference of the bill states that the person **may** transition to the community for the last 2 years of sentence. The second reference states that the inmate **shall** immediately transition into the community for the last 24 months of their sentence.

Line 88, Line 133-134, & Line 98-100: These lines also seem to contradict one another. The first and second references state the inmate **must be court-ordered** to the reentry program to be eligible. The third reference states the sentencing **court must recommend** participation in the program.

Lines 178-182: The bill states that “following completion of the in-prison treatment program, the inmate shall be immediately transitioned into the community on drug offender-mental health probation for the last 24 months of his or her sentence.” This stipulation will increase the number of offenders on drug offender-mental health probation. Pursuant to s. 948.001(5) and (6), F.S., drug offender-mental health probation caseloads should be restricted to a maximum of 50 per cases per officer in order to ensure an adequate level of staffing and supervision. At this time, the Department is unable to determine the potential impact for additional drug offender-mental health probation officers due to the variables requiring judiciary recommendation, order modification, and the availability of in-prison program treatment slots. However, there will likely be a need for additional mental health probation officer.

In regards to individuals with mental health issues, the Department has Health Service Bulletin 15.05.21 Mental Health Re-Entry Aftercare Planning Services, in which, the Department arranges for continuity of post-release care for inmates who are receiving psychiatric care for the disabling symptoms of a mental disorder. Additionally the Department ensures that inmates with milder forms of mental disorder are counseled according to clinical need in preparation for their reentry into the community after release from prison. This process begins approximately 150 days prior to an inmate’s release when a Department Institution Re-Entry Specialist is assigned. The specialist initiates a series of activities on behalf of the inmates and with the inmate’s written consent, which is intended to facilitate the continuity of necessary mental health care and adequate adjustment when the inmate is released to the community.

Line 205-206: "As appropriate or unless waived by the department." May be needed to address ambiguity. As written, it says the inmate will pay cost of supervision and then in the following lines for the other costs, it says if financially able.

Line 212-214: "Time spent on probation as part of the reentry program shall be considered in-custody time in calculating the 85 percent requirement of s. 944.275, F.S." Clarification may be needed as the rest of the bill requires the inmate to be on community supervision for 24 months. If the inmate is receiving gain time, it may result in some kind of credit on the FDC term which could result in serving less than 24 months

Line 217-219: Clarification may be needed on what kind of special training. The in-prison part of the program is not inherently different from our current substance use and mental health treatment programs.

Line 223-225: This requirement would involve a business case plan to ensure that the contracted services would result in substantial savings. A definition may be needed on what substantial savings means.

Line 236-240: The Department would likely not be able to report on recidivism and recommitment of program participants until October 2020, given the length of time it would take a participant to complete the in-prison and community-based components of the program.

There does not appear to be a separation of powers issue with this bill. The bill requires that if an inmate is to participate in the Program, the sentencing court must grant approval at the time of the initial sentencing. However, FDC's final decision to allow the inmate to serve the last two years of his sentence on probation in accordance with that recommendation would be better protected if court were also required to enter an order modifying the sentence prior to the inmate's actual release from prison.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? **Y** ☒ **N** ☐

If yes, explain:	Yes, lines 243-244 states that the Department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.
Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☒ **N** ☐

If yes, provide a description:	Line 238-242: The Department is required to submit an annual report of the results collected to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
Date Due:	October 1, 2019, and on each October 1 thereafter.
Bill Section Number(s):	Line 238-242

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	N/A
Expenditures:	Additional resources will be needed to develop and implement an integrated co-occurring program. The added resources are currently indeterminate until a needs assessments can be done (i.e. which inmates will be admitted and what level of service they will require). Lines 217-219 reference the need for special training and there will likely be a need to increase contracted services funding Finally, the Department currently provides inmates with comprehensive medical services, mental health care and substance use treatment through separate contracts with different service providers. Additional procurements and/or modifications to existing contracts may be required.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	Indeterminate.
Expenditures:	Indeterminate.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?**Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There may be technology impact to include programming changes to create the new reentry program. There will also need to be updates to current programs and possible impact to the admissions and release calculator. Cost Estimate Estimated Hours: 300 Estimated Cost Per Hour: \$85.00 Estimated Total Cost: \$25,500
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FEDERAL IMPACT**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?**Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
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ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A
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ⁱ Taxman, F.S. & M Thannner (2006) Risk, Need, and Responsivity (RNR): It all depends. *Crime & Delinquency* 52:1

ⁱⁱ Joplin, L., Bogue, B., Campbell, V., Carey, M., Clawson, E., Faust, D., Florio, K., Wasson, B., and W. Woodward. (2004) Using an Integrated Model to Implement Evidence-based Practices in Corrections. International Community Corrections Association and American Correctional Association.

ENTREPRENEURSHIP EDUCATION PROGRAM AT HARDEE CORRECTIONAL INSTITUTE

COURSE DESCRIPTION AND OBJECTIVES:

This course provides an introductory overview of the knowledge and skills needed for the identification, evaluation, and exploitation of opportunities in a variety of circumstances and environments. The course focuses on developing a proactive and effective way for participants/inmates to determine and pursue their goals. The course emphasizes the ways that entrepreneurs think about their situations, and how their mindset affects their ability to find opportunities. It also helps participants/inmates to gain an understanding of business decision making within the constraints of a small business.

The topic of entrepreneurship/small business management is an exciting and important one. For those participants/inmates who decide to pursue a career as an entrepreneur upon release from prison, this course will provide some knowledge and skills required to help you succeed. For those who may be undecided, or perhaps committed to a more “traditional” career, many ideas covered in this course will have value within that more structured business setting. It is important to note that the process of identifying and pursuing opportunity in the face of limited resources, the hallmark of the small business owner, has become increasingly important to restoring and maintaining the competitive position of many U.S. industries in the international marketplace.

COURSE PARTICIPANT LEARNING OUTCOMES:

Upon completion of the course, participants will be able to:

1. Develop an understanding of the elements of the entrepreneurial process.
2. Apply the entrepreneurial process to real life of small business owners.
3. Develop an appreciation of self-employment or becoming an entrepreneur as an economic viable option.

COURSE CONTENT AND METHODOLOGY OF INSTRUCTION:

A. Methodology of Presentation

The application of entrepreneurship/small business management concepts will be practiced using a variety of methods including lecture materials, class discussions, case analyses and presentations.

B. Class Outline by Topic (subject to change from time to time)

Session 1: Introduction

The importance of small business in the U.S. economy
The revolutionary impact of entrepreneurship
About the entrepreneurship program
What is entrepreneurship?
Why become an entrepreneur?

Characteristics of successful entrepreneurs
Type of start-up businesses
Exercise—Am I an entrepreneur?

Session 2: Recognizing opportunities and generating ideas

Identifying and recognizing opportunities
Finding gaps in the marketplace
Techniques of generating ideas

Session 3: Feasibility analysis

Product/service feasibility analysis
Industry/Target market feasibility analysis
Organizational feasibility analysis
Financial feasibility analysis
First screen

Session 4: Writing a Business Plan

Reasons for writing business plans
Who reads the Business Plan—and what they are looking for?
Guidelines for writing a Business Plan

Session 5: Industry and competitor analysis

Studying industry trends
The Five Forces Model
Industry types and opportunities they offer
Identifying competitors
Sources of competitive intelligence
Completing a competitive analysis grid

Session 6: Developing an effective business model

How business models emerge
Potential flaws of business models
Strategic resources

Session 7: Preparing the proper ethical and legal foundation

Establishing a strong ethical culture for a business
Business permits
Business licenses
Choosing a form of business organization

Session 8: Assessing a new venture's financial strength

- Financial objectives of a firm
- The process of financial management
- Historical financial statements
- Forecasts

Session 9: Getting Financing or funding

- Why most new ventures need funding
- Sources of personal financing
- Preparing to raise debt or equity financing
- Sources of debt financing
- Sources of equity financing

Session 10: Unique marketing issues

- Segmenting the market
- Selecting a target market
- Establishing a unique position
- Branding

MEMORANDUM OF AGREEMENT
BETWEEN
THE FLORIDA DEPARTMENT OF CORRECTIONS
AND
THE UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES ON BEHALF OF THE
UNIVERSITY OF SOUTH FLORIDA SARASOTA-MANATEE

This Memorandum of Agreement ("Agreement") is between the Florida Department of Corrections ("Department"), and the University of South Florida Board of Trustees on behalf of the University of South Florida Sarasota-Manatee ("Participating Entity"), which are the parties hereto.

WITNESSETH

WHEREAS, the Department and the Participating Entity are authorized to enter into this Agreement pursuant to Section 945.04, Florida Statutes;

WHEREAS, the purpose of this Agreement is to establish the general conditions and joint processes that will enable the Department and the Participating Entity to collaborate as partners to study the effects of entrepreneurial skills on inmate behavior and the re-entry process for inmates who volunteer for participation in the program at Hardee Correctional Institution. The objective of this study is to seek understanding on the influence of entrepreneurial skills on inmate behavior in prison, post-prison, and during the re-entry process; and

WHEREAS, the Department is committed to helping participating inmates successfully transition back into their communities, as part of an effort to build a better life in the community for everyone. The need for re-entry services for the ex-offender population is great. For many years both government agencies and community-based organizations have provided programs and services to inmates who are in the custody of the Department and after they have returned to society. The services provided by these groups are a valuable supplement to existing programs provided by the Department. The Department encourages such partnerships as a means to expand the availability of community resources to a greater number of inmates and to assist with their successful post-release transition.

NOW THEREFORE, subject to controlling law, rules, regulations, or to other governing policies and/or procedures, and in consideration of the mutual interests and understandings expressed herein, the parties agree as follows:

I. TERM OF AGREEMENT

This Memorandum of Agreement shall begin the date on which it is signed by both parties, whichever is later, and shall end at midnight three (3) years from the date of execution. In the event this Agreement is signed by the parties on different dates, the latter date shall control.

This Agreement may be renewed for up to three (3) additional years, after the initial agreement term, upon the same terms and conditions contained herein, and upon agreement of both parties. Exercise of the renewal option is at the Department's sole discretion and shall be conditioned, at a minimum, on the Participating Entity's performance of this Agreement. The Department, if it desires to exercise its renewal option, will provide written notice to the Participating Entity no later than thirty (30) days prior to the Agreement expiration date. The renewal term shall be considered separate and shall require the exercise of a renewal amendment that shall be signed by both parties.

II. SCOPE OF AGREEMENT

A. Overview

The Department and the Participating Entity agree to carry out their respective duties and responsibilities outlined below, subject to controlling law, policy(ies) and/or procedure(s), and in consideration of the mutual interests and understandings expressed herein. The Department reserves the right to add or delete institutions/facilities to the locations covered under this Memorandum of Agreement upon thirty (30) days written notice. Such additions or deletions may be accomplished by formal communication letter and will not require a formal Agreement amendment. Inmate-specific records referenced herein refer to individual records organized by Department's inmate identification number.

B. Responsibilities of the Department

1. Provide the Participating Entity's Principal Investigator and Co-Investigator ("investigators") access to inmates while they are incarcerated at Hardee Correctional Institution for the purpose of study recruitment and implementation.
2. Provide inmate eligibility information to the investigators that meets the following criteria: a) inmates within six (6) months of their release date, b) inmates that are literate, and c) inmates that are English-speaking.
3. Provide the investigators with inmate-specific records from all inmates at Hardee Correctional Institution including name, age, race/ethnicity, criminal record history, sentence length, and time in prison in order to conduct secondary analyses.
4. Provide the investigators with inmate-specific records from all inmates at Hardee Correctional Institution relating to visitations, disciplinary/misconduct reports, and other program involvement in order to conduct secondary analyses. This information will be provided for the twelve (12) month period prior to the start of the entrepreneurship course and every one (1) month period following the implementation of the entrepreneurship course.
5. Work with the investigators to provide contact information for released inmates who participated in the entrepreneurship course.
6. Provide an adequate meeting space appropriate for group purposes. The Department agrees to use reasonable efforts to provide storage for equipment and/or supplies used in the program that may be difficult to transport in and out of each session.
7. Provide a private, visible room appropriate for conducting in-depth interviews with study participants.
8. Provide an orientation training session at Hardee Correctional Institution for the investigators which will include an overview of Department procedures, (including, but not limited to, Department Procedure 503.004, "Volunteers") staff, and inmates.
9. All program materials will be inspected and approved by Department security staff prior to entering and use at the designated institutions.

C. Responsibilities of the Participating Entity

1. The Participating Entity agrees to obtain approval from the Warden of an institution prior to said institution's program initiation and participation.
2. The Participating Entity shall require both investigators that participate in the program at Hardee Correctional Institution to submit to fingerprinting and complete a background check as referenced in Section VII. C., and the Department of Corrections' Volunteer's Training prior to conducting sessions. Each Participating Entity investigator shall agree to follow any and all security guidelines relevant to the Department's requirements and procedures, herein referenced as Attachment A, and other applicable Department rules, policies, and procedures.
3. The Participating Entity agrees to provide one (1) three-hour (3) class per week for ten (10) weeks for each entrepreneurship class cohort participating in the study.
4. The Participating Entity investigators shall ensure that all evaluation materials remain confidential (Refer to Section VII. D. Confidentiality).
5. The Participating Entity shall provide attendance logs, program completion logs, and post-release follow-up information to the Department's Agreement Manager regarding inmates that received services under this Agreement, when requested. Data should be inmate-specific and includes, but is not limited to, type(s) of services provided, referrals provided, and follow-up information.
6. The Participating Entity shall coordinate with the Department's Agreement Manager, through meetings, to evaluate and assess the effectiveness of the study when requested.
7. Because the Participating Entity will be performing services under this Agreement at an institutional site, the Participating Entity staff shall be screened and/or tested for tuberculosis annually as required by Department Procedure 401.015, Employee Tuberculosis Screening and Control Program.
8. The Participating Entity shall be responsible for obtaining the Tuberculosis (TB) screening/testing.
9. The Participating Entity shall provide the institutional Senior Registered Nurse Supervisor with proof of testing annually.
10. The Participating Entity shall bear all costs associated with the TB screening/testing.

III. FINANCIAL OBLIGATIONS

The parties acknowledge that this Agreement is not intended to create financial obligations between the parties. However, in the event that costs are incurred as a result of either or both of the parties performing their duties or responsibilities under this Agreement, each party agrees to be responsible for their own costs.

IV. AGREEMENT MANAGEMENT

A. Department's Agreement Administrator

The Agreement Administrator is responsible for maintaining the official Agreement file, processing any amendments or termination of the Agreement, and maintaining records of all formal correspondence between the parties regarding administration of this Agreement.

The address and telephone number of the Department's Agreement Administrator is:

Operations Manager, Contract Administration
Bureau of Contract Management and Monitoring
501 South Calhoun Street
Tallahassee, Florida 32399-2500
Telephone: (850) 717-3681
Fax: (850) 488-7189

B. Agreement Managers

The parties have identified the following individuals as Agreement Managers. These individuals are responsible for enforcing performance of the Agreement terms and conditions and shall serve as liaison regarding issues arising out of this Agreement.

FOR THE DEPARTMENT

John Howle, Assistant Chief
Bureau of Programs
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500
Telephone: (850) 717-3160
Fax: (850) 487-0906
Email: howle.john@mail.dc.state.fl.us

FOR THE PARTICIPATING ENTITY

Jessica M. Grosholz, Assistant Professor of Criminology
University of South Florida Sarasota-Manatee
8350 N. Tamiami Trail (C263)
Sarasota, Florida 34243
Telephone: (941) 359-4324
Fax: (941) 359-4489
Email: jgrosholz@sar.usf.edu

V. REVIEW AND MODIFICATION

Upon request of either party, both parties will review this Agreement in order to determine whether its terms and conditions are still appropriate. The parties agree to renegotiate terms and conditions hereof if it is mutually determined that significant changes in this Agreement are necessary. There are no obligations to agree by either party.

Modifications to the provisions of this Agreement, with the exception of Section IV, AGREEMENT MANAGEMENT, shall be valid only through execution of a formal written amendment to the Agreement.

VI. TERMINATION

This Agreement may be terminated at any time upon the mutual consent of both parties or unilaterally by either party upon no less than thirty (30) calendar days' notice. Notice shall be delivered by express mail or other method whereby a receipt of delivery may be obtained.

In addition, this Agreement may be terminated with 24 hours notice by the Department for any failure of the Participating Entity to comply with the terms of this Agreement or any applicable Florida law.

VII. OTHER CONDITIONS

A. Public Records Law

The Participating Entity agrees to allow the Department and the public access to any documents, papers, letters, or other materials subject to the provisions of Chapter 119 and Section 945.10, Florida Statutes, made or received by the Participating Entity in conjunction with this Agreement. The Participating Entity's refusal to comply with this provision shall constitute sufficient cause for termination of this Agreement.

B. Sovereign Immunity

The Participating Entity and the Department are state agencies or political subdivisions as defined in Section 768.28, Florida Statutes, and agree to be fully responsible for acts and omissions of their own agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by either party to which sovereign immunity may be applicable. Further, nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement.

C. Background Checks

The Participating Entity's staff assigned to this Agreement and any other person performing services pursuant thereto, shall be subject, at the Department's discretion and expense, to a Florida Department of Law Enforcement (FDLE) Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) background/criminal records check. This background check will be conducted by the Department and may occur or re-occur at any time during the Agreement period. The Department has full discretion to require the Participating Entity to disqualify, prevent, or remove any staff from any work under the Agreement. The use of criminal history records and information derived from such records checks are restricted pursuant to Section 943.054, Florida Statutes. The Department shall not disclose any information regarding the records check findings or criteria for disqualification or removal to the Participating Entity. The Department shall not

confirm to the Participating Entity the existence or nonexistence of any criminal history record information. In order to carry out this records check, the Participating Entity shall provide, to the institution(s) at which the program is offered, upon request, the following data for any individual contractor or subcontractor's staff assigned to the Agreement: Full Name, Race, Gender, Date of Birth, Social Security Number, Driver's License Number, and State of Issue

When providing services within a correctional setting, the Participating Entity shall obtain a Level II background screening (which includes fingerprinting to be submitted to the Federal Bureau of Investigation (FBI)), and results must be submitted to the Department prior to any current or new Participating Entity staff being hired or assigned to work under the Agreement. The Participating Entity shall bear all costs associated with this background screening. The Participating Entity shall not consider new employees to be on permanent status until a favorable report is received by the Department from the FBI.

D. Confidentiality

The Participating Entity shall ensure all staff assigned to this Agreement maintains confidentiality with reference to individual participants receiving services in accordance with applicable local, state, and federal laws, rules, and regulations. The Department and the Participating Entity agree that all information and records obtained in the course of providing services under this Agreement shall be subject to confidentiality and disclosure provisions of applicable federal and state statutes and regulations adopted pursuant thereto.

The Participating Entity agrees to keep all Department personnel information (i.e., DC staff telephone numbers, addresses, etc.) strictly confidential and shall not disclose said information to any person, unless released in writing by said Department.

Notwithstanding the foregoing, pursuant to the provisions of Florida Statute 1004.22, Participating Entity is required to make available upon request, the title and description of a project, the name of the researcher, and the amount and source of funding provided for a project.

E. Disputes

Any dispute concerning performance of the terms of this Agreement shall be resolved informally by the Agreement Managers. Any dispute that cannot be resolved informally shall be reduced to writing and delivered to the Department's Bureau Chief of Programs. The Bureau Chief of Programs shall decide the dispute, reduce the decision to writing, and deliver a copy to the Participating Entity, the Department's Agreement Manager, and the Department's Agreement Administrator.

F. Data Sharing

The Department and the Participating Entity acknowledge their separate obligations to store and disseminate data in compliance with the requirements of Public Records Law, Chapter 119, Florida Statutes, and with other applicable statutes that constitute express exceptions to the requirements of Section 119.07(1), Florida Statutes, by making certain categories of records confidential, exempt from disclosure, or accessible as prescribed by statute. The Participating Entity acknowledges that the data exchanged between them has been provided for official purposes and that public access to such data is limited and prescribed by statute. The Participating Entity therefore agrees, consistent with public records law, to refer third

parties requesting delivery of information to the originating party. Participating Entity further agrees to disseminate data only in compliance with confidentiality restrictions and in recognition of the exemptions from disclosure provided by law and to provide advance copies of documents involving the other party's data for review to determine if there has been an inadvertent disclosure of confidential information as described herein prior to publication.

G. Notices

All notices required or permitted by this Agreement shall be given in writing and by hand-delivery or email to the respective addresses of the parties as set forth in Section IV above. All notices by hand-delivery shall be deemed received on the date of delivery and all notices by email shall be deemed received when they are transmitted and not returned as undelivered or undeliverable. Either party may change the names, addresses, or telephone numbers set forth in Section IV above by written notice given to the other party as provided above.

H. Health Insurance Portability and Accountability Act

The Participating Entity shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U. S. C. 1320d-8), and all applicable regulations promulgated thereunder. Agreement to comply with HIPAA is evidenced by the execution of this Agreement, which includes and incorporates **Attachment B**, Business Associate Agreement, as part of this Agreement.

I. Prison Rape Elimination Act (PREA)

The Participating Entity shall report any violations of the Prison Rape Elimination Act (PREA), Federal Rule 28 C.F.R. Part 115 to the Department of Corrections' Agreement Manager.

J. Cooperation with Inspector General

In accordance with Section 20.055(5), Florida Statutes, the Participating Entity understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.

K. Institutional Security

In carrying out the provisions of this Agreement, the Participating Entity must comply with all security procedures for vendors doing business in Department's facilities as contained in Department Procedure 602.016, "Entering and Exiting Department of Corrections Institutions", and the Security Requirements for Contractors, attached hereto and herein referred to as **Attachment A**.

L. Insurance

If the Participating Entity is a state agency or subdivision as defined in Section 768.28, Florida Statutes, the Participating Entity shall furnish the Department, upon request, written verification of liability protection in accordance with Section 768.28, Florida Statutes. Nothing herein shall be construed to extend any party's liability beyond that provided in Section 768.28, Florida Statutes.

M. Employee Status

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Department and Participating Entity are independent contractors under this Agreement and neither is the employee of the other for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The parties shall each retain sole and absolute discretion in the judgment of the manner and means of carrying out their activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of each individual party. Services provided by each party pursuant to this Agreement shall be subject to the supervision of such party. In providing such services, neither party nor its agents shall act as officers, employees, or agents of the other party. The parties agree that they are separate and independent enterprises, and that each has the ability to pursue other opportunities.

This Agreement shall not be construed as creating any joint employment relationship between the Parties and neither party will be liable for any obligation incurred by the other party, including, but not limited to, unpaid minimum wages and/or overtime premiums.

N. Force Majeure

Neither party shall be liable for loss or damage suffered as a result of any delay or failure in performance under this Agreement or interruption of performance resulting directly or indirectly from acts of God, fire, explosions, earthquakes, floods, water, wind, lightning, civil, or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, strikes, or labor disputes.

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AGREEMENT #A3896

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

**FOR THE UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES ON BEHALF OF THE
UNIVERSITY OF SOUTH FLORIDA SARASOTA-
MANATEE**

SIGNED
BY:

Rebecca Puig

NAME: Rebecca Puig, Ph.D.

TITLE: Associate Vice President

DATE: 6/16/2016

FEID# 59-3102112

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Bryan D. Ruff

Bryan D. Ruff
Associate General Counsel - University of South Florida

FOR THE DEPARTMENT OF CORRECTIONS

Approved as to form and legality,
subject to execution.

SIGNED
BY:

Kelley J. Scott

NAME: Kelley J. Scott

TITLE: Director, Office of Administration
Department of Corrections

DATE: 6/27/16

SIGNED
BY:

Kenneth S. Steely

NAME: Kenneth S. Steely

TITLE: General Counsel
Department of Corrections

DATE: 6/22/16

Firm Representing: The University of South Florida Sarasota-Manatee

Name of Employee/Vendor: Jessica M. Gmsholz
(Print)

**DEPARTMENT OF CORRECTIONS
SECURITY REQUIREMENTS FOR CONTRACTORS**

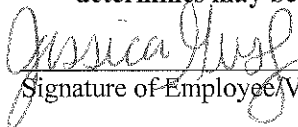
- (1) FS 944.47: Except through regular channels as authorized by the officer-in-charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom any of the following articles, which are hereby declared to be contraband.
- (a) Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
 - (b) Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
 - (c) Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
 - (d) Any controlled substance or any prescription or nonprescription drug having a hypnotic, stimulating or depressing effect.
 - (e) Any firearm or weapon of any kind or any explosive substance. (This includes any weapons left in vehicles)
 - (f) Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.

A person who violates any provision of this section as it pertains to an article of contraband described in subsections (a), (b), or (f) is guilty of a felony of the third degree. In all other cases, a violation of a provision of this section constitutes a felony of the second degree.

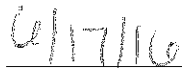
- (2) Do not leave keys in ignition locks of motor vehicles. All vehicles must be locked and windows rolled up when parked on state property. Wheel locking devices may also be required.
- (3) Keep all keys in your pockets.
- (4) Confirm, with the Institutional Warden, where construction vehicles should be parked.
- (5) Obtain formal identification (driver's license or non-driver's license obtained from the Department of Highway Safety and Motor Vehicles). This identification must be presented each time you enter or depart the institution.
- (6) Absolutely no transactions between contract personnel and inmates are permitted. This includes, but is not limited to, giving or receiving cigarettes, stamps, or letters.
- (7) No communication with inmates, verbal or otherwise, is permitted without the authorization of the officer-in-charge.

AGREEMENT #A3896
Attachment A

- (8) Strict tool control will be enforced at all times. Tools within the correctional institution are classified as AA, A, or B. Class AA tools are defined as any tool that can be utilized to cut chain link fence fiber or razor wire in a rapid and effective manner. Class A tools are defined as those tools which, in their present form, are most likely to be used in an escape or to do bodily harm to staff or inmates. Class B tools are defined as tools of a less hazardous nature. Every tool is to be geographically controlled and accounted for at all times. At the end of the workday, toolboxes will be removed from the compound or to a secure area as directed by security staff. You must have two copies of the correct inventory with each tool box, one copy will be used and retained by security staff who will search and ensure a proper inventory of tools each time the tool box is brought into the facility, the other copy will remain with the tool box at all times. Tools should be kept to a minimum (only those tools necessary to complete your job). All lost tools must be reported to the Chief of Security (Colonel or Major) **immediately**. No inmate will be allowed to leave the area until the lost tool is recovered.
- (9) Prior approval must be obtained from the Chief of Security prior to bringing any powder-activated tools onto the compound. Strict accountability of all powder loads and spent cartridges is required.
- (10) All construction materials will be delivered into the compound on trucks entering through the sallyport gate. As the security check of vehicles is an intensive and time consuming (10-15 minutes) process, the contractor is requested to minimize the number of deliveries.
- (11) Establish materials storage and working areas with the Warden and/or Chief of Security.
- (12) Control end-of-day construction materials and debris. Construction materials and debris can be used as weapons or as a means of escape. Construction material will be stored in locations agreed to by security staff and debris will be removed to a designated location. Arrange for security staff to inspect the project area before construction personnel leave. This will aid you in assuring that necessary security measures are accomplished.
- (13) Coordinate with the Warden and Chief of Security regarding any shutdown of existing systems (gas, water, electricity, electronics, sewage, etc.). Obtain institutional approval prior to shutting down any existing utility system. Arrange for alternative service (if required) and expeditious re-establishment of the shutdown system.
- (14) With the intent of maintaining security upon the institution's grounds, a background check will be made upon all persons employed by the contractor or who work on the project. **The department, represented by institution's Warden, reserves the right to reject any person whom it determines may be a threat to the security of the institution.**



Signature of Employee/Vendor



Date

Signature of Staff Witness

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement supplements and is made a part of this Agreement between the Florida Department of Corrections ("Department") and The University of South Florida Board of Trustees on behalf of the University of South Florida Sarasota-Manatee ("Contractor/Participating Entity/Agency"), (individually, a "Party" and collectively referred to as "Parties").

Whereas, the Department creates or maintains, or has authorized the Contractor to receive, create, or maintain certain Protected Health Information ("PHI") as that term is defined in 45 C.F.R. §164.501 and that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended. ("HIPAA");

Whereas, the Department is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A, C, and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") and the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

Whereas, the Contractor may have access to Protected Health Information in fulfilling its responsibilities under its contract with the Department;

Whereas, the Contractor is considered to be a "Business Associate" of a Covered Entity as defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

Whereas, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.504(e).

Whereas, in regards to Electronic Protected Health Information as defined in 45 C.F.R. § 160.103, the purpose of this Agreement is to comply with the requirements of the Security Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.314(a).

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions**

Unless otherwise provided in this Agreement, any and all capitalized terms have the same meanings as set forth in the HIPAA Privacy Rule, HIPAA Security Rule or the HITECH Act. Contractor acknowledges and agrees that all Protected Health Information that is created or received by the Department and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Department or its operating units to Contractor or is created or received by Contractor on the Department's behalf shall be subject to this Agreement.

2. **Confidentiality Requirements**

- A. Contractor agrees to use and disclose Protected Health Information that is disclosed to it by the Department solely for meeting its obligations under its agreements with the Department, in accordance with the terms of this agreement, the Department's established policies rules, procedures and requirements, or as required by law, rule or regulation.
- B. In addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Contractor may use and disclose Protected Health Information as follows:
 - (1) if necessary for the proper management and administration of the Contractor and to carry out the legal responsibilities of the Contractor, provided that any such disclosure is required by law or that Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached;

AGREEMENT #A3896
Attachment B

- (2) for data aggregation services, only if to be provided by Contractor for the health care operations of the Department pursuant to any and all agreements between the Parties. For purposes of this Agreement, data aggregation services means the combining of protected health information by Contractor with the protected health information received by Contractor in its capacity as a Contractor of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
 - (3) Contractor may use and disclose protected health information that Contractor obtains or creates only if such disclosure is in compliance with every applicable requirement of Section 164.504(e) of the Privacy relating to Contractor contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable to the Department as a covered entity shall also be applicable to Contractor and are incorporated herein by reference.
- C. Contractor will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Further, Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Department. The Secretary of Health and Human Services and the Department shall have the right to audit Contractor's records and practices related to use and disclosure of Protected Health Information to ensure the Department's compliance with the terms of the HIPAA Privacy Rule and/or the HIPAA Security Rule.
- Further, Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to the Contractor in the same manner that such sections apply to the Department as a covered entity. The additional requirements of the HITECH Act that relate to security and that are made applicable to covered entities shall be applicable to Contractor and are hereby incorporated by reference into this BA Agreement.
- D. Contractor shall report to Department any use or disclosure of Protected Health Information, which is not in compliance with the terms of this Agreement as well as any Security incident of which it becomes aware. Contractor agrees to notify the Department, and include a copy of any complaint related to use, disclosure, or requests of Protected Health Information that the Contractor receives directly and use best efforts to assist the Department in investigating and resolving such complaints. In addition, Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.

Such report shall notify the Department of:

- 1) any Use or Disclosure of protected health information (including Security Incidents) not permitted by this Agreement or in writing by the Department;
- 2) any Security Incident;
- 3) any Breach, as defined by the HITECH Act; or
- 4) any other breach of a security system, or like system, as may be defined under applicable State law (Collectively a "Breach").

Contractor will without unreasonable delay, but no later than seventy-two (72) hours after discovery of a Breach, send the above report to the Department.

Such report shall identify each individual whose protected health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during any Breach pursuant to 42 U.S.C.A. § 17932(b). Such report will:

- 1) Identify the nature of the non-permitted or prohibited access, use, or disclosure, including the nature of the Breach and the date of discovery of the Breach.
 - 2) Identify the protected health information accessed, used or disclosed, and provide an exact copy or replication of that protected health information.
 - 3) Identify who or what caused the Breach and who accessed, used, or received the protected health information.
 - 4) Identify what has been or will be done to mitigate the effects of the Breach; and
 - 5) Provide any other information, including further written reports, as the Department may request.
- E. In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, each party agrees that if it knows of a pattern of activity or practice of the other party that constitutes a material breach of or violation of the other party's obligations under the BA Agreement, the non-breaching party will take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the contract or arrangement if feasible. If termination is not feasible, the party will report the problem to the Secretary of Health and Human Services (federal government).
- F. Contractor will ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from, or created by Contractor on behalf of the Department, agree to the same restrictions and conditions that apply to Contractor, and apply reasonable and appropriate safeguards to protect such information. Contractor agrees to designate an appropriate individual (by title or name) to ensure the obligations of this agreement are met and to respond to issues and requests related to Protected Health Information. In addition, Contractor agrees to take other reasonable steps to ensure that its employees' actions or omissions do not cause Contractor to breach the terms of this Agreement.
- G. Contractor shall secure all protected health information by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary of Health and Human Services specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, pursuant to the HITECH Act, 42 U.S.C.A. § 300jj-11, unless the Department agrees in writing that this requirement is infeasible with respect to particular data. These security and protection standards shall also apply to any of Contractor's agents and subcontractors.
- H. Contractor agrees to make available Protected Health Information so that the Department may comply with individual rights to access in accordance with Section 164.524 of the HIPAA Privacy Rule. Contractor agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Contractor agrees to record disclosures and such other information necessary, and make such information available, for purposes of the Department providing an accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.
- I. The Contractor agrees, when requesting Protected Health Information to fulfill its contractual obligations or on the Department's behalf, and when using and disclosing Protected Health Information as permitted in this contract, that the Contractor will request, use, or disclose only the minimum necessary in order to accomplish the intended purpose.
3. **Obligations of Department**
- A. The Department will make available to the Business Associate the notice of privacy practices (applicable to offenders under supervision, not to inmates) that the Department produces in accordance with 45 CFR 164.520, as well as any material changes to such notice.

- B. The Department shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- C. The Department shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that impacts the business associate's use or disclosure and that the Department has agreed to in accordance with 45 CFR 164.522 and the HITECH Act.

4. **Termination**

- A. **Termination for Breach** - The Department may terminate this Agreement if the Department determines that Contractor has breached a material term of this Agreement. Alternatively, the Department may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of the Department, the Department may immediately thereafter terminate this Agreement.
- B. **Automatic Termination** - This Agreement will automatically terminate upon the termination or expiration of the original contract between the Department and the Contractor.
- C. **Effect of Termination**
 - (1) Termination of this agreement will result in termination of the associated contract between the Department and the Contractor.
 - (2) Upon termination of this Agreement or the contract, Contractor will return or destroy all PHI received from the Department or created or received by Contractor on behalf of the Department that Contractor still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, Contractor will extend the protections of this Agreement to the PHI and limit further uses and disclosure to those purposes that make the return or destruction of the information infeasible.

- 5. **Amendment** - Both parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the requirements of the Privacy Rule, the HIPAA Security Rule, and the HITECH Act.
- 6. **Interpretation** - Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Privacy Rule and/or the HIPAA Security Rule.
- 7. **Indemnification** - The Contractor shall be liable for and agrees to be liable for, and shall indemnify, defend, and hold harmless the Department, its employees, agents, officers, and assigns from any and all claims, suits, judgments, or damages including court costs and attorneys' fees arising out of or in connection with any non-permitted or prohibited Use or Disclosure of PHI or other breach of this Agreement, whether intentional, negligent or by omission, by Contractor, or any sub-contractor of Contractor, or agent, person or entity under the control or direction of Contractor. This indemnification by Contractor includes any claims brought under Title 42 USC §1983, the Civil Rights Act.
- 8. **Miscellaneous** - Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Contractor under this Section shall survive the expiration, termination, or cancellation of this Agreement, or any and all other contracts between the parties, and shall continue to bind Contractor, its agents, employees, contractors, successors, and assigns as set forth herein for any PHI that is not returned to the Department or destroyed.

The Florida Department of Corrections partners or collaborates with the following providers to assist incarcerated individuals with training and readiness skills (public speaking, workforce). These services are provided to the Department at no cost with the exception of the FSU art/behavioral therapy which will be grant funded for students with disabilities.

- Stetson University → MOA to provide credit and non-credit college courses
- Florida State University → Actively meeting to provide art and behavioral therapy
- University of Florida Institute of Food and Agricultural Sciences → Consultation and training for hydroponics
- University of Central Florida → Active discussions related to development of an Entrepreneurship Program in collaboration with the Bureau of Programs, interest in expanding college programming in corrections, currently working with Central Florida Reception Center
- University of West Florida → Active discussion regarding teacher training in adult and correctional education, best practices, to enhance service delivery to the inmate student population.
- Beekeeping → MOA with community providers (Homestead CI - female population, Jefferson CI, and the Reception and Medical Center)
- Canine Obedience and Emotional Support Dog Programs → Memorandum of Agreement (MOA) with various entities
- Toastmasters/Gavel Club → Volunteer- Led Public Speaking Activities
- University of South Florida → Entrepreneurship program at Hardee CI (MOA and course description attached)

Cox, Ryan

From: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>
Sent: Thursday, February 22, 2018 3:16 PM
To: Cox, Ryan
Cc: Taylor, Chris; Torres, Jared
Subject: RE: Job training
Attachments: Requested Information - FDC Partnerships with Universities and Community....docx; Entrepreneurship Education Program at Hardee Correctional Institute_Prog....docx; Fully Executed SIGNED MOU - Hardee CI and USF.PDF

Ryan,

- FDC Partnerships with Universities and Community Providers
- Entrepreneurship Education Program at Hardee CI with USF
- MOU for Hardee CI Partnership with USF

From: Cox, Ryan [mailto:Cox.Ryan@flsenate.gov]
Sent: Thursday, February 22, 2018 2:48 PM
To: Vaughan, Scotti <Scotti.Vaughan@fdc.myflorida.com>; Torres, Jared <Jared.Torres@fdc.myflorida.com>
Cc: Taylor, Chris <WillardChris.Taylor@fdc.myflorida.com>
Subject: Job training

Can you send me an email confirming universities you work with for job training and readiness skills? Thanks!

Sincerely,

Ryan C. Cox

Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192



2018 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	HB 7089
BILL TITLE:	Public Safety
BILL SPONSOR:	Judiciary Committee and Representative Byrd
EFFECTIVE DATE:	October 1, 2018

<u>COMMITTEES OF REFERENCE</u>
1)
2)
3)
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 20, 2018
LEAD AGENCY ANALYST:	Lee Adams, Kerensa Lockwood, Joe Winkler, Kristina Hartman
ADDITIONAL ANALYST(S):	Jami Dunsford
LEGAL ANALYST:	Ryan Padgett
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill enhances public safety through initiatives in several different corrections related areas. It creates a new third degree felony for multiple convictions of indecent exposure. It aids inmate transition back into the community by helping inmates identify industry certifications for which they qualify, and by mitigating the automatic negative effect of a felony conviction on certain professional licenses. It also requires the creation of an entrepreneurship program within the Correctional Education curriculum. It requires the Florida Department of Corrections (FDC or Department) to transmit all terms of supervision to the Florida Crime Information Center (FCIC) database and mandates creation of an Alternative Sanctions Program (ASP) for handling technical supervision violations in each judicial circuit, along with making modifications to the existing framework of the ASP.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 800.03, F.S. prohibits the vulgar or indecent exposure of the sexual organs in public or on the private premises of another person, as well as public nudity except in places set aside for that purpose. A violation of the statute is a first degree misdemeanor.

Section 944.701-708, F.S. is entitled the Transition Assistance Program Act. These statutes require the Department to provide a transition assistance specialist at each major facility to coordinate, develop and help deliver post-release planning and assistance, including assistance with obtaining job placement information. As part of the release planning process, inmates are interviewed by release officers between 140 and 180 days prior to release. Through this interview, along with a review of the inmate's record, the post-release needs of the inmate in areas including education, vocational training, substance abuse, housing, are identified. The release officer accesses a resource directory to locate appropriate service providers in the community where the inmate will be released, and at the time of release provides the inmate information about community resources responsive to the identified needs. Sex offenders with supervision involve an additional level of complexity due to the many housing restrictions that are applicable (state law, local ordinances, conditions of supervision). Residence plans for these offenders have to be approved by the supervising probation office prior to release. The release officer coordinates with the inmate and probation office to develop a residence plan.

Under s.944.801 the Department is authorized to operate the Correctional Education Program. Development of an entrepreneurship program is not among the enumerated duties under this statute. The Department holds an active Memorandum of Agreement (MOA), #A3896, with the University of South Florida for the provision of one, three-hour entrepreneurial skills class per week for 10 weeks per cohort with the purpose of understanding the influence of the course on inmate behavior in prison, post-prison and during the re-entry process. Lessons include writing a business plan, industry and competitor analysis, developing an effective business model, and preparing the proper ethical and legal foundation, among others. In late 2017, a Bureau of Programs staff member visited the Prison Entrepreneurship Program (PEP) in Texas and gained valuable information and feedback regarding the model. The Department then engaged the University of Central Florida for the development and implementation of an entrepreneurship program, with discussions ongoing. Funding limitations may impact progress towards development, implementation, and replication.

"Administrative probation" is a form of no contact, nonreporting supervision. The Department uses administrative probation as a possible incentive to reduce reporting requirements for offenders who comply with conditions of supervision.

In 2005 at the request of the Florida Department of Law Enforcement (FDLE), the Department began electronically transmitting certain sex offender special conditions to FDLE. FDC and FDLE use a real time direct data pipe line to each other's agency to send and receive probationer's data. FDC's Offender Based Information System (OBIS) houses many on-line screens to capture the probationer's data with real time entry by FDC probation officers. This data is sent to FDLE who then in-turn sends the data to NCIC within seconds. It should also be noted that there are many times when Probation Officers give case specific permission to offenders to deviate for certain situations, but the officer may not have access to OBIS to be able to make an immediate update. This could lead to unnecessary arrests in cases where a law enforcement officer encounters the offender without these directions being known.

Currently a judge or other sentencing/releasing authority may authorize the Department to report certain technical violations through an administrative process developed by the Department called the "Alternative Sanctioning Program." Unless otherwise specified by the court or releasing authority, the Alternative Sanctioning Program is intended to be limited to technical violations for non-violent offenders. The Alternative Sanctioning Program offers the court an administrative method of resolving specified technical violations in an efficient manner which allows for the

noncompliance or deviant behavior to be swiftly addressed. The difference between the Alternative Sanctioning Program and the Technical Violation Notification letter is that Alternative Sanctioning Program allows the offender's sentence to be modified with an additional sanction imposed. An offender's participation in the alternative sanctions program is voluntary.

2. EFFECT OF THE BILL:

The first 6 sections of the bill do not impact the Department.

The bill makes a second or subsequent conviction for the crime proscribed under s.800.03, F.S. a third degree felony, assigned to severity level 3. Because the current offense is a misdemeanor, the Department does not have adequate data on which to base an impact projection (a total of 25 probation admission over the last 3 years). An indeterminate increase in admissions to the Department is expected from the creation of a new felony.

The bill modifies s. 944.704(3), F.S. to expand the duties of the Transition Assistance Specialist to include "identifying any job assignment credentialing or industry certifications for which an inmate is eligible". It should be noted that the Department currently informs the inmate population of opportunities for securing industry certification through various methods. This includes our Education staff, Classification staff, Regional Program Coordinators, Community Transition Specialist and community trade associations. Additionally, The Department of Education curriculum frameworks, which are utilized by all the Department of Corrections' academic and vocation programs, include Career Readiness Standards that require educators to assist students with identifying appropriate careers to include providing information related to the associated education requirements, which often contain completion of vocation programs and industry credentials.

However, because the Transition Assistance Specialist position have not been funded since 2003, these duties and functions have been distributed to various staff members. To adequately meet the intent of this bill along with the addition of including job assignment credentialing or industry certification for which inmates are eligible, the Department would require **13 transition assistance specialists**. Specifically, one for each of the Department's five re-entry centers due to the high number of inmates who complete their term of imprisonment and return to the community from a re-entry center; and two for each of the Department's four regions to be staffed at each regional office and handle the associated workload for all institutions in that region. The 13 total positions would be in accordance with s.944.704, F.S., position title Correctional Services Assistant Consultant.

The bill adds new subsections to s.944.705, F.S. Under s. 944.705(3), F.S., the Department will be required to provide each releasing inmate a "comprehensive resource directory". The Department currently operates a user friendly, statewide resource directory to assist staff in the inmate/offender reentry planning process. The resource directory is a searchable website that contains over 6,000 community, state, and local organizations that provide services to those returning home. These resources are verified on a routine basis to ensure the most up-to-date information is being provided. The resource directory can be accessed at <http://www.dc.state.fl.us/resourcedirectory/Search.aspx>.

When inmates are released they receive information about community resources in proximity to their residence. The bill would increase release costs by requiring the Department to provide a state-wide resource directory to every inmate, even though this would necessarily entail giving out information that would be of no value because of the distance from the inmate's home to the resources. A recommended alternative would be to provide the inmate with the local provider list as is the current practice, and also provide information on accessing the web site for additional information in the event the inmate relocated after initial release.

The bill further amends s.944.705, F.S. to require the Department to provide the ability for nonprofit faith-based, business and professional, civic, or community organizations to apply to be registered to provide inmate reentry services. At this time, the Department does not have this capability. Development of an automated web portal would be required.

The bill does not explicitly bar any particular organization from contracting with the Department absent registration so unless and until the Department promulgates rules barring contractual arrangements with unregistered vendors it could be argued that the Department can still contract with unregistered vendors. Also, if the Legislature were to enact this law, there is currently no requirement that a vendor currently under contract with the Department be required to register except for the following: "[re-entry services vendors] are allowed to be registered with the Department under this section for the purpose of providing inmate reentry services." For this reason, without a rule promulgated to more specifically circumscribe the Department's ability to contract, there appears to be minimal effect on current Department contractual arrangements.

The screening and approving of applicants, along with maintaining a registration system will create an additional workload issue, which is anticipated to be absorbed by the Department within existing resources.

“Approval” of applicants is not defined by the proposed bill. Further clarification may be required as to what being approved in the registration process would mean and what standards should be used to judge whether an organization should be approved or not. It is also important to note that “approval” presents a concern in that the Department cannot be responsible if the said organization is found to be operating in an inappropriate manner.

The bill grants the authority for the Department to provide an entrepreneurship program that is managed with existing resources. This will require coordination within the Department’s Central Office and at the local regional level to develop procedures and agreements with eligible entities, and monitor the course delivery. Entrepreneurship programs also rely heavily on community business owners and volunteers to facilitate events related to development and delivery of business plans. To ensure proper implementation and management of this project, the addition of **one Correctional Services Consultant position is required**. This coverage permits a central office coordinator to ensure critical development steps are satisfied and proper contract monitoring.

The Department will require contractual funding to procure these services, to include development, implementation and provision of services. The estimated fiscal impact to include contracted staff, materials and supplies is estimated at \$200,000 for one location.

The Department recommends removal or clarifying language in reference to the minimum in-prison program timeframe of 180 days and the 90-day transitional option component by replacing “must” with “may” in both instances. From a practical standpoint, once the inmate leaves Department custody, the Department has no control of who or how many inmates would request the continuing education, yet the Department would be required to expend tax dollars to create a program that may not be used. In addition, timeframes for in-prison education would align with the best practices and recommendations of the referenced entities.

The bill creates sections 944.805, 944.8055, 944.8056, and 944.8065 F.S., dealing with Certificates of Achievement and Employability. The intent of these sections is to mitigate the automatic, negative effects of a felony conviction on opportunities for professional licensure and certification, resulting in increased employment opportunities for inmates.

The bill adds language that directs the Department to manage, within existing resources, the process for inmates who complete an in-prison vocational program, have exemplary performance as determined by completion of a cognitive or behavioral program, and show other evidence of achievement and rehabilitation, to apply to the Department for a Certificate of Achievement and Employability. Exceptions to eligibility are those with a conviction record for a dangerous crime as defined in s.907.041, or a violation that would trigger registration under s.775.21, F.S. (sex predator) or 943.0435, F.S. (sex offender). Application time frame is set at one year prior to release up to the point of release. Former inmates under post-release supervision may apply during the supervision term. .

The inmate must specify the “mandatory civil impacts” for which he/she is seeking relief through a certificate. The relevant licensing agency must be notified by the Department with a copy of the application and other documentation about the inmate. The licensing agency may then object in writing to issuance of the certificate. The Department is required to consider the application and all objections and render a decision on whether the certificate should be issued. The certificate constitutes a rebuttal presumption that the inmate’s conviction alone is insufficient evidence that he/she is unfit for licensure or certification, resulting in an individual review by the licensing agent. The license may still be denied.

The Department is required to adopt rules requiring revocation, “if a certificate holder is convicted of or pleads guilty to a felony. The Department shall determine which additional offenses require revocation, considering the nature of the offense and the employment of a certificate holder.”

To ensure proper implementation and management of this project, staffing coverage at the Department’s Central Office is required to handle all eligibility and objection inquiries, however this is anticipated to be absorbed by the Department within existing resources. In addition, programming within the Department’s OBIS would be needed to identify eligible inmates and automate the process. Further, the Department will have no ability to monitor eligible inmates upon their release and/or completion of supervision, and therefore would not be in a proper position to monitor or supervise the revocation of the certificate. For this reason, the Department recommends that it be removed from the position of revoking certificates.

The bill amends s.948.013, F.S. regarding Administrative Probation, however there is no anticipated impact as the bill deletes language from one section to add to s.948.013, F.S.

The bill mandates the expansion of the Alternative Sanctions Program (ASP) for handling technical supervision violations to all judicial circuits. It also modifies the framework of the ASP, creating a two tier violation system for low and medium risk violations, with authorized sanctions for each violation level.

The Department does not anticipate any significant operational impact from expanding this program to the remaining 7 judicial circuits (it already operates in 13 circuits) and working with the local courts to implement the changes in the program authorized in the bill. Impact from the expansion and the changes on the VOP case load and the number of revocations is indeterminate at this time.

It should be noted however that the sanctions authorized by the bill could result in an increase in referrals for counseling and drug testing, driving up these costs. The amount of such increase is indeterminate at this time. Also, one authorized sanction is residential treatment for up to 90 days, however the Department's residential treatment model is at least 6 months.

The bill adds to s.948.03, F.S., by requiring the Department to submit all conditions of probation to the FCIC database. As part of implementation, the Department will establish a policy document to address the methodology to be used for providing the data elements to FDLE. This policy document will also provide for timeframes under which the Department will strive to send the data to FDLE in a timely manner once the conditions of probation have been finalized by the court.

There would also be technology impact associated with the requirements in s. 948.03, F.S. Technology programming updates to the Department's Offender Based Information System (OBIS) would be required as well as the need to modify the existing data feed to FDLE for the creation of special conditions codes. Please note that FDLE would also need to modify their process, including the ability for a larger file, in order to accept the new file format from the Department.

The bill creates s.948.081, F.S., authorizing Community Court Programs, for defendants charged with certain misdemeanor offenses. Eligible offenses will be established by administrative order of the Chief Judge. An advisory committee is to be appointed for purposes of reviewing cases and making recommendations to the court. Although the bill requires the Department to "support" the program, there does not appear to be any direct impact on the agency.

The bill reenacts a number of statutes for purposes of incorporating changes made by the bill. It provides for an October 1, 2018 effective date. It is recommended to allow additional time for appropriate rulemaking and implementation by the Department.

Additionally, please note:

There could be a separation of powers issue with the alternative sanctions program as expanded in the bill. Although the sanctions may be subject to court review, the bill could, in practice, be determined to grant probation officers excessive authority to impose a variety of sanctions without sufficient input from a judge.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	The Department is required to adopt rules to implement section 10 modifying s.944.705. The Department is required to adopt rules to implement section 13 creating eligibility requirements for a Certificate of Achievement and Employability. The Department is required to adopt rules to implement section 15 regarding revocation requirements for a Certificate of Achievement and Employability.
Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	None by FDC.
--------------------------------	--------------

Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	Unknown
Expenditures:	The Department projects necessary costs as follows:

	Re-Entry Services	Class	Salary &	FTE	Year 1
	Class Title	Code	Benefits	#	Annual Costs
	Correctional Services Consultant	8058	56,987	1	56,987
	Correctional Services Assistant Consultant	8055	52,161	13	678,093
	Total salaries & benefits ⁽¹⁾			14	735,080
	Recurring expense - Professional		\$ 7,124		99,736
	Non-recurring expense - Professional		4,549		63,686
	Total expenses				163,422
	Human Resource Services ⁽¹⁾		\$ 329		4,606
	Sub-total			14	\$ 903,108
	Contracted Services ⁽¹⁾				200,000
	OIT Costs ⁽²⁾				228,225
	Grand Total			14	\$ 1,331,333
Summary of Costs					
Recurring ⁽¹⁾				1,039,422	
Non-recurring ⁽²⁾				291,911	
Total				\$ 1,331,333	

Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☐

Revenues:	Indeterminate
Expenditures:	Indeterminate
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y ☐ N ☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Based on the analysis there will be Department technology related fiscal impact as follows: Reentry Services: Currently, the Department does not have the programming capability to provide for nonprofit faith-based, business and professional, civic, or community organizations to apply to be registered to provide inmate reentry services. In order for this to be accomplished a new system/web portal would need to be created or purchased. The cost and resource estimate for creation of a new system/web portal is indeterminate at this time and would require a possible procurement to identify possible proposal solutions. As directed in Section 12, the Certificate of Achievement and Employment program is established by 944.8055, F.S. and the Department estimates additional technology costs associated with implementation. There would be a need for the creation of a nightly data feed for the Certificate of Achievement and Employability program. In order to accomplish this a new batch job, project management, business analysis, development and testing and accessibility for the agency of Business and Professional Regulation (BPR) staff to receive the generated information would be required. Cost Estimate: <table style="width: 100%;"> <tr> <td>Estimated Hours:</td> <td style="text-align: right;">2,445</td> </tr> <tr> <td>Estimated Cost Per Hour:</td> <td style="text-align: right;">\$85.00</td> </tr> <tr> <td>Estimated Cost:</td> <td style="text-align: right;">\$207,825</td> </tr> </table> Probation Requirements: Creation of special conditions codes would require the modification of the existing JFI data feed to FDLE. The FDLE would need to modify their process in order to accept the new file format from the Department. Cost Estimate: <table style="width: 100%;"> <tr> <td>Estimated Hours:</td> <td style="text-align: right;">80</td> </tr> <tr> <td>Estimated Cost Per Hour</td> <td style="text-align: right;">\$85.00</td> </tr> <tr> <td>Estimated Cost:</td> <td style="text-align: right;">\$6,800</td> </tr> </table> Additional programming changes would be needed to the Department's Offender Based Information System (OBIS). These changes are needed for changes to the offender tracking screens Cost Estimate <table style="width: 100%;"> <tr> <td>Estimated Hours:</td> <td style="text-align: right;">160</td> </tr> <tr> <td>Estimate Cost Per Hour:</td> <td style="text-align: right;">\$85.00</td> </tr> <tr> <td>Estimated Cost:</td> <td style="text-align: right;">\$13,600</td> </tr> </table>	Estimated Hours:	2,445	Estimated Cost Per Hour:	\$85.00	Estimated Cost:	\$207,825	Estimated Hours:	80	Estimated Cost Per Hour	\$85.00	Estimated Cost:	\$6,800	Estimated Hours:	160	Estimate Cost Per Hour:	\$85.00	Estimated Cost:	\$13,600
Estimated Hours:	2,445																		
Estimated Cost Per Hour:	\$85.00																		
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Estimated Cost:	\$6,800																		
Estimated Hours:	160																		
Estimate Cost Per Hour:	\$85.00																		
Estimated Cost:	\$13,600																		

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

N/A

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

SB 642

Bill Number (if applicable)

739966

Amendment Barcode (if applicable)

Topic Criminal Justice (Florida First Step Act)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850-521-3042

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SPLC Action Fund

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)

3/4/19

Meeting Date

SB 642

Bill Number (if applicable)

739966

Amendment Barcode (if applicable)

Topic Amendment 739966 - re: changing 150 miles to 300 miles

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., 400

Street

Miami

City

FL

State

33134

Zip

Phone 786-363-4436

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of 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.

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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)

3/4/2019

Meeting Date

SB 642

Bill Number (if applicable)

615712

Amendment Barcode (if applicable)

Topic Criminal Justice (Florida First Step Act)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850-521-3042

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/4/19

Meeting Date

SB 642

Bill Number (if applicable)

615712

Amendment Barcode (if applicable)

Topic Amendment 615712 - re: completion of sentence

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., 400

Street

Miami

City

FL

State

33134

Zip

Phone 786-363-4436

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

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

Meeting Date _____

Bill Number (if applicable) 642Topic SB642

Amendment Barcode (if applicable) _____

Name Enca Medina

Job Title _____

Address 2295 Underwood AvePhone 417 217-0904

Street

Orlando FL 32771

City

State

Zip

Email ETIC91007Medina@gmail.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

6412

SB 0624

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Cesar Grajales

Job Title Director of Coalitions

Address 200 W College Ave

Street

Phone

Tallahassee FL

State

32301

Zip

Email cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Libre Initiative

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.

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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)

3/4/19
Meeting Date

SB 642
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Sean Pittman

Job Title Attorney

Address 1028 East Park Avenue

Phone

Street

City TLH State FL Zip 32301

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Broward County Government

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19
Meeting Date

SB 0642
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Cesar Grajales

Job Title Director of Coalitions

Address 200 W College Ave
Street

Phone cgrajales@belibre.org

Tallahassee FL 32301
City State Zip

Email cgrajales@belibre.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Libre Initiative

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3 / 4 / 2019

Meeting Date

Topic _____

Bill Number 642
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 0642

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address 200 W College Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone (850) 866-0710

Email psuderman@afpq.org

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

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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)

3/4/19.

Meeting Date

642

Bill Number (if applicable)

Topic

CJ

Amendment Barcode (if applicable)

Name

Chelsea Murphy

Job Title

State Director

Address

605 Middlebrooks Cir.

Phone

954 557 0016

Street

TLH FL 32303

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Right on Crime.

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.

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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)

3.4.19

Meeting Date

642

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

SB642

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Communications and Public Affairs

Address 100 N Duval Street

Phone 850-386-3131

Street

Tallahassee

FL

32301

City

State

Zip

Email lpadgett@jamesmadison.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/2019

Meeting Date

SB 642

Bill Number (if applicable)

Topic Criminal Justice (Florida First Step Act)

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SPLC Action Fund

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.

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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)

3-4-19

Meeting Date

642

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352-682-2542

Gainesville FL 32614

City

State

Zip

Email gnewburn@fam.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMN

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.

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S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 15, 2019

I respectfully request that **Senate Bill #642**, relating to **Criminal Justice**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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: CS/SB 766

INTRODUCER: Criminal Justice Committee and Senator Gruters

SUBJECT: Expanded Uses of Unmanned Aircraft

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			IS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 766 expands the possibilities for drone use by law enforcement agencies, state agencies, and political subdivisions.

The bill creates additional exceptions for law enforcement agency drone use found in s. 934.50(4), F.S. The new exceptions will allow law enforcement agencies to use drones to:

- Assist in crowd control where the crowd consists of 50 or more persons.
- Assist with traffic management, except that the agency may not use the drone to gather evidence to enforce traffic infractions.
- Facilitate evidence collection at a crime scene or traffic crash scene.

Under the provisions of the bill, state agencies and political subdivisions will not be prohibited from using drones for damage assessment under certain circumstances and for vegetation and wildlife management purposes on publicly owned land or water.

The bill is effective July 1, 2019.

II. Present Situation:

A drone, also called Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;

- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.¹

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.² They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.³ Drones can be equipped with infrared cameras,⁴ and "LADAR" (laser radar).⁵ In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Federal Aviation Authority

In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.⁷ The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.⁸

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.⁹ The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver

¹ Section 934.50(2), F.S.

² 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

³ *Id.*

⁴ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed February 22, 2019). Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. *Best Infrared Drones (Buying Guide)*, Spire Drones, available at <https://buythebestdrone.com/best-infrared-drones/> (last viewed February 22, 2019).

⁵ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-lidar*, available at <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last viewed February 22, 2019).

⁶ Clay Dillow, Popular Science, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, available at pops.ci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind (last viewed February 22, 2019).

⁷ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed February 19, 2019).

⁸ 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

⁹ *Id.*

mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.¹⁰

FAA Drone Airspace Restrictions

The FAA has designated generally restricted airspace including drone flight around and over sports stadiums and wildfires at specified times or under specified conditions. Drone operators must educate themselves on these restrictions prior to flying.¹¹

FAA Drone Operational Restrictions

The following are among the operational restrictions in the 2016 regulation:

- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle;¹²
- Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure; and
- Daylight-only operations or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.¹³

Both the Lakeland Police Department and the Polk County Sheriff's Office have recently obtained waivers of the daylight-only operational restriction from the FAA.¹⁴

Proposed Rule

The FAA announced a new proposed regulation for the use of drones on January 18, 2019.¹⁵ The proposal appears to provide avenues that would allow drone operators to routinely fly over people and fly at night.¹⁶

The proposed regulation creates a risk-assessment model based upon the weight of the drone, and the design of the drone, with an eye toward any mitigation the drone design presents to prohibit serious injury or property damage should the drone make contact with a person or

¹⁰ *Id.*

¹¹ See FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires (last viewed February 19, 2019).

¹² The term “over” refers to the flight of the small unmanned aircraft directly over any part of a person. For example, a small UAS that hovers directly over a person’s head, shoulders, or extended arms or legs would be an operation over people. Similarly, if a person is lying down, for example at a beach, an operation over that person’s torso or toes would also constitute an operation over people. An operation during which a small UAS flies over any part of any person, regardless of the dwell time, if any, over the person, would be an operation over people. 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

¹³ *Id.*

¹⁴ Certificates of Waiver 107W-2018-16741 (dated November 28, 2018) and 107W-2018-16274 (dated November 6, 2018); FAA, Unmanned Aircraft Systems, *Part 107 Waivers Issued*, available at https://www.faa.gov/uas/commercial_operators/part_107_waivers/waivers_issued/ (last viewed February 20 2019).

¹⁵ Department of Transportation, Office of the Secretary, FAA, 14 CFR Part 107, Notice of Proposed Rulemaking, *Operation of Small Unmanned Aircraft Systems over People*, Comments due on or before April 15, 2019, Federal Register, Vol 84, No. 30, February 13, 2019.

¹⁶ *Id.*

property on the ground.¹⁷ The process of the FAA accepting public comment on the proposal, and then drafting a final regulation began on February 13, 2019.¹⁸

Law Enforcement Use of Drones in Florida – Section 934.50, F.S.

The Florida Sheriff's Association estimates that 12 sheriff's offices currently have drones.¹⁹ Of the 139 police departments that responded to the question regarding whether their department has at least one drone, 32 said they do have a drone and 10 responded that they soon will have a drone.²⁰

A law enforcement agency is defined in s. 934.50, F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.²¹

Section 934.50(3)(b), F.S., provides that a real property owner, tenant, occupant, invitee, or licensee of the property is presumed to have a reasonable expectation of privacy from drone surveillance²² of the property or the owner, tenant, occupant, invitee, or licensee by another person, state agency,²³ or political subdivision,²⁴ if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.²⁵

Section 934.50, F.S., prohibits law enforcement agencies from using a drone to gather evidence or other information, with certain exceptions.²⁶ Evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in this state unless it is permitted under one of the statute's exceptions.²⁷ An aggrieved party may

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ E-mail from Florida Sheriff's Association Deputy Executive Director of Operations dated January 28, 2019 (on file with the Senate Committee on Criminal Justice).

²⁰ E-mail from Florida Police Chiefs Association Executive Director dated January 29, 2019 (on file with the Senate Committee on Criminal Justice).

²¹ Section 934.50(2)(d), F.S.

²² Surveillance is defined in s. 934.50(2)(e), F.S.: With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or with respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

²³ A state agency, as defined in s. 11.45, F.S., is a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

²⁴ A political subdivision is defined in s. 11.45, F.S., as a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

²⁵ Section 934.50(3)(b), F.S. *See also* s. 934.50(5)(b)-(d) F.S., providing for compensatory damages, injunctive relief, attorney fees, and punitive damages for a violation of s. 934.50(3)(b), F.S.

²⁶ Section 934.50(3)(a), F.S.

²⁷ Section 934.50(6), F.S.

initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.²⁸

The exceptions for law enforcement agencies using drones to gather evidence and other information are as follows:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization and the drone is used to counter the risk;
- The law enforcement agency first obtains a search warrant authorizing the use of a drone; or
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.²⁹

Weaponized Drones Prohibited in Florida

In Florida, s. 330.411, F.S., prohibits a person from possessing or operating an unmanned aircraft or unmanned aircraft system as defined in s. 330.41, F.S., with an attached weapon, firearm, explosive, destructive device, or ammunition as defined in s. 790.001, F.S.³⁰ North Dakota is the only state that allows law enforcement agencies to utilize weaponized drones. The weapons are limited to the non-lethal variety such as tear gas, rubber bullets, beanbags, pepper spray, and tasers.³¹

Use of Drones for Law Enforcement Investigations

Several jurisdictions outside Florida, including the Massachusetts State Police and the Lake County Police in Illinois, are reported to be using drones to assist in more efficient and timely traffic crash investigations.³² The North Carolina Department of Transportation and North Carolina State Highway Patrol demonstrated in a research project that some advantages to using drones in traffic crash investigations include faster processing and clearing of the scene and opening the road to traffic flow more quickly than traditional evidence-gathering methods.³³

²⁸ Section 934.50(5)(a), F.S.

²⁹ Section 934.50(4)(a)-(c), F.S. There are additional exceptions to the prohibition on the use of drones that are not law enforcement agency related. These exceptions can be found in s. 934.50(4)(d)-(j), F.S.

³⁰ Section 330.41(2)(c), F.S., defines an unmanned aircraft system as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently. Section 330.41(2)(b), F.S., specifies that drone has the same meaning as s. 934.50(2), F.S.

³¹ North Dakota House Bill 1328 (2015), available at <https://www.legis.nd.gov/assembly/64-2015/documents/15-0259-05000.pdf?20150501154934> (last viewed February 19, 2019).

³² *How drones help Lake County police investigate crashes, get roads open faster*, Daily Herald, May 7, 2017, available at <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster> (last viewed February 18, 2019).

³³ “Research shows that documenting a collision scene using photogrammetry and UAS can be advantageous, especially in terms of speed and cost. With a combination of advanced imaging software and the latest UAS technology, we find that the North Carolina State Highway Patrol (NCSHP) can rapidly map collision scenes and simultaneously gather more information than legacy technologies. Indeed, large scenes can be documented in less than 30 minutes.” *Collision Scene Reconstruction & Investigation Using Unmanned Aircraft Systems*, Division of Aviation, UAS Program Office, N.C. Department of Transportation, August 2017, available at <https://www.ncdot.gov/divisions/aviation/Documents/ncshp-uas-mapping-study.pdf> (last viewed February 18, 2019).

In addition to quickly and efficiently clearing traffic crash scenes, drone technology has enhanced crime scene documentation using a process called orthomosaic photography that can recreate a crime scene in 3-D.³⁴

Drones can also be used by law enforcement to more efficiently do jobs such as searching for evidence. For example, the San Bernardino Police Department used a drone to successfully search a large field for a gun thrown by a suspect who was being pursued.³⁵ The San Bernardino police chief emphasized the cost benefit in deploying a drone versus assembling a team to look for the gun in that situation.³⁶

Tactical Uses for Drones

Some have suggested that drones could be used to gain a tactical advantage in active shooter situations like that which occurred in Las Vegas in 2017 at the outdoor music festival at which 58 people were killed and more than 500 injured.³⁷ For example, Brian Levin, director of The Center for the Study of Hate and Extremism at California State University-San Bernardino opines that a “drone could have provided real-time intelligence and surveillance to what’s going on” during the Las Vegas incident.³⁸ In an article written for the International Journal of Aviation, Aeronautics, and Aerospace, Ryan Wallace and Jon Loffi, analyzed the law enforcement response to the Las Vegas shooting, concluding that had a drone been accessible to the Las Vegas Police it may have provided life-saving reconnaissance and shooter distraction.³⁹

Crowd Control and Monitoring for Public Safety

According to a December 2017 news article, the Las Vegas Police Department planned to use drones to monitor New Year’s Eve revelers on the Strip on December 31, 2017. The department decided to use drones to monitor crowds from an aerial view, which would help police better position barricades and other pedestrian control devices. Additionally, the department intended to use the drones to identify suspicious packages, track any unusual activity, and check hotel

³⁴ Mesa County, Colorado, Sheriff’s Office unmanned aircraft program director, Ben Miller, envisions the 3-D crime scene preservation technique as a real aid in cold cases. The Huffington Post, Michelle Fredrickson, *Drones Add a New Dimension to Crime Scene Investigations*, October 24, 2014 (updated December 6, 2017), available at https://www.huffingtonpost.com/pro-journal/drones-add-a-new-dimension_b_6033392.html (last viewed February 19, 2019).

³⁵ National Police Foundation, Jarrod Burguan, San Bernardino Police Chief, *Drones help augment a police department’s capabilities to fight crime*, available at <https://www.policefoundation.org/drones-help-augment-a-police-departments-capabilities-to-fight-crime/> (last viewed February 20, 2019).

³⁶ *Id.*

³⁷ Las Vegas Review-Journal, Nicole Raz, *Las Vegas police drones will monitor New Year’s Eve crowds*, December 27, 2017, available at <https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/las-vegas-police-drones-will-monitor-new-years-eve-crowds/> (last viewed February 20, 2019).

³⁸ *Id.* See also Wallace, Ryan and Loffi, Jon, *How Law Enforcement Unmanned Aircraft Systems (UAS) Could Improve Tactical Response to Active Shooter Situations: The Case of the 2017 Las Vegas Shooting*, Vol. 4, Article 7, International Journal of Aviation, Aeronautics, and Aerospace, October 9, 2017, available at <https://commons.erau.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1198&context=ijaa> (last viewed February 20, 2019).

³⁹ *Id.*

windows to try to detect anyone who might try to recreate the mass shooting incident that occurred in the city just a few months earlier.⁴⁰

Likewise, New York City had planned to have a camera-equipped drone in the sky during the 2018 New Year's Eve celebration, but "relegated to a cordoned-off area and tethered to a building" to prevent injury should the drone fall. Inclement weather prevented the drone operation.⁴¹

As stated above, the FAA, which regulates the use of drones and other aircraft in the national airspace, has restricted drone flight over persons, however at least one local governmental authority has recently had that restriction waived by the FAA.⁴² The same model drone (Vantage Robotics Snap) was used by CNN to obtain a waiver from the FAA due to the safety features of the drone, which has the ability to break apart upon impact.⁴³

Other Governmental Functions for Drones

Drones are becoming useful for governmental functions outside policing. For example, the Daytona Beach Police Department utilized its drones to document the state of the city's infrastructure immediately before and after Hurricane Irma came through in September 2017 to provide the Federal Emergency Management Agency with the proof necessary to obtain funding for rebuilding. Additionally, the department was able to aid first responders in navigating the fastest and safest routes to those in need of aid by providing a birds-eye view to downed power lines, unstable infrastructure, and blocked roads in the wake of the storm.⁴⁴

In Brevard County, Fire Rescue personnel have been trained to test for the FAA drone pilot certification so they can conduct search-and-rescue operations, ocean rescue, map brush fires, and examine burning buildings to identify safe entry points for firefighters using drones.⁴⁵

Although it does not currently use drones, the Florida Department of Agriculture and Consumer Services suggests that using a drone would be helpful in conducting timber assessments after a

⁴⁰ Las Vegas Review-Journal, Nicole Raz, *Las Vegas police drones will monitor New Year's Eve crowds*, December 27, 2017, available at <https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/las-vegas-police-drones-will-monitor-new-years-eve-crowds/> (last viewed February 20, 2019).

⁴¹ The Washington Post, Peter Holley, *The NYPD planned to use drones during Times Square New Year's Eve celebration. Then it started raining*, December 31, 2018, available at https://www.washingtonpost.com/technology/2018/12/31/nypds-latest-tool-keeping-times-square-revelers-safe-remote-controlled-drone/?utm_term=.1a63123ba637 (last viewed February 20, 2019).

⁴² See the section of the Bill Analysis on the FAA below; see also Vantage Robotics News, *Snap Gets FAA Waiver with Rutherford County, Tennessee*, November 19, 2018, available at <https://vantagerobotics.com/news/snap-gets-faa-waiver-rutherford-county-tennessee> (last viewed February 20, 2019).

⁴³ IEEE Spectrum, David Schneider, *CNN Uses Vantage Robotics' Snap Drone to Win FAA Fly-Over-People Waiver*, October 19, 2018, available at <https://spectrum.ieee.org/automaton/robotics/drones/cnn-uses-vantage-robotics-snap-drone-to-win-faa-fly-over-people-waiver> (last viewed February 20, 2019).

⁴⁴ In Public Safety, PoliceOne.com, Jinnie Chua, *Why drones should be part of every PD's disaster response plan*, February 22, 2018, available at <https://www.policeone.com/2018-guide-drones/articles/471474006-Why-drones-should-be-part-of-every-PDs-disaster-response-plan/> (last viewed February 20, 2019).

⁴⁵ Florida Today, Rick Neale, *Florida Tech drone training takes flight for Brevard County firefighters, lifeguards*, November 30, 2018, available at <https://www.floridatoday.com/story/news/2018/11/30/florida-tech-drone-training-takes-flight-brevard-firefighters/2140086002/> (last viewed February 20, 2019).

wildfire goes through an area and for land management purposes such as prescribed burning, timber stand mapping, and insect and disease monitoring. A drone could also be used by the department to pinpoint areas that need to be further evaluated by field personnel for both timber stand work and insect and disease evaluations. Utilizing a drone over such large tracts of land could reduce potential physical impacts for working around threatened and endangered species by allowing the department to work remotely with the drone thus reducing disturbance to the endangered species.⁴⁶

III. Effect of Proposed Changes:

The bill adds three exceptions in s. 934.50(4), F.S., that will allow law enforcement agencies to use drones to:

- Assist in crowd control involving a group of 50 people or more.
- Assist with traffic management, except that a law enforcement agency may not use a drone to gather evidence to enforce traffic infractions.
- Facilitate the collection of evidence at a crime scene or traffic crash scene.

Additionally, the bill provides that s. 934.50, F.S., does not prohibit the use of a drone by a state agency or political subdivision for:

- The assessment of damage due to a flood, wildfire, or natural disaster; or
- Vegetation or wildlife management on publicly owned land or water.⁴⁷

The terms law enforcement agency, state agency, and political subdivision as used in s. 934.50, F.S., are currently defined in s. 934.50(2)(d), F.S., and s. 934.50(3)(b), F.S., (by cross-reference to s. 11.45, F.S.).

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴⁶ Florida Department of Agriculture and Consumer Services, Agency Bill Analysis, February 11, 2019, (on file with the Senate Committee on Criminal Justice).

⁴⁷ There does not seem to be a singular definition in the Florida Statutes for the term publicly owned land. For example, in s. 317.0003(8), F.S., public lands is defined as lands within the state that are available for public use and that are owned, operated, or managed by a federal, state, county or municipal government entity. In s. 375.312(2), F.S., public lands means any lands in the state which are owned by, leased by, or otherwise assigned to the state or any of its agencies and which are used by the general public for recreational purposes. There is no definition of public waters appearing in the Florida Statutes although there is a detailed definition of “waters” found in s. 403.031(13), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Privacy

Although it is generally understood that a person does not currently have a reasonable expectation of privacy under the circumstances set forth in the bill, with the evolution of technology as it relates to intrusion into a person's privacy interests, the law applying the Fourth Amendment to the U.S. Constitution, too, may evolve.⁴⁸

Preemption

The regulation of the national airspace and the aircraft that occupy it is a federal matter.⁴⁹ The FAA Chief Counsel issued a document in 2015 about state and local regulation of drones in which he said that state and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework in order to “ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions.”⁵⁰ However, given the Chief Counsel's acknowledgement that “laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation”⁵¹ it appears that the bill would not be an encroachment into an area exclusively regulated by the federal government.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁴⁸ The Fourth Amendment to the U.S. Constitution protects persons from unreasonable searches and seizures by the government. U.S. Const. amend. IV. See *Katz v. United States*, 389 U.S. 347 (1967) finding there is no reasonable expectation of privacy in the public view. See also *Carpenter v. United States*, 138 S.Ct. 2206 (2018) a recent Fourth Amendment case finding a reasonable expectation of privacy in historical cell phone location records.

⁴⁹ Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. ss. 40103, 44502, and 44701-44735.

⁵⁰ FAA, Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, December 17, 2015, available at https://www.faa.gov/uas/resources/policy_library/media/UAS_Fact_Sheet_Final.pdf (last viewed February 4, 2019).

⁵¹ *Id.*, citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

C. Government Sector Impact:

The bill allows for new uses for drones by government agencies under certain circumstances which could result in a cost savings for such agencies. However, nothing in the bill requires law enforcement agencies, state agencies, or political subdivisions to spend resources to acquire drones or train personnel to use them.

The Florida Department of Agriculture and Consumer Services and the Florida Department of Law Enforcement do not anticipate a fiscal impact related to this bill.⁵²

The Florida Fish and Wildlife Conservation Commission indicates by Memorandum that it will not be submitting a bill analysis for this bill.⁵³

The Florida Department of Highway Safety and Motor Vehicles expects no immediate fiscal impact, however, if the department decides to expand its use of drones, additional non-recurring budget authority would be required to purchase the equipment and recurring budget authority would be needed for ongoing maintenance.⁵⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes

IX. Additional Information:

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

CS by Criminal Justice on March 4, 2019:

The committee substitute amends the exceptions in the bill to:

- Require that the size of a crowd subject to crowd control be 50 people or more.
- Provide that a law enforcement agency may not use a drone to gather evidence to enforce traffic infractions.

⁵² Florida Department of Agriculture and Consumer Services, 2019 Agency Bill Analysis, February 11, 2019; Florida Department of Law Enforcement, 2019 Agency Bill Analysis, February 6, 2019 (on file with the Senate Committee on Criminal Justice).

⁵³ Florida Fish and Wildlife Conservation Commission, Memorandum, March 1, 2019, (on file with the Senate Committee on Criminal Justice).

⁵⁴ Florida Department of Highway Safety and Motor Vehicles, 2019 Agency Bill Analysis, February 12, 2019, (on file with the Senate Committee on Criminal Justice).

- Allow a state agency or political subdivision to use a drone for vegetation or wildlife management on publicly owned land or water.

B. Amendments:

None.

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



712380

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
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The Committee on Criminal Justice (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (3) is amended and paragraphs (d) through (j) of subsection (4) of section 934.50, Florida Statutes, are redesignated as paragraphs (h) through (n), respectively, and new paragraphs (d), (e), (f), and (g) are added to that subsection to read:

934.50 Searches and seizure using a drone.—



712380

(3) PROHIBITED USE OF DRONES.—

(a) A law enforcement agency may not use a drone to gather evidence or other information except as provided in (4).

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(d) To assist a law enforcement agency in crowd control involving a group of 50 people or more.

(e) To assist a law enforcement agency with traffic management, except that a law enforcement agency may not use a drone to gather evidence to enforce traffic infractions.

(f) To facilitate a law enforcement agency's collection of evidence at a crime scene or traffic crash scene.

(g) By a state agency or political subdivision for the assessment of damage due to a flood, wildfire, or natural disaster or for vegetation or wildlife management on publicly owned land or water.

Section 2. This act shall take effect July 1, 2019

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to expanded uses of unmanned aircraft;
amending s. 934.50, F.S.; authorizing the use of
drones by law enforcement agencies and other specified
entities for specified purposes; providing an
effective date.

By Senator Gruters

23-01036C-19

2019766__

A bill to be entitled

An act relating to expanded uses of unmanned aircraft;
amending s. 934.50, F.S.; authorizing the use of
drones by law enforcement agencies and other specified
entities for specified purposes; providing an
effective date.

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

Section 1. Paragraphs (d) through (j) of subsection (4) of
section 934.50, Florida Statutes, are redesignated as paragraphs
(g) through (m), respectively, and new paragraphs (d), (e), and
(f) are added to that subsection, to read:

934.50 Searches and seizure using a drone.—

(4) EXCEPTIONS.—This section does not prohibit the use of a
drone:

(d) To assist a law enforcement agency in crowd control or
traffic management.

(e) To facilitate a law enforcement agency's collection of
evidence at a crime scene or traffic crash scene.

(f) By a state agency or political subdivision for the
assessment of damage due to a flood, wildfire, or natural
disaster or for land management.

Section 2. This act shall take effect July 1, 2019.

Arnold, Sue

From: Cellon, Connie
Sent: Thursday, February 21, 2019 1:45 PM
To: Arnold, Sue
Subject: for SB 766...

From: Matt Dunagan <mdunagan@flsheriffs.org>
Sent: Monday, January 28, 2019 4:11 PM
To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Subject: RE: today's seemingly random question is...

Firm...might be off one or two.

Matt Dunagan, Deputy Executive Director of Operations
(850) 877-2165 x. 212 (office)
(850) 274-3599 (cell)
FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Monday, January 28, 2019 2:55 PM
To: Matt Dunagan <mdunagan@flsheriffs.org>
Subject: RE: today's seemingly random question is...

Estimate or firm-ish?

From: Matt Dunagan <mdunagan@flsheriffs.org>
Sent: Monday, January 28, 2019 2:54 PM
To: Amy Mercer <amercer@fpca.com>; Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Subject: RE: today's seemingly random question is...

I would say about a dozen sheriffs offices.

Matt Dunagan, Deputy Executive Director of Operations

(850) 877-2165 x. 212 (office)

(850) 274-3599 (cell)

FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Amy Mercer <amercer@fpca.com>

Sent: Friday, January 25, 2019 11:50 AM

To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>; Matt Dunagan <mdunagan@flsheriffs.org>

Subject: RE: today's seemingly random question is...

No but let me see what I can find out!

Amy Mercer

Executive Director

The Florida Police Chiefs Association, FPCA

850-219-3631

www.fpca.com

amercer@fpca.com

Faithfully serving Florida Police Chiefs

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>

Sent: Friday, January 25, 2019 11:38 AM

To: Amy Mercer <amercer@fpca.com>; Matt Dunagan <mdunagan@flsheriffs.org>

Subject: today's seemingly random question is...

Any idea how many departments have drones?

Connie Cellon

Senate Criminal Justice

850-487-5192

Arnold, Sue

From: Cellon, Connie
Sent: Thursday, February 21, 2019 1:44 PM
To: Arnold, Sue
Subject: FW: Drones List SB 766
Attachments: Drones PD Feedback.xlsx

From: Amy Mercer <amercer@fpca.com>
Sent: Tuesday, January 29, 2019 3:00 PM
To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>; Matt Dunagan <mdunagan@flsheriffs.org>
Subject: FW: Drones List

Hi Connie, please see attached list. These are the agencies that responded to our inquiry. Hope this helps! Amy

Amy Mercer
Executive Director
The Florida Police Chiefs Association, FPCA
850-219-3631
www.fpca.com
amercer@fpca.com
Faithfully serving Florida Police Chiefs

From: Kendra Oates <KBriscoe@fpca.com>
Sent: Tuesday, January 29, 2019 2:56 PM
To: Amy Mercer <amercer@fpca.com>
Subject: Drones List

Agency	Drones?
CSX Railroad PD	Yes
Clearwater PD	Yes
Aventura PD	Yes
Medley PD	Yes
St. Petersburg PD	Yes
Lakeland PD	Yes
Naples PD	Yes
St. Cloud PD	Yes
FHP	Yes
Mount Dora PD	Yes
Winter Springs PD	Yes
Panama City Beach PD	Yes
Fort Lauderdale PD	Yes
Daytona Beach PD	Yes
Melbourne Beach PD	Yes
Miami Shores PD	Yes
Winter Park PD	Yes
Margate PD	Yes
Groveland PD	Yes
Palm Beach Gardens PD	Yes
Lake Wales PD	Yes
Boca Raton PD	Yes
Miami Beach PD	Yes
Panama City PD	Yes
Key West PD	Yes
Winter Haven PD	Yes
West Palm Beach PD	Yes
Daytona Beach Shores PD	Yes
Melbourne PD	Yes
Crestview PD	Yes
Treasure Island	Yes
Coral Springs PD	Yes
Miami-Dade PD	Will be using soon
	Will be
Coconut Creek PD	purchasing soon
	Will be
Orange Park PD	purchasing soon
	Will be
Holly Hill PD	purchasing soon
	Will be
Bay Harbor Islands PD	purchasing soon
	Will be
Auburndale PD	purchasing soon
	Will be
USF PD	purchasing soon

	Will be
Bradenton PD	purchasing soon
	Will be
Lawtey PD	purchasing soon
	Will be
North Port PD	purchasing soon
New College of Florida PD	No
Milton PD	No
Eustis PD	No
Edgewood PD	No
Sanford Airport PD	No
Marianna PD	No
Satellite Beach PD	No
North Palm Beach PD	No
Casselberry PD	No
TLH Community College PD	No
Vero Beach PD	No
Bunnell PD	No
Tampa PD	No
Clermont PD	No
Belle Air PD	No
University of North Florida PD	No
Palm Springs PD	No
Cape Coral PD	No
FL East Coast Railway	No
Lake City PD	No
Fernandina Beach PD	No
Capitol Police	No
FL Southwestern State College	No
West Miami PD	No
West Melbourne PD	No
Punta Gorda PD	No
Orange City PD	No
Florida State University PD	No
Howey In the Hills PD	No
Sewalls Point PD	No
Seminole PD	No
Perry PD	No
Longwood PD	No
Pembroke Pines PD	No
Lake Mary PD	No
FL Gulf Coast University PD	No
Sanibel PD	No
FL Atlantic University PD	No
South Miami PD	No
Cocoa Beach PD	No
South Daytona PD	No

Lake Placid PD	No
Division of Alcoholic Bev. And Tobacco	No
Welaka PD	No
Lake Alfred PD	No
Lee County Port Authority PD	No
Winter Garden PD	No
Hillsboro Beach PD	No
Melbourne Airport PD	No
Ponce Inlet PD	No
Fellsmere PD	No
Temple Terrace PD	No
Windermere PD	No
Ocoee PD	No
Bal Harbour PD	No
Plantation PD	No
Sanford PD	No
Leesburg PD	No
Biscayne Park PD	No
University of Central FL PD	No
Fort Pierce PD	No
Santa Fe College PD	No
Sarasota County Schools PD	No
NW FL Beaches Airport PD	No
Boynton Beach PD	No
Sarasota PD	No
Ocean Ridge PD	No
Alachua PD	No
Cedar Key PD	No
Jennings PD	No
Lake Hamilton PD	No
Largo PD	No
Surfside PD	No
Kenneth City PD	No
FL Supreme Court	No
Ormond Beach PD	No
Pinellas Park PD	No
Pinecrest PD	No
DeFuniak Springs PD	No
Oviedo PD	No
Indian Shores PD	No
Dade City PD	No
Valparaiso PD	No
Jacksonville Airport PD	No
Maitland PD	No
Flagler Beach PD	No
FL International University PD	No

Umatilla PD	No
Mexico Beach PD	No
Tallahassee PD	No
Jupiter PD	No
Clewiston PD	No
Sneads PD	No
St. Augustine PD	No
Citrus County School Board PD	No
Palatka PD	No

Date: February 11, 2019

Agency Affected:	<u>Dept. of Agriculture and Consumer Services</u>	Telephone: <u>850-617-7000</u>
Agency Contact:	<u>Emily Buckley, Legislative Affairs Director</u>	Telephone: <u>850-617-7700</u>
Respondent:	<u>Emily Koon</u>	Telephone: <u>850-410-2289</u>

RE: SENATE BILL # 0766 – Expanded Uses of Unmanned Aircraft – by Sen. Gruters

I. SUMMARY

This act provides exceptions for the use of drones amending s. 934.50, F.S.; permitting the use of drones by law enforcement for crowd control, traffic management, evidence collection at a crime or crash scene. Also, would allow state agencies and other political subdivisions to conduct damage assessments due to flood, wildfire, or natural disaster or for land management. Effective date July 1, 2019.

II. PRESENT SITUATION

Currently, the Florida Department of Agriculture and Consumer Services does not utilize the use of unmanned aircraft.

III. EFFECT OF PROPOSED CHANGES

This would allow the Florida Forest Service to utilize drones for both wildfire assessments to see what condition timber is in after a wildfire goes through an area and for land management purposes including prescribed burning, timber stand mapping, and insect and disease monitoring. A small drone could be used in place of more expensive manned aviation assets, freeing them up for higher priority missions. It could also be used to help pinpoint areas that need to be checked by field personnel for both timber stand work and insect and disease evaluations. This could reduce potential physical impacts for threatened and endangered species work by allowing the Department to work remotely with the drone; thus, reducing disturbance to the endangered species.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

	(FY 19-20) Amount/ FTE	(FY 20-21) Amount/ FTE	(FY 21-22) Amount/ FTE
A. Revenues			
1.Recurring			
2.Non-Recurring			
B. Expenditures			
1.Recurring			
2.Non-Recurring			

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

VII. LEGAL ISSUES

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

D. Other:

VIII. COMMENTS:



2019 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB 766
BILL TITLE:	<u>Expanded Uses of Unmanned Aircraft</u>
BILL SPONSOR:	Gruters
EFFECTIVE DATE:	July 01, 2019

COMMITTEES OF REFERENCE

1)
2)
3)
4)
5)

CURRENT COMMITTEE

--

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	HB 75
SPONSOR:	Yarborough

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	February 06, 2019
LEAD AGENCY ANALYST:	Sherry Gomez
ADDITIONAL ANALYST(S):	Mike Duffey; Grant Geyer, Becky Bezemek
LEGAL ANALYST:	Jason Jones; Jeff Dambly
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Permits the use of drones by law enforcement and other specified entities for specified purposes. The bill provides for law enforcement use of drones to facilitate collection of evidence at a crime scene or traffic crash scene; to assist a law enforcement agency in crowd control or traffic management. It allows the use of a drone by a state agency or political subdivision for the assessment of damage due to natural disasters or for land assessment.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Currently section 934.50, F.S, prohibits the use of drones by law enforcement agencies to gather evidence or other information unless specified exceptions are met. Also, a person, a state agency, or a political subdivision as defined may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.

2. EFFECT OF THE BILL:

Adds additional exceptions to the prohibitions listed in section 934.50, F.S. Allows the use of a drone to assist a law enforcement agency in crowd control or traffic management and to facilitate a law enforcement agency's collection of evidence at a crime scene or traffic crash scene. The bill also allows the use of a drone by a state agency or political subdivision for the assessment of damage due to a flood, wildfire or natural disaster or for land management.

The exceptions in this bill assist law enforcement covering crime and traffic crash scenes. Aerial views provide a greater vantage point with fewer resources. When the scenes cover large areas, the manpower needed can be dramatic. Being able to use drones in these scenarios without waiting for a warrant will allow a faster response by law enforcement which is often critical to public safety.

Use of drones in disaster assessments will allow a much more immediate response to an impacted area. The observation will allow for quick reviews of areas for search and rescue efforts, forward advance of relief and protection efforts, and closer views of damages or areas where aircraft cannot go. This would improve public safety and aid in faster recovery.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☒

If yes, explain:	
What is the expected impact to the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	
--------------------------------	--

Date Due:	
Bill Section Number:	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☒

Revenues:	
-----------	--

Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☒

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
--	--

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	No additional comments or concerns.
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ADDITIONAL COMMENTS



Florida Fish and Wildlife Conservation Commission

Commissioners
Robert A. Spottswood
Chairman
Key West

Michael W. Sole
Vice Chairman
Tequesta

Joshua Kellam
Palm Beach Gardens

Gary Lester
Oxford

Gary Nicklaus
Jupiter

Sonya Rood
St. Augustine

Office of the
Executive Director
Eric Sutton
Executive Director
Thomas H. Eason, Ph.D.
Assistant Executive Director
Jennifer Fitzwater
Chief of Staff

850-487-3796
850-921-5786 FAX

*Managing fish and wildlife
resources for their long-term
well-being and the benefit
of people.*

620 South Meridian Street
Tallahassee, Florida
32399-1600
Voice: 850-488-4676

Hearing/speech-impaired:
800-955-8771 (T)
800 955-8770 (V)

MyFWC.com

March 1, 2019

Re: Bill Analysis Request for SB 766

The Florida Fish and Wildlife Conservation Commission (FWC) will not be submitting a bill analysis for SB 766.

If you have any questions, or if I can be of assistance in any way, please contact me.

Thank you,

Lance Watson
Deputy Legislative Affairs Director
Florida Fish and Wildlife Conservation Commission
Office: (850) 487-3795
Email: lance.watson@myfwc.com

- FLA. CON., art. X, s. 11.
The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, is held by the state.
- Section 177.28, F.S.
Mean high-water line along the shores of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the state in its sovereign capacity and upland subject to private ownership.
- Section 177.27, F.S.
(14) “Mean high water” means the average height of the high waters over a 19-year period. For shorter periods of observation, “mean high water” means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.
(15) “Mean high-water line” means the intersection of the tidal plane of mean high water with the shore.
- 43 U.S.C. 1312 (“Submerged Land Act”)
The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries.
- United States v. States of La., Tex., Miss., Ala., & Fla., 364 U.S. 502, 503 (1960)
“[A]s against the United States, the defendant States are respectively entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico, extending seaward from their coast lines for a distance of three leagues in the case of Texas and Florida ...”
- DEP, Florida Coastal Management Program Guide, A Guide to the Federally Approved Florida Coastal Management Program, 7 (2017) available at https://floridadep.gov/sites/default/files/FCMP-Program-Guide-2017_0.pdf.
“**Seaward Boundaries** – The [1972 Coastal Zone Management Act] defines the seaward extent of a state’s coastal zone as ‘to the outer limit of state title and ownership under the Submerged Land Act ...’ Under the Submerged Lands Act, Florida’s title and ownership extends *three miles into the Atlantic Ocean* and, in accordance with United States vs. Louisiana, et.al., 364 U.S. 502 (1960), three marine leagues (approximately *nine nautical miles*) *into the Gulf of Mexico*. **Interstate Boundaries** - The western lateral boundary of the [Florida Coastal management Program] is defined by the adjudicated boundary between Florida and Alabama. The coastal zone boundary in Alabama is the continuous 10-foot contour in Mobile and Baldwin counties. The northern lateral boundary of the



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Highway Safety and Motor Vehicles

BILL INFORMATION

BILL NUMBER:	SB 766
BILL TITLE:	<u>Expanded Uses of Unmanned Aircraft</u>
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

1) Not assigned
2)
3)
4)
5)

CURRENT COMMITTEE

--

SIMILAR BILLS

BILL NUMBER:	SB 132
SPONSOR:	Senator Rouson

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	HB 75
SPONSOR:	Representative Yarborough

Is this bill part of an agency package?

--

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	2/12/19: Elizabeth Hudson/Major Gary Howze/Major Timothy Roufa - FHP
Division Director/Designee MS	
Division Director/Designee FHP	<i>Michael McDermott JH 2/14/19 JSP 2/20/19</i>
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Nate Sebastian/Rich Coln/Nicole Jordan, OGC
FISCAL ANALYST:	Suzie Carey, Budget <i>2/22/19 JSC</i>

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill permits the use of drones by law enforcement agencies for crowd control, traffic management, and collection of evidence at a crime scene or traffic crash; and by a state agency or political subdivision for damage assessment following a natural disaster or for land management.

If passed, this bill shall take effect July 1, 2019.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 934.50(3)(a), F.S., generally prohibits a law enforcement agency from using a drone to gather evidence or other information unless allowed under subsection (4). Pursuant to s. 934.50(4)(c), F.S., law enforcement agencies may use a drone if the agency possesses a reasonable suspicion that swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to search for a missing person. Law enforcement may not use drones for investigative surveillance or as a routine investigative tactic. The current law as written leaves open the question of the use of drones for certain non-surveillance related public safety functions, but clarity is necessary to ensure agencies are able to take advantage of this technology to the benefit of the public.

2. EFFECT OF THE BILL:

This bill amends s. 934.50(4), F.S., to clarify that the use of drones is permitted for the following specified purposes:

- To assist a law enforcement agency in crowd control or traffic management;
- To facilitate a law enforcement agency's collection of evidence at a crime scene or traffic crash scene; and
- By a state agency or political subdivision to assess damage due to a flood, wildfire, or natural disaster or for land management by a state agency or political subdivision

This bill will help Florida Highway Patrol (FHP) troopers make use of new technologies to improve their abilities to investigate traffic crashes, as well as plan responses to significant crash scenes and road closures. This change can potentially help the FHP reduce the amount of time a road may need to be closed and possibly reduce secondary crashes that result from road closures due to traffic crashes. It will ensure the FHP and other public safety agencies can make use of capabilities that will provide more effective and efficient search and rescue operations, and open up opportunities for enhanced disaster response.

If the bill is passed, FHP may need to revise their written directive governing the use of Unmanned Aerial Systems by members of the Patrol, while in an official capacity.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y ☐ N ☒

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	NA

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y ☒ N ☐

Revenues:	No
Expenditures:	There is no immediate fiscal impact to the Department of Highway Safety and Motor Vehicles. However, if the department decides to expand its use of unmanned aerial systems (UAS), additional non-recurring budget authority would be required for the purchase of the equipment, and recurring budget authority would be needed for the ongoing maintenance.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	Yes, if local and statewide law enforcement agencies, state agencies, and political subdivisions decide to utilize this technology, vendors would benefit from the sale and ongoing maintenance of the equipment.
Expenditures:	No
Other:	NA

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	No
-------------------------	----

Bill Section Number:

NA

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.

This legislation does not appear to have any impact on the Department's technology systems.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.

ADDITIONAL COMMENTS**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

766

Bill Number (if applicable)

712300

Amendment Barcode (if applicable)

Topic UNMANNED AIRCRAFT

Name DAVID DANIEL

Job Title

Address 311 EAST PARK AVENUE

Street

TALLAHASSEE

City

FL

State

32301

Zip

Phone 224-5081

Email ddaniel@smithbryanaandallen.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing U.A.S. ASSOCIATION OF 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.

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)

3/4/2019

Meeting Date

SB 766

Bill Number (if applicable)

Topic Unmanned Aircraft

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Public Policy Director,

Address 126 N. Mills Ave

Phone 407-376-4801

Street

Orlando FL 32801

City

State

Zip

Email ida.eskamani@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3.4.19

Meeting Date

766

Bill Number (if applicable)

Topic Expanded Use of Unmanned Aircraft

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

Meeting Date

7666
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Phone 850 766-8808

Tallahassee , FL 32301
City State Zip

Email foxlegislative@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

766

Bill Number (if applicable)

Topic UNMANNED AIRCRAFT

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE

Phone 224-5081

Street

TALLAHASSEE FL 32301

City

State

Zip

Email ddaniel@smithbryanandassociates.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing U. A. S. ASSOCIATION OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/4/2019

Meeting Date

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

766

Bill Number (if applicable)

Topic Expanded Use of Unmanned Aircraft

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/2019

Meeting Date

766

Bill Number (if applicable)

Topic Expanded Uses of Unmanned Aircraft

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email amercer@fpca.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-4-19
Meeting Date

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

766
Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

City

State

Zip

Email JMM2@MIAMIDADE.GOV

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

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.

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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)

3/4/19

Meeting Date

SB 766

Bill Number (if applicable)

Topic Drones - Surveillance

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., Suite 400

Phone 786-363-4436

Street

Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of 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.

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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)

3 / 4 / 2019

Meeting Date

Topic _____

Bill Number 766
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

SB 766

Bill Number (if applicable)

Topic Expanded Use of Unmanned Aircraft

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

SR 766

Bill Number (if applicable)

Topic SR 766

Amendment Barcode (if applicable)

Name Todd Sumner

Job Title Lobbyist

Address 1102 Mimosa Dr.
Street

Phone 850-591-6119

Tallahassee FL 32312
City State Zip

Email Todd@sumnerlawoffices.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Drone Technologist LLC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 20th, 2019

The Honorable Keith Perry, Chair
Criminal Justice Committee
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Perry:

I am writing to request that Senate Bill 766, Expanded Uses of Unmanned Aircraft, be placed on the agenda of the next Criminal Justice Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me.
Thank you for your time and consideration.

Warm regards,



Joe Gruters

cc: Lauren Jones, Staff Director
Sue Arnold, Committee Administrative Assistant

REPLY TO:

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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: SB 782

INTRODUCER: Senator Simmons

SUBJECT: Youthful Offenders

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 782 permits a court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person to be under 21 years of age at the time of sentencing.

The Criminal Justice Impact Conference (CJIC) has not yet determined the impact of the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill would have no impact on state prison beds.

The bill is effective July 1, 2019.

II. Present Situation:

Current law provides an alternative sentencing scheme for certain youthful offenders convicted of a felony. A court may sentence a person as a youthful offender if he or she:

- Was found guilty of, or plead nolo contendere or guilty to a felony;¹
- Is younger than 21 years of age at the time the sentence is imposed; and
- Has not previously been sentenced as a youthful offender.²

If a court elects to sentence a person as a youthful offender, it must sentence the youthful offender to any combination of the following penalties:

- Placement of the youthful offender on probation or in a community control program for no more than 6 years. Under this sentencing option, the court can choose to withhold adjudication of guilt or impose adjudication of guilt.

¹ A person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under s. 958.04, F.S.

² Section 958.04(1)(a)-(c), F.S.

- Incarcerate the youthful offender for no more than 364 days. The incarceration must take place in a specified facility and is a condition of probation or community control.
- Incarcerate the youthful offender for a specified period followed by a term of probation or community control. If the incarceration is in specified Department of Corrections facilities, it cannot be for less than 1 year or longer than 4 years. The period of incarceration and probation or community control cannot exceed 6 years.
- Incarcerate the youthful offender for no more than 6 years.³

III. Effect of Proposed Changes:

The bill permits a court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person to be under 21 years of age at the time of sentencing.

As a result, a larger group of people will now be eligible for a youthful offender sentence.

The bill reenacts ss. 958.03(5), 958.045(8)(a), and 985.565(4)(c), F.S.

The bill is effective July 1, 2019.

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.

³ Section 958.04(2)(a)-(d), F.S. Any of these sentencing combinations cannot exceed the maximum sentence for the offense for which the youthful offender was found guilty. If a youthful offender is sentenced to a period of incarceration, the court must adjudicate the youthful offender guilty.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CJIC has not yet determined the fiscal impact of the bill. However, the EDR preliminarily estimates that the bill would have no impact on state prison beds.⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 958.04 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 958.03, 958.045, and 985.565.

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.

⁴ Information provided by EDR staff (on file with Senate Criminal Justice Committee).

By Senator Simmons

9-00969-19

2019782__

A bill to be entitled

An act relating to youthful offenders; amending s. 958.04, F.S.; revising the criteria allowing a court to sentence as a youthful offender a person who is found guilty of, or who pled nolo contendere or guilty to, committing a felony before the person turned 21 years of age; reenacting ss. 958.03(5), 958.045(8)(a), and 985.565(4)(c), F.S., relating to the definition of the term "youthful offender," the youthful offender basic training program, and classification as a youth offender, respectively, to incorporate the amendment made to s. 958.04, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(1) The court may sentence as a youthful offender any person:

(a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;

(b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant turned 21 years of age ~~the offender is younger than 21 years of age at the time~~

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00969-19

2019782__

~~sentence is imposed;~~ and

(c) Who has not previously been classified as a youthful offender under the provisions of this act; however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

Section 2. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, subsection (5) of section 958.03, Florida Statutes, is reenacted to read:

958.03 Definitions.—As used in this act:

(5) "Youthful offender" means any person who is sentenced as such by the court or is classified as such by the department pursuant to s. 958.04.

Section 3. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 958.045, Florida Statutes, is reenacted to read:

958.045 Youthful offender basic training program.—

(8)(a) The Assistant Secretary for Youthful Offenders shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04, whose age does not exceed 24 years. The department may classify and assign as a youthful offender any inmate who meets the criteria of s. 958.04.

Section 4. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 985.565, Florida Statutes, is reenacted to read:

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00969-19

2019782__

59 985.565 Sentencing powers; procedures; alternatives for
60 juveniles prosecuted as adults.—

61 (4) SENTENCING ALTERNATIVES.—

62 (c) *Adult sanctions upon failure of juvenile sanctions.*—If
63 a child proves not to be suitable to a commitment program,
64 juvenile probation program, or treatment program under paragraph
65 (b), the department shall provide the sentencing court with a
66 written report outlining the basis for its objections to the
67 juvenile sanction and shall simultaneously provide a copy of the
68 report to the state attorney and the defense counsel. The
69 department shall schedule a hearing within 30 days. Upon
70 hearing, the court may revoke the previous adjudication, impose
71 an adjudication of guilt, and impose any sentence which it may
72 lawfully impose, giving credit for all time spent by the child
73 in the department. The court may also classify the child as a
74 youthful offender under s. 958.04, if appropriate. For purposes
75 of this paragraph, a child may be found not suitable to a
76 commitment program, community control program, or treatment
77 program under paragraph (b) if the child commits a new violation
78 of law while under juvenile sanctions, if the child commits any
79 other violation of the conditions of juvenile sanctions, or if
80 the child's actions are otherwise determined by the court to
81 demonstrate a failure of juvenile sanctions.

82
83 It is the intent of the Legislature that the criteria and
84 guidelines in this subsection are mandatory and that a
85 determination of disposition under this subsection is subject to
86 the right of the child to appellate review under s. 985.534.

87 Section 5. This act shall take effect July 1, 2019.

HB 887 – Youthful Offenders (Identical SB 782)

Amends s. 958.04, F.S., deleting the current requirement that an offender was younger than 21 years of age at the time sentence is imposed for a court to be allowed to sentence as a youthful offender and replacing it with “such crime was committed before the defendant turned 21 years of age.”

EDR PROPOSED ESTIMATE: No Impact

Requested by: Senate

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 782

Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., Suite 400

Phone 786-363-4436

Street

Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/4/19

Meeting Date

SB 782

Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney

Address 2725 Judge Frank Jamieson Way

Phone (321) 637-5525

Street

Viera FL

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla Prosecuting Attorneys Assoc. (FPAA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/2019

Meeting Date

782

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

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.

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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)

3.4.19

Meeting Date

782

Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

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.

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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)

3/4/19

Meeting Date

782

Bill Number (if applicable)

Topic YOUTHFUL OFFENDERS

Amendment Barcode (if applicable)

Name RJ MUIRS

Job Title LOBBYIST

Address 113 E COURTESY AVE, 300

Street

Phone (850) 933-0853

TAMPA

City

FL

State

32301

Zip

Email RJ@SUBKFCORPORATION.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL PUBLIC DEFENDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

SB 782

Bill Number (if applicable)

Topic

Youthful Offenders

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

1747 Orlando Central Pkwy

Phone

407 855 7604

Street

Orlando

State

FL

Zip

32809

Email

legislation@floridapta.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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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)

3/4/19

Meeting Date

SB 0782

Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Cesar Grajales

Job Title Director of Coalitions

Address 200 W College Ave

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Libre Initiative

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)

3/4/2019

Meeting Date

SB 782

Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

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

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 19, 2019

I respectfully request that **Senate Bill 782**, relating to Youthful Offenders, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

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: CS/SB 822

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Assault or Battery

DATE: March 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 822 reclassifies the misdemeanor or felony degree of an assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon a code enforcement officer, an employee of a state park or park operated by any of the state's political subdivisions, or a certified lifeguard while such officer, employee, or lifeguard is engaged in the lawful performance of his or her duties.

The Criminal Justice Impact Conference estimates the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault,¹ aggravated assault,² battery,³ and aggravated battery⁴ when a person is charged with knowingly committing any of these offenses upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person's employing agency and that the person is a licensed security officer; and
- A security officer employed by the board of trustees of a community college.⁵

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor;
- In the case of battery, from a first degree misdemeanor to a third degree felony;
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment; and
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.⁶

¹ Assault, which is a second degree misdemeanor, is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.011(1) and (2), F.S.

² Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. Section 784.021(1) and (2), F.S.

³ Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. Section 784.03(1)(a), F.S.

⁴ A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. Section 784.045(1) and (2), F.S.

⁵ Section 784.07(2), F.S.

⁶ Section 784.07(2)(a)-(d), F.S.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.⁷

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁸

III. Effect of Proposed Changes:

The bill amends s. 784.07, F.S., to reclassify the misdemeanor or felony degree of an assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon a code enforcement officer as defined in s. 162.21, F.S.,⁹ an employee of a state park or a park operated by any of the state's political subdivisions, or a lifeguard certified under s. 514.071, F.S.,¹⁰ while that officer, employee, or lifeguard is engaged in the lawful performance of his or her duties. The reclassification is as follows:

- In the case of assault, from a second degree misdemeanor (maximum penalty of 60 days in county jail) to a first degree misdemeanor (maximum penalty of one year in county jail);
- In the case of battery, from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison);
- In the case of aggravated assault, from a third degree felony to a second degree felony (maximum penalty of 15 years in state prison); and
- In the case of aggravated battery, from a second degree felony to a first degree felony (maximum penalty of 30 years in state prison).¹¹

If the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

⁷ Section 784.07(3)(a) and (b), F.S. Additionally, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence. Section 784.07(3), F.S.

⁸ Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

⁹ Section 162.21(1), F.S., defines a "code enforcement officer" as any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

¹⁰ Section 514.071(1), F.S., requires that any person working as a lifeguard at a public swimming pool must be certified by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs. Lifeguards must be currently certified in lifeguarding, first aid, and cardiopulmonary resuscitation. *Id.*

¹¹ Section 775.082, F.S. (maximum penalties).

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.¹²

A person subject to such mandatory minimum term may not have adjudication of guilt or imposition of sentence suspended, deferred, or withheld, and is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence.¹³

The bill is effective October 1, 2019.

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.

¹² Section 784.07(3)(a) and (b), F.S.

¹³ Section 784.07(3), F.S.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of prison bed impact, if any of legislation, estimates that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).¹⁴

VI. Technical Deficiencies:

None.

VII. Statutes Affected:

This bill substantially amends section 784.07 of the Florida Statutes.

This bill also reenacts the following sections of the Florida Statutes: 775.0877, 794.056, 921.0022, 938.08, and 938.085.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 4, 2019:

The committee substitute removes the term “state’s subdivisions” and substitutes the term “state’s political subdivisions.”

B. Amendments:

None.

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

¹⁴ The CJIC estimate is available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB113.pdf> (last visited on March 4, 2019).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Pizzo) recommended the following:

Senate Amendment

Delete line 43
and insert:
operated by any of the state's political subdivisions, or a
lifeguard certified under

By Senator Pizzo

38-01194-19

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1 A bill to be entitled
 2 An act relating to assault or battery; amending s.
 3 784.07, F.S.; providing for reclassification of
 4 assault or battery offenses committed on certain
 5 persons when such persons are engaged in their lawful
 6 duties; reenacting ss. 775.0877(1)(d), (e), (f), and
 7 (g), 794.056(1), 921.0022(3)(d), 938.08, and 938.085,
 8 F.S., relating to criminal transmission of HIV, the
 9 Rape Crisis Program Trust Fund, the offense severity
 10 ranking chart of the Criminal Punishment Code,
 11 additional cost to fund domestic violence programs,
 12 and additional cost to fund rape crisis centers,
 13 respectively, to incorporate the amendments made by
 14 the act; providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Subsection (2) of section 784.07, Florida
 19 Statutes, is amended to read:
 20 784.07 Assault or battery of law enforcement officers,
 21 firefighters, emergency medical care providers, public transit
 22 employees or agents, or other specified officers;
 23 reclassification of offenses; minimum sentences.-
 24 (2) Whenever any person is charged with knowingly
 25 committing an assault or battery upon a law enforcement officer,
 26 a firefighter, an emergency medical care provider, a railroad
 27 special officer, a traffic accident investigation officer as
 28 described in s. 316.640, a nonsworn law enforcement agency
 29 employee who is certified as an agency inspector, a blood

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30 alcohol analyst, or a breath test operator while such employee
 31 is in uniform and engaged in processing, testing, evaluating,
 32 analyzing, or transporting a person who is detained or under
 33 arrest for DUI, a law enforcement explorer, a traffic infraction
 34 enforcement officer as described in s. 316.640, a parking
 35 enforcement specialist as defined in s. 316.640, a person
 36 licensed as a security officer as defined in s. 493.6101 and
 37 wearing a uniform that bears at least one patch or emblem that
 38 is visible at all times that clearly identifies the employing
 39 agency and that clearly identifies the person as a licensed
 40 security officer, ~~or~~ a security officer employed by the board of
 41 trustees of a community college, a code enforcement officer as
 42 defined in s. 162.21, an employee of a state park or a park
 43 operated by a state subdivision, or a lifeguard certified under
 44 s. 514.071, while the officer, firefighter, emergency medical
 45 care provider, railroad special officer, traffic accident
 46 investigation officer, traffic infraction enforcement officer,
 47 inspector, analyst, operator, law enforcement explorer, parking
 48 enforcement specialist, public transit employee or agent, ~~or~~
 49 security officer, code enforcement officer, park employee, or
 50 lifeguard is engaged in the lawful performance of his or her
 51 duties, the offense for which the person is charged shall be
 52 reclassified as follows:
 53 (a) In the case of assault, from a misdemeanor of the
 54 second degree to a misdemeanor of the first degree.
 55 (b) In the case of battery, from a misdemeanor of the first
 56 degree to a felony of the third degree.
 57 (c) In the case of aggravated assault, from a felony of the
 58 third degree to a felony of the second degree. Notwithstanding

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any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

Section 2. For the purpose of incorporating the amendment made by this act to section 784.07, Florida Statutes, in references thereto, paragraphs (d), (e), (f), and (g) of subsection (1) of section 775.0877, Florida Statutes, are reenacted to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

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the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

Section 3. For the purpose of incorporating the amendment made by this act to section 784.07, Florida Statutes, in a reference thereto, subsection (1) of section 794.056, Florida Statutes, is reenacted to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.

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 117 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 118 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 119 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 120 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 121 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 122 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 123 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust
 124 fund also shall include revenues provided by law, moneys
 125 appropriated by the Legislature, and grants from public or
 126 private entities.

127 Section 4. For the purpose of incorporating the amendment
 128 made by this act to section 784.07, Florida Statutes, in a
 129 reference thereto, paragraph (d) of subsection (3) of section
 130 921.0022, Florida Statutes, is reenacted to read:

131 921.0022 Criminal Punishment Code; offense severity ranking
 132 chart.—

133 (3) OFFENSE SEVERITY RANKING CHART

134 (d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

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 499.0051(1) 3rd Failure to maintain or deliver transaction history, transaction information, or transaction statements.
 138 499.0051(5) 2nd Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
 139 517.07(1) 3rd Failure to register securities.
 140 517.12(1) 3rd Failure of dealer, associated person, or issuer of securities to register.
 141 784.07(2)(b) 3rd Battery of law enforcement officer, firefighter, etc.
 142 784.074(1)(c) 3rd Battery of sexually violent predators facility staff.
 143 784.075 3rd Battery on detention or commitment facility staff.
 144 784.078 3rd Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
 145 784.08(2)(c) 3rd Battery on a person 65 years of

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age or older.

146

784.081(3) 3rd Battery on specified official
or employee.

147

784.082(3) 3rd Battery by detained person on
visitor or other detainee.

148

784.083(3) 3rd Battery on code inspector.

149

784.085 3rd Battery of child by throwing,
tossing, projecting, or
expelling certain fluids or
materials.

150

787.03(1) 3rd Interference with custody;
wrongly takes minor from
appointed guardian.

151

787.04(2) 3rd Take, entice, or remove child
beyond state limits with
criminal intent pending custody
proceedings.

152

787.04(3) 3rd Carrying child beyond state
lines with criminal intent to
avoid producing child at
custody hearing or delivering
to designated person.

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153

787.07 3rd Human smuggling.

154

790.115(1) 3rd Exhibiting firearm or weapon
within 1,000 feet of a school.

155

790.115(2) (b) 3rd Possessing electric weapon or
device, destructive device, or
other weapon on school
property.

156

790.115(2) (c) 3rd Possessing firearm on school
property.

157

800.04(7) (c) 3rd Lewd or lascivious exhibition;
offender less than 18 years.

158

810.02(4) (a) 3rd Burglary, or attempted
burglary, of an unoccupied
structure; unarmed; no assault
or battery.

159

810.02(4) (b) 3rd Burglary, or attempted
burglary, of an unoccupied
conveyance; unarmed; no assault
or battery.

160

810.06 3rd Burglary; possession of tools.

161

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162	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
163	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
164	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
165	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
166	817.505(4)(a)	3rd	Patient brokering.
167	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
168	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
169	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.

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170	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
171	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
172	837.02(1)	3rd	Perjury in official proceedings.
173	837.021(1)	3rd	Make contradictory statements in official proceedings.
174	838.022	3rd	Official misconduct.
175	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
176	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
177	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
	843.025	3rd	Deprive law enforcement,

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correctional, or correctional
probation officer of means of
protection or communication.

843.15(1) (a) 3rd Failure to appear while on bail
for felony (bond estreature or
bond jumping).

847.0135(5) (c) 3rd Lewd or lascivious exhibition
using computer; offender less
than 18 years.

874.05(1) (a) 3rd Encouraging or recruiting
another to join a criminal
gang.

893.13(2) (a) 1. 2nd Purchase of cocaine (or other
s. 893.03(1) (a), (b), or (d),
(2) (a), (2) (b), or (2) (c) 5.
drugs).

914.14(2) 3rd Witnesses accepting bribes.

914.22(1) 3rd Force, threaten, etc., witness,
victim, or informant.

914.23(2) 3rd Retaliation against a witness,
victim, or informant, no bodily
injury.

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918.12 3rd Tampering with jurors.

934.215 3rd Use of two-way communications
device to facilitate commission
of a crime.

Section 5. For the purpose of incorporating the amendment
made by this act to section 784.07, Florida Statutes, in a
reference thereto, section 938.08, Florida Statutes, is
reenacted to read:

938.08 Additional cost to fund programs in domestic
violence.—In addition to any sanction imposed for a violation of
s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s.
784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s.
784.083, s. 784.085, s. 794.011, or for any offense of domestic
violence described in s. 741.28, the court shall impose a
surcharge of \$201. Payment of the surcharge shall be a condition
of probation, community control, or any other court-ordered
supervision. The sum of \$85 of the surcharge shall be deposited
into the Domestic Violence Trust Fund established in s. 741.01.
The clerk of the court shall retain \$1 of each surcharge that
the clerk of the court collects as a service charge of the
clerk's office. The remainder of the surcharge shall be provided
to the governing board of the county and must be used only to
defray the costs of incarcerating persons sentenced under s.
741.283 and provide additional training to law enforcement
personnel in combating domestic violence.

Section 6. For the purpose of incorporating the amendment

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made by this act to section 784.07, Florida Statutes, in a reference thereto, section 938.085, Florida Statutes, is reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of \$151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of \$150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain \$1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 7. This act shall take effect October 1, 2019.

HB 113 – Assault or Battery (Identical SB 822)

This bill adds code enforcement officers, park employees, and lifeguards to s. 784.07, F.S., which addresses assault or battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, etc. A code enforcement officer is defined under s. 162.21, F.S. as “any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.” Park employees are defined in the bill as employees “of a state park or a park operated by a state subdivision” and lifeguards are defined as those certified under s. 514.071, F.S. Offenses under this statute are reclassified as follows:

Assault increased from 2nd degree misdemeanor to 1st degree misdemeanor;
Battery from 1st degree misdemeanor to 3rd degree felony
Aggravated assault from 3rd degree felony to 2nd degree felony
Aggravated battery from 2nd degree felony to 1st degree felony

Large numbers come to prison each year with these offenses as primary. There were 1,998 (adj.) sentenced in FY 17-18 with 466 (adj.) sentenced to prison. **See Handout.** It is unknown how large the code enforcement officers, park employees, and lifeguards victim pool is, but simple battery is the most common felony offense and the incarceration rate is low (16.3% adj.). CJIC has heard bills with the same provisions in prior years and found them to have an insignificant impact due to low volume.

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: House & Senate

HB 113 -- Assault or Battery

These bills add healthcare providers to the list of professions in s. 784.07, F.S. , which increases the felony degree of assault and battery offenses when the victim is a healthcare provider.

Current assault and battery offenses on law enforcement and other professions (s. 784.07, F.S.)

Statute	Primary Offense	Felony Degree	Offense Severity Level	Criminal Code Lowest Permissible Sentence (in months) ¹	Maximum Sentence Under Criminal Code (Based on degree)	Number Sentenced FY 17-18 ²	Number Receiving Prison ²	Percent Receiving Prison	Mean Sentence Length (in months)
784.087(2)(b)	BATTERY; OF LAW ENFORCEMENT OFFICER OR FIREFIGHTER OR INTAKE OFFICER, ETC.	3rd	4	Non-prison	5 years	1,726	282	16.3%	25.8
784.087(2)(c)	AGGRAVATED ASSAULT; OF LAW ENFORCEMENT OFFICER OR FIREFIGHTER OR INTAKE OFFICER, ETC.	2nd	6	Non-prison	15 years	195	130	66.5%	101.4
784.087(2)(d)	AGGRAVATED BATTERY; OF LAW ENFORCEMENT OFFICER OR FIREFIGHTER OR INTAKE OFFICER, ETC.	1st	7	21	30 years	77	55	70.8%	83.9

¹ Criminal Code Lowest Permissible Sentence assumes no additional or prior offenses and is based on offense severity level.

² Adjusted for non-compliance in the completion of scoresheets. Per Department of Corrections report entitled, "Sentencing Scoresheet Compliance Report July 1, 2018 - June 30, 2016", compliance is about 93.3%.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 822

Bill Number (if applicable)

Topic

Assault or Battery

Amendment Barcode (if applicable)

Name

Greg Pound

Job Title

Address

9166 Sunrise Dr.

Phone

Street

Largo

City

FL

State

33773

Zip

Email

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.

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)

3/4/2019

Meeting Date

822

Bill Number (if applicable)

Topic Assault and Battery

Amendment Barcode (if applicable)

Name Ryan Matthews

Job Title Peebles, Smith & Matthews

Address 301 S. Bronough Street, Suite 500

Phone 850-681-7383

Street

Tallahassee

FL

32302

Email ryan@psmfl.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Code Enforcement

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.

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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)

3/4/2019

Meeting Date

822

Bill Number (if applicable)

Topic Assault or Battery

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email amercer@fpca.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs 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.

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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)

3.4.19

Meeting Date

822

Bill Number (if applicable)

Topic Assault or Battery

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

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.

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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)

3 1 4 2019

Meeting Date

Topic _____

Bill Number 822

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)



The Florida Senate

Committee Agenda Request

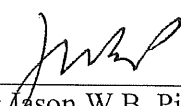
To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 15, 2019

I respectfully request that **Senate Bill #822**, relating to Assault or Battery, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.



Senator Jason W.B. Pizzo
Florida Senate, District 38

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: CS/SB 828

INTRODUCER: Criminal Justice Committee and Senator Rader

SUBJECT: Lewd or Lascivious Exhibition

DATE: March 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 828 expands the scope of the prohibition on lewd or lascivious exhibition in the presence of an employee of a correctional institution to include any person employed at or performing contractual work for a *county detention facility*. Current law prohibits such conduct in a state or private correctional facility only.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill would result in a positive insignificant prison bed impact (i.e. an increase in jail beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Sexual Harassment at Correctional Facilities

Employees, specifically females, in many correctional institutions face sexual harassment and sexual abuse directed at them by prisoners.¹ For example, "gunning" refers to the practice of

¹ 2010 (7) AELE Mo. L. J. 301, *Civil Liability for Sexual Harassment of Female Employees by Prisoners*, pg. 301, (July 2010), available at <http://www.aele.org/law/2010all07/2010-07MLJ301.pdf> (last visited February 22, 2019).

inmates exposing themselves and masturbating directly at female staff members.² Correctional agencies have a legal obligation to take reasonable measures to prevent and remedy sexual harassment in the workplace and failure to respond properly can result in extensive civil liability. Despite this fact, gunning and other lewd or lascivious conduct has been a crippling issue at both federal and state correctional institutions.³

Sexual Harassment at Federal Institutions

The sexual harassment of female employees at the federal level came to light almost a decade ago when the Equal Employment Opportunity Commission (EEOC) issued a report concluding that the Bureau of Prison (Bureau) mishandled harassment claims.⁴ The report detailed that Bureau employees were advised not to report things and that there was a fear of retaliation among employees.⁵ Additionally, the report concluded that anti-sexual harassment training occurred on an infrequent and inconsistent basis.⁶ In its recommendation, the EEOC advised the Bureau to establish a broad anti-harassment policy with effective procedures for preventing and addressing sexual harassment complaints.⁷

Despite the implementation of new policies required by that report, the problem still remains at federal prisons. In 2017, 524 female prison workers filed a class-action complaint, alleging that inmates at the Coleman Federal Correctional Complex in Sumter County, Florida, regularly made lewd comments and rape threats toward female employees in the prison. The parties to the complaint agreed to a \$20 million settlement, signifying one of the largest class-action sexual harassment settlements in U.S. history. In the case, the court also permitted a group of the women to take action against their employer for failing to address sexual harassment by non-employees.⁸

The terms of the settlement specified new procedures that would be in place, such as the requirement for prison staff to identify inmates who are harassing female workers, which could lead to those inmates losing privileges, in addition to providing notice to inmates that repeated harassment of female staffers would result in a referral to psychological services.⁹

² *Id.* at 302.

³ *Id.* at 301.

⁴ Caitlyn Dickerson, *Hazing, Humiliation, Terror: Working While Female in Federal Prison*, The New York Times (November 17, 2018), available at <https://www.nytimes.com/2018/11/17/us/prison-sexual-harassment-women.html> (last visited February 22, 2019).

⁵ EEO Commission Final Report on BOP, pg. 23 (November 24, 2010), available at <https://www.scribd.com/document/74311966/EEO-Commission-Final-Rpt-on-BOP-Nov-24-2010> (last visited February 22, 2019).

⁶ *Supra* n. 5 at pg. 12.

⁷ *Supra* n. 5 at pg. 28.

⁸ Hanna Kozlowska, *Female prison workers, harassed by inmates and ignored by bosses, stood up for their rights – and won*, Quartz, (February 16, 2017), available at <https://qz.com/910810/female-prison-workers-harassed-by-inmates-and-ignored-by-bosses-stood-up-for-their-rights-and-won/> (last visited February 22, 2019).

⁹ Mike Schneider, *Harassed Female Workers at Federal Prison Reach Settlement*, U.S. News, (February 13, 2017), available at <https://www.usnews.com/news/florida/articles/2017-02-13/harassed-female-workers-at-federal-prison-reach-settlement> (last visited February 22, 2019).

Sexual Harassment at State Institutions

Similar problems have plagued state correctional facilities as well. Since 1987, the Department of Corrections (DOC) has paid more than \$5 million in settlements to state workers who alleged they were sexually harassed at work. In 2009, a class action lawsuit brought by mostly women claimed inmates would expose themselves and masturbate in front of them. Further, the complaint alleged that the DOC failed to remedy the sexually hostile work environment created by male inmates. The lawsuit went into further detail, alleging that, upon seeing female staff members approaching a dorm, prisoners would commit the practice of “gunning,” exposing themselves and masturbating directly at the staff.¹⁰ In its discussion of the jury’s ruling, the court found that pursuant to Title VII (of the Civil Rights Act of 1964), the DOC is required to adopt reasonably remedial measures to protect its female employees from the sexually hostile environment that the inmates created.¹¹

The DOC appealed this decision, but the court upheld the judgment, ruling that exhibitionist masturbation, especially gunning, is sex based and highly offensive conduct. Furthermore, the court held that the jury was entitled to find that the DOC made almost no effort to protect its employees from this sex-based harassment.¹² As a result of this decision, the DOC paid out more than \$1.14 million in settlements.¹³

Lewd or Lascivious Exhibition

Section 800.09, F.S., was created in response to the class action lawsuit brought against the DOC in 2009, as a way to deter such lewd or lascivious conduct.¹⁴ Specifically, the law prohibits a person who is detained in a state correctional institution¹⁵ or a private correctional facility¹⁶ from doing any of the following in the presence of a person he or she knows or reasonably should know is an employee:

- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner; or
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to:
 - Sadoomasochistic abuse;
 - Sexual bestiality; or
 - The simulation of any act involving sexual activity.¹⁷

An “employee” is defined as:

¹⁰ Lauren Sweeney, *Florida paid out \$11 million in sexual harassment claims to more than 300 state workers*, Wink News, (February 27, 2018), available at <http://www.winknews.com/2018/02/26/florida-paid-11-million-sexual-harassment-claims/> (last visited February 21, 2019).

¹¹ *Beckford v. Dep’t of Corrections*, 605 F.3d 951, 960 (11th Cir. 2010).

¹² *Id.*

¹³ *Supra*, n. 10.

¹⁴ Ch. 2010-64, s. 4, Laws of Fla. (2010).

¹⁵ “State correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the DOC. Section 944.02(8), F.S.

¹⁶ “Private correctional facility” means any facility, which is not operated by the DOC, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the DOC. Section 944.710(3), F.S.

¹⁷ Section 800.09(2)(a), F.S.

- Any person employed by or performing contractual services for a public or private entity operating a facility;
- Any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional programs under part II, ch. 946, F.S.; or
- Any person who is a parole examiner with the Florida Commission on Offender Review.¹⁸

Any person who violates s. 800.09(2)(a), F.S., commits a third degree felony.¹⁹ Since the law's passage in 2010, reports of such lewd or lascivious conduct has decreased in correctional facilities. For example, the DOC wrote 99 disciplinary reports at Charlotte Correctional Institution in Punta Gorda, Florida, for gunning in 2017, which was down from the average of 300 reports written at the prison every year prior to 2010.²⁰

III. Effect of Proposed Changes:

Current law prohibits lewd or lascivious exhibition in the presence of an employee in a state correctional institution or private correctional facility. The bill expands the scope of the prohibition on such conduct to include any person employed at or performing contractual work for a *county detention facility*.

Additionally, the bill defines a county detention facility as a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.²¹

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁸ Section 800.09(1)(a), F.S.

¹⁹ Section 800.09(2)(b), F.S. A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

²⁰ *Supra*, n. 13.

²¹ This is the same definition as provided in s. 951.23(1)(a), F.S.

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 CJIC has not yet determined the fiscal impact for this bill. However, the EDR preliminarily estimates that the bill would result in a positive insignificant prison bed impact (i.e. an increase in jail beds). According to the DOC, 5 offenders were sentenced under the current statute, with 2 of those offenders sentenced to prison during FY 2017-18.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 800.09 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 4, 2019:

The Committee Substitute clarifies that lewd or lascivious exhibition is prohibited in the presence of *any person employed at or performing contractual work* for a county detention facility.

²² Information provided by EDR staff (on file with the Senate Criminal Justice Committee).

B. Amendments:

None.

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



860444

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Rader) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 22

and insert:

(a) "Employee" means:

1. Any person employed by or performing contractual services for a public or private entity operating a state correctional institution or private correctional facility; ~~or~~

2. Any person employed by or performing contractual services for the corporation operating the prison industry



860444

enhancement programs or the correctional work programs under
part II of chapter 946; ~~The term also includes~~

3. Any person who is a parole examiner with the Florida
Commission on Offender Review; or

4. Any person employed at or performing contractual
services for a county detention facility.

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

And the title is amended as follows:

Delete line 4

and insert:

lascivious acts in the presence of county

By Senator Rader

29-01207-19

2019828__

A bill to be entitled

An act relating to lewd or lascivious exhibition; amending s. 800.09, F.S.; prohibiting certain lewd or lascivious acts in the presence of county or municipal correctional personnel; providing criminal penalties; providing an effective date.

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

Section 1. Section 800.09, Florida Statutes, is amended to read:

800.09 Lewd or lascivious exhibition in the presence of an employee.—

(1) As used in this section, the term:

(a) "Employee" means any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of chapter 946. The term also includes any person who is a parole examiner with the Florida Commission on Offender Review and any person employed pursuant to s. 951.06 or s. 951.061.

(b) "Facility" means a state correctional institution as defined in s. 944.02, ~~or~~ a private correctional facility as defined in s. 944.710, or a county detention facility as defined in s. 951.23.

(2) (a) A person who is detained in a facility may not:

1. Intentionally masturbate;
2. Intentionally expose the genitals in a lewd or

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29-01207-19

2019828__

lascivious manner; or

3. Intentionally commit any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity,

in the presence of a person he or she knows or reasonably should know is an employee.

(b) A person who violates paragraph (a) commits lewd or lascivious exhibition in the presence of an employee, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 599 – Lewd or Lascivious Exhibition (Identical SB 828)

This bill amends s. 800.09, F.S., adding county or municipal correctional personnel to the current unranked, 3rd degree felony for lewd or lascivious exhibition in the presence of “a person he or she knows or reasonably should know is an employee.”

Per DOC, in FY 17-18, 5 (adj.) offenders were sentenced under the current statute, with 2 (adj.) sentenced to prison (mean sentence length=18.5 m, incarceration rate: 40.0% adj.-40.0% unadj.).

EDR PROPOSED ESTIMATE: Positive Insignificant

Requested by: House & Senate

THE FLORIDA SENATE

APPEARANCE RECORD

3-4-19

Meeting Date

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

828

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

City

State

Zip

Email JMM2@MIAMIDADE.GOV

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

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.

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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)

03/04/2019

Meeting Date

828

Bill Number (if applicable)

Topic Lewd & Lascivious Behavior

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Lobbyist

Address 205 S. Adams St.

Street

Phone 931-265-8999

Tallahassee

FL

32301

City

State

Zip

Email lauren@ericksconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Federation of Public Employees

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.

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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)

3/4/2019

Meeting Date

828

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/4/19

Meeting Date

828

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Chris Scoonover

Job Title

Address 101 E College Ave

Street

Phone 850-222-9075

TLH

City

FL

State

32301

Zip

Email cscoonover@capacityconsult.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach County Sheriff

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.

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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)

828

Bill Number (if applicable)

Meeting Date

Topic Lewd & Lascivious

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Phone 950-766-8808

Tallahassee FL 32301
City State Zip

Email lplegislative@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

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.

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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)

03/04/19

Meeting Date

828

Bill Number (if applicable)

Topic Lewd + Lascivious Behavior

Amendment Barcode (if applicable)

Name Dave Ericks

Job Title Lobbyist

Address 2055 Adams St
Street

Phone 850-591-7550
~~7550~~

Tallahassee, FL 32301
City State Zip

Email dave@ericksconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Federation of Public Employees

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.

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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)

3.4.19

Meeting Date

828

Bill Number (if applicable)

Topic Lewd or Lascivious Exhibition

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER
29th District

February 15, 2019

Chairman Keith Perry
Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Perry,

I respectfully request that you place SB 828, relating to Lewd or Lascivious Exhibition, on the agenda of the Committee on Criminal Justice at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in cursive script that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

cc: Lauren Jones, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:

- ☐ 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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: SB 966

INTRODUCER: Senator Perry

SUBJECT: Juvenile Diversion Expungement

DATE: March 1, 2019

REVISED: 03/04/19

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Storch	Jones	CJ	Favorable
2.		JU	
3.		RC	

I. Summary:

SB 966 permits a juvenile to have his or her nonjudicial arrest record expunged following the successful completion of a diversion program for any offense, including a felony. This is an expansion of current law, which restricts eligibility for this type of expunction to the arrest for a misdemeanor offense.

The bill also permits a juvenile who has successfully completed a diversion program for any offense, including a felony or subsequent misdemeanor, to lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record, subject to exceptions. This is also an expansion of current law, which restricts eligibility for such denial to a juvenile who has successfully completed a diversion program for a first-time misdemeanor only.

The Florida Department of Law Enforcement (FDLE) is expected to incur costs associated with the processing of additional applications submitted by newly-eligible applicants pursuant to the bill. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Juvenile Criminal History Records

In contrast to adult criminal history records,¹ which are generally accessible to the public, Florida law treats juvenile offender records that are in the jurisdiction of juvenile courts differently, making such records confidential and exempt from public disclosure.²

Such records that are confidential and exempt information may be disclosed only to:

- Authorized personnel of the court;
- The Department of Juvenile Justice (DJJ) and its designees;
- The Department of Corrections;
- The Florida Commission on Offender Review;
- Law enforcement agents;
- School superintendents and their designees;
- Any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile; and
- Others entitled under ch. 985, F.S., to receive that information, or upon order of the court.³

However, the following exceptions apply:

- The name, photograph, address, and crime or arrest report of a juvenile is not considered confidential and exempt if the juvenile has been:
 - Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
 - Charged with a violation of law which, if committed by an adult, would be a felony;
 - Found to have committed an offense which, if committed by an adult, would be a felony;or
 - Transferred to adult court pursuant to part X of ch. 985, F.S.;
- A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense;⁴
- A law enforcement agency must notify the superintendent of schools that a juvenile is alleged to have committed a delinquent act when a juvenile of any age is taken into custody for an offense that would have been a felony if committed by an adult, or a crime of violence;⁵
- Records maintained by the DJJ, including copies of records maintained by the court, which pertain to a juvenile found to have committed a delinquent act which, if committed by an

¹ “Criminal history record” means any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(6), F.S.

² Section 985.04(1)(a), F.S.

³ Section 985.04(1)(b), F.S.

⁴ Information gained by the victim pursuant to ch. 985, F.S., including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies. Section 985.04(3), F.S.

⁵ When a juvenile of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile’s school that the juvenile has been charged with such felony or delinquent act. The information obtained by the superintendent of schools must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the juvenile and the director of transportation. The principal must immediately notify the juvenile’s classroom teachers, the juvenile’s assigned bus driver, and any other school personnel whose duties include direct supervision of the juvenile. Section 985.04(4)(b), F.S.

adult, would be a crime specified in s. 435.04, F.S., may not be destroyed for 25 years after the juvenile's final referral to the DJJ, except in cases of the death of the juvenile; and

- Records in the custody of the DJJ may be inspected only upon order of the Secretary or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper.⁶

In these instances, the criminal history information⁷ of a juvenile will be available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.⁸

Records pertaining to juveniles committed to or supervised by the DJJ are retained until a juvenile reaches the age of 24 years or 26 years in the case of a serious or habitual delinquent child, and the destruction of such records are governed by ch. 943, F.S.⁹

Juvenile Diversion Expungement

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed¹⁰ or expunged.¹¹ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.¹² The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;¹³
- Automatic juvenile;¹⁴ and
- Early juvenile.¹⁵

⁶ Section 985.04, F.S.

⁷ "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. Section 943.045(5), F.S.

⁸ Section 943.053(3)(c)1.a.-d., F.S.

⁹ Section 985.04(7)(b), F.S.

¹⁰ "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

¹¹ Section 943.053(3)(b), F.S.

¹² Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

¹³ Section 943.0582, F.S.

¹⁴ Section 943.0515, F.S.

¹⁵ Section 943.0515(1)(b)2., F.S.

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.¹⁶ The term diversion has been broadly used over the years, but typically refers to the placement of an individual on a track that is less restrictive and affords more opportunities for rehabilitation and restoration. Whether it is a prearrest or postarrest diversion program, the goal of the program is to maximize the opportunity for success and minimize the likelihood of recidivism.¹⁷

A juvenile may have the opportunity to participate in either a prearrest or postarrest diversion program, and examples of such programs are Community Arbitration, Juvenile Alternative Services Program, Teen Court, Intensive Delinquency Diversion Services, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools.¹⁸

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2017-18, there were 5,159 juveniles who were referred to post arrest diversion programs for felony offenses.¹⁹

Section 943.0582, F.S., requires the FDLE to provide for the expunction of a nonjudicial arrest record of a juvenile who has successfully completed a diversion program for a misdemeanor offense. Completion of one of the following diversion programs would enable a juvenile to petition for the expunction of his or her nonjudicial record:

- Civil citation or similar prearrest diversion program;²⁰
- Prearrest or postarrest diversion program;²¹
- Neighborhood restorative justice;²²
- Community arbitration;²³ or
- A program to which a referral is made by a state attorney.²⁴

¹⁶ Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last visited February 20, 2019).

¹⁷ Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013), available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited February 27, 2019).

¹⁸ Florida Department of Juvenile Justice, *Probation & Community Intervention*, available at <http://www.djj.state.fl.us/services/probation> (last visited February 20, 2019).

¹⁹ Florida Department of Juvenile Justice, *Delinquency Profile 2018, Statewide Diversion – Felony Arrests*, (September 19, 2018), available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited February 26, 2019).

²⁰ Section 985.12, F.S.

²¹ Section 985.125, F.S.

²² Section 985.155, F.S.

²³ Section 985.16, F.S.

²⁴ Section 985.15, F.S. See s. 943.0582(2)(a), F.S.

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must submit the following to the FDLE:

- An application for diversion expunction, on a form prescribed by the FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying; and
- With the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's diversion program, that his or her participation in the program was based on an arrest for a misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.²⁵

Additionally, a juvenile seeking to have his or her nonjudicial record expunged must have never been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.²⁶ The expunction of a nonjudicial arrest record of a juvenile pursuant to s. 943.0582, F.S., does not prevent the juvenile from petitioning for the expunction or sealing of a later criminal history record, if otherwise eligible.²⁷

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.²⁸ Subsequently, the criminal history record of a juvenile whose record is expunged pursuant to s. 943.0582, F.S., will be made available only to criminal justice agencies for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.²⁹

A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record pursuant to s. 943.0582, F.S., unless the inquiry is made by a criminal justice agency³⁰ for a specific purpose.³¹

III. Effect of Proposed Changes:

The bill permits a juvenile to have his or her nonjudicial arrest record expunged following the successful completion of an enumerated diversion program for any offense, *including a felony*. This is an expansion of current law, which restricts eligibility for this type of expunction to the arrest for a *misdemeanor offense*.

²⁵ Section 943.0582(3)(a)-(b), F.S.

²⁶ Section 943.0582(3)(c), F.S.

²⁷ Section 943.0582(4), F.S.

²⁸ Section 943.0582(3), F.S.

²⁹ Section 943.0582(2)(b)1.a.-c., F.S.

³⁰ "Criminal justice agency" means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. Section 942.045(11), F.S.

³¹ Section 985.126(5), F.S. *Supra*, n. 29.

Additionally, the bill permits a juvenile who has successfully completed an enumerated diversion program for any offense, *including a felony or subsequent misdemeanor*, to lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record, subject to exceptions.³² This is an expansion of current law, which restricts eligibility for such denial to a juvenile who has successfully completed a diversion program for a *first-time misdemeanor only*.

The bill is effective July 1, 2019.

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:

In order to implement the bill, the FDLE will incur an estimated cost of \$25,050 to modify the Computerized Criminal History (CCH) program used in part to process applications for a juvenile diversion expungement. Additionally, the FDLE will likely

³² *Supra*, n 29.

incur costs associated with the processing of additional applications submitted by newly-eligible applicants.³³

In 2017-18 there were 5,159 juveniles who were referred to post arrest diversion for felony offenses.³⁴ There are currently 14,102 juveniles with a criminal history record for a felony arrest in CCH that may qualify for participation in a diversion program and thus, would be eligible to a diversion expunction.³⁵ It is unknown the number of applications that will be submitted to the FDLE of those newly eligible. Therefore, the cost to the FDLE in processing the additional applications is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0582 and 985.126.

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.

³³ Florida Department of Law Enforcement, *SB 966 Analysis*, (February 27, 2019) (on file with the Senate Criminal Justice Committee).

³⁴ *Supra*, n 19.

³⁵ Email from Ron Draa, Florida Department of Law Enforcement, (March 1, 2019) (on file with the Senate Criminal Justice Committee).

By Senator Perry

8-00508-19

2019966__

A bill to be entitled

An act relating to juvenile diversion expungement; amending s. 943.0582, F.S.; deleting a requirement that limits diversion program expunction to programs for misdemeanor offenses; amending s. 985.126, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) and paragraph (b) of subsection (3) of section 943.0582, Florida Statutes, are amended to read: 943.0582 Diversion program expunction.—

(1) Notwithstanding any law dealing generally with the preservation and destruction of public records, the department shall adopt rules to provide for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program ~~for a misdemeanor offense~~.

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a diversion program if that minor:

(b) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's diversion program, ~~that his or her participation in the program was based on an arrest for a misdemeanor,~~ and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-00508-19

2019966__

Section 2. Subsection (5) of section 985.126, Florida Statutes, is amended to read:

985.126 Diversion programs; data collection; denial of participation or expunged record.—

(5) A minor who successfully completes a diversion program ~~for a first-time misdemeanor offense~~ may lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record under s. 943.0582, unless the inquiry is made by a criminal justice agency, as defined in s. 943.045, for a purpose described in s. 943.0582(2)(b)1.

Section 3. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



2019 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB 966
BILL TITLE:	<u>Juvenile Diversion Expungement</u>
BILL SPONSOR:	Senator Perry
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Judiciary
3) Rules
4)
5)

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	February 27, 2019
LEAD AGENCY ANALYST:	Charlie Schaeffer
ADDITIONAL ANALYST(S):	Gernett Rogers, Tim Giesecke
LEGAL ANALYST:	Jason Jones, Joe White , Andrew Branch
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This legislation amends s. 943.0582, F.S., deleting the requirement that limits diversion program expunction to programs for misdemeanor offenses. It also amends s. 985.126, F.S., removing the provision that the diversion program is only for a misdemeanor offense.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Under current law, a minor who has gone through a diversion program for a misdemeanor offense may apply to have the record expunged from the criminal history file of FDLE. FDLE's Seal and Expunge section received 255 juvenile diversion expunction applications in 2018.

2. EFFECT OF THE BILL:

Amends s. 943.0582, F.S., by removing the requirement that limits the diversion program expunction to programs for misdemeanor offenses only. This will allow minors who complete a juvenile diversion program for felonies or comparable ordinance violations to apply for the juvenile diversion expunction. Currently, the Computerized Criminal History (CCH) files contain 127,409 subject records that have a juvenile felony arrest with or without a disposition. There is no fee associated with the juvenile diversion application process.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☒

If yes, explain:	
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number:	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	
Board Purpose:	
Who Appointments:	

Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	Since there is no charge for juvenile diversion applications, the additional workload would cause a loss in revenue.
Expenditures:	There are currently 127,409 criminal records that have a juvenile felony arrest that may qualify for juvenile diversion expunction under this bill. Assuming 10% of those eligible persons apply for a juvenile diversion expunction, there would be an additional 12,741 applications received by FDLE for processing. Implementing provisions of the bill will require five additional FTE's; 3 Criminal Justice Information Analyst II, a Criminal Justice Information Analyst I and a Criminal Justice Information Consultant I totaling \$318,289 in year one for salary, benefits, expense and human resources services and \$299,514 in recurring years. CCH changes = \$24,050 (see Technology Impact) Total FDLE Fiscal: \$342,339 Year One, \$299,513 recurring.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☒

Revenues:	
Expenditures:	
Other:	

--	--

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☒

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT
1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	To implement this bill, the cost to make CCH programmatic changes is estimated to be \$24,050 based on the information and understanding on the current requirement and includes analysis, development, integration testing and deployment. This does not include any non-functional testing and support time. The implication of the legislation will have an effect on CCH in the following capacities: 1) The Juvenile Diversion Expunction application located on the Intake Web will require a verbiage change and once edited, the application will need to be integrated. 2) The Reason for Denial "Charge requested is a Felony or Violent Misdemeanor" under the Precertification Outcome section will need to be removed.
--	--

FEDERAL IMPACT
1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
--	--

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	Because the bill does not revise s. 943.0582(4), F.S., it appears a person who received a diversion expunction for a felony or a misdemeanor would presumably not be eligible to also apply for early expunction of additional juvenile records under s. 943.0515(1)(b)2, F.S. However, it would be helpful if the Legislature's intent on this point was clearly specified.
--	--

ADDITIONAL COMMENTS

Jones, Lauren

From: Draa, Ronald <RonaldDraa@fdle.state.fl.us>
Sent: Friday, March 1, 2019 2:11 PM
To: Jones, Lauren
Cc: Smith, Bobbie
Subject: SB 966

Per our conversation on SB 966, we will be submitting a revised bill analysis. In the meantime, here's updated language from the "Expenditures" section of Fiscal Analysis. Sorry we didn't meet your 1pm deadline...Ron

There are currently 127,402 criminal records that have a juvenile felony arrest that may qualify for juvenile diversion expunction. Of this total, 113,300 are currently considered adults and presumably would no longer be eligible to participate in a juvenile diversion program. The remaining 14,102 are still classified as juveniles within CCH and may qualify to participate in a juvenile diversion program for their felony arrest(s).

Assuming 10% of those eligible persons apply for a juvenile diversion expunction, there would be an additional 1,410 applications received by FDLE for processing.

While the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional criminal history record check bills could rise to the level requiring additional staffing and other resources.

Ronald E. Draa, Jr. | Director of External Affairs

Florida Department of Law Enforcement
850.410.7020 (Office)
850.528.2755 (Cell)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19
Meeting Date

SB0966
Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Cesar Grajales

Job Title Director of Coalitions

Address 200 W College Ave
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Libre Initiative

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)

3/4/19

Meeting Date

966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Parr Av

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

SB 966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 W. Flagler St., Suite 400

Phone 786-363-4436

Street

Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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3/4/2019

Meeting Date

SB 966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

966

Bill Number (if applicable)

Topic JUVENILE DIVERSION EXPUNGEMENT

Amendment Barcode (if applicable)

Name RJ MUIERS

Job Title LOBBYIST

Address 113 E COLLEGE AVE, SUITE 300

Street

Phone 850/933-0883

TALLAHASSEE

FL

32301

City

State

Zip

Email RJ@SUSK4CONSULTING.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL PUBLIC DEFENDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3-4-19

Meeting Date

966

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address Po Box 142933

Phone 352.682.2542

Gainesville, FL 32614

City

State

Zip

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

966

Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 MIDDLEBROOKS CIR.

Phone 954 557 0016

Street

TLH FL 32303

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

March 4, 2019

Meeting Date

966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Foyt Ralston

Job Title

Address 317 East Park Ave

Street

Tallahassee

City

Fl

State

32301

Zip

Phone

Email foyt@capadvocates.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Twin Oaks Juvenile Development, Inc.

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.

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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)

3/4/2019
Meeting Date

966
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/19

Meeting Date

966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title State Attorney - Gainesville

Address 120 W UNIVERSITY AVE
Street

Phone 352-374-3686

Gainesville FL 32601
City State Zip

Email cervone@sa08.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA PROSECUTING ATTORNEY ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/4/19

Meeting Date

SB966

Bill Number (if applicable)

Topic

Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

1747 Orlando Central Pkwy

Phone

407 855 7604

Street

Orlando

FL

32809

City

State

Zip

Email

legislation@floridapta.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/4/19
Meeting Date

SB 966
Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 1300 N. Adams St. #2
Street

Phone (321) 223-4232

Tallahassee FL 32303
City State Zip

Email cmminor@fjja.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Juvenile Justice Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/4/19
Meeting Date

966
Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Tara Reid

Job Title Principal

Address 200 W. College Ave
Street

Phone 386-530-0426

Tallahassee FL 32301
City State Zip

Email treid@strategosgroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AMI kids

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3.4.19

Meeting Date

966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/4/19

Meeting Date

SB966

Bill Number (if applicable)

Topic Juvenile Diversion Expungement

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Communications and Public Affairs

Address 100 N Duval Street

Phone 850-386-3131

Street

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

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.

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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.)

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

BILL: SB 976

INTRODUCER: Senator Powell

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Favorable
2.			AP	

I. Summary:

SB 976 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog by the former handler or adopter who incurs the costs.

The bill provides legislative findings and definitions. The bill requires valid documentation of the dog's retirement from the law enforcement agency the dog served and a valid paid invoice from the veterinarian for veterinary care for reimbursement of costs to occur.

The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with the Florida Department of Law Enforcement (FDLE) after a competitive grant award process.

The bill includes an appropriation of \$300,000 in recurring General Revenue Funds for the purpose of implementing and administering the program.

The bill takes effect July 1, 2019.

II. Present Situation:

Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations.¹ Law enforcement dogs cannot work forever

¹ Panama City Beach Police Department, *K-9 Patrol*, available at <http://www.pcbgov.com/departments-services/police-department/specialized-units/k-9-patrol> (last viewed February 22, 2019); Coral Springs Police Department, *K-9 Unit*, available at <https://www.coral Springs.org/government/other-departments-and-services/police/divisions/k-9> (last viewed February 22, 2019); Hillsborough County Sheriff's Office, *K-9 Unit*, available at <http://www.hcso.tampa.fl.us/A-Z-Directory/K/K9-Unit.aspx> (last viewed February 22, 2019); Brevard County Sheriff's Office, *K-9 Unit*, available at <http://www.brevardsheriff.com/home/commands-services/operational-services/k-9-unit/> (last viewed February 22, 2019).

and are faced with natural aging conditions and may have sustained injuries in the line of duty. When it is time for a law enforcement dog to retire the dog typically lives with their law enforcement officer partner. However, retired law enforcement dogs can experience costly medical expenses that the owner is unable to handle.²

The Pembroke Pines Police Department retired two law enforcement dogs in 2015, one having been on the job for 9 years as a patrol and narcotics detecting dog, the other working for 6 years as a patrol and explosive detecting dog.³ Similarly, in 2017, two dogs who had both served the Flagler County Sheriff's Office for 8 years retired from duty in apprehending suspects and sniffing for narcotics, with a combined 190 deployments.⁴ All four of the dogs were to stay at home with their handlers as pets.⁵

Just one example of a law enforcement dog's ultimate service is Cigo, who worked at the Palm Beach County Sheriff's Office. On December 24, 2018, Cigo was shot and killed while assisting in the apprehension of an attempted-murder suspect at the Wellington Green Mall. Cigo was only 3 years old at the time he was killed by the suspect.⁶

III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the Florida Department of Law Enforcement (FDLE). The program is created within the FDLE to provide a stable funding source for veterinary care for retired law enforcement dogs.

The program will provide up to \$1,500 annually to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian for care provided in Florida and proof of payment for reimbursement to occur. The former handler or adopter may not accumulate unused funds for the current year for use in a future year. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined as a dog who has been in the service of or employed by a law enforcement agency in this state for the principle purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders. The retired law

² South Florida Fund for Retired Law Enforcement K-9's, Who We Help, *The Fund*, available at <https://soflretiredk9fund.com/about/who-we-help/> (last viewed February 22, 2019).

³ Local 10 News, *2 K-9s retire from Pembroke Pines Police Department, Dogs to remain with handlers*, Amanda Batchelor, October 15, 2015, available at <https://www.local10.com/news/florida/2-k-9s-retire-from-pembroke-pines-police-department-> (last visited February 21, 2019).

⁴ FlaglerLive.com, *Retirement of Two K-9s, Repo and Reno, Highlights Sheriff's Award Ceremony*, April 26, 2017, available at <https://flaglerlive.com/107363/sheriffs-awards-2017/> (last viewed February 21, 2019).

⁵ *Supra* note 3 and 4.

⁶ Officer Down Memorial Page, United States, Florida, Palm Beach County Sheriff's Office, *K9 Cigo*, available at <http://www.odmp.org/k9/1714-k9-cigo> (last viewed February 22, 2019). See also Jacksonville Sheriff's Office, *K9 Fang*, available at <http://www.odmp.org/k9/1706-k9-fang> (last viewed February 22, 2019); and Leon County Sheriff's Office, *K-9 Koda*, available at <http://www.odmp.org/k9/1497-k9-koda#ixzz2vrveuHYU> (last viewed February 22, 2019).

enforcement dog must have received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association, Inc.⁷

The bill defines “law enforcement agency” as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

The bill adopts the term “veterinarian” from s. 474.202(11), F.S., which defines “veterinarian” as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of ch. 474, F.S.⁸ The bill also defines “veterinary care” as the practice of veterinary medicine as defined in s. 474.202(13), F.S. “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine.⁹ The bill specifies that the term also includes:

- Annual wellness examinations;
- Vaccinations;
- Internal and external parasite prevention treatments;
- Testing and treatment of illnesses and diseases;
- Medications;
- Emergency care and surgeries; and
- Care provided in specialties of veterinary medicine such as veterinary oncology, euthanasia, and cremation services.

The FDLE is directed to contract with a not-for-profit corporation, organized under ch. 617, F.S., to administer and manage the program.¹⁰ The corporation will be selected through a competitive grant award process and must:

- Be dedicated to the protection or care of retired law enforcement dogs.
- Hold tax-exempt status under the Internal Revenue code as an s. 501(c)(3) organization.¹¹
- Have held tax-exempt status for at least five years.
- Agree to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with the bill.

⁷ National Police Canine Association, available at <http://www.npca.net/> (last viewed February 22, 2019). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) dedicated to the training and certification of Florida’s Law Enforcement Canine Teams. Florida Law Enforcement Canine Association, FLECA, available at <http://www.flecak9.com/> (last viewed February 22, 2019).

⁸ Section 474.202(9), F.S., defines “practice of veterinary medicine” to mean diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

⁹ Section 474.202(13), F.S.

¹⁰ Section 617.01401(5), F.S., defines “corporation not for profit” as a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under ch. 617, F.S.

¹¹ See 26 U.S.C. s. 501(c)(3).

The bill specifies the not-for-profit corporation is the disbursing authority for the funds appropriated by the Legislature to the FDLE for the program. The FDLE must pay the not-for-profit corporation up to ten percent of appropriated funds for administrative expenses, including salaries and benefits.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

The bill includes an appropriation of \$300,000 for FY 2019-2020 in recurring funds from the General Revenue Fund to the FDLE for the purpose of implementing and administering the program.

The FDLE is given rulemaking authority to implement the provisions in the bill.

The bill is effective July 1, 2019.

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:

To the extent that the retired dog's former handler or adopter is reimbursed for the dog's on-going veterinary care, the bill will have a positive fiscal impact for those persons.

C. Government Sector Impact:

The bill includes an appropriation of \$300,000 in recurring funds from the General Revenue Fund for the purpose of implementing and administering the program. The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with the FDLE.

The FDLE does not anticipate incurring any costs associated with the implementation of the bill.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.69 of the Florida Statutes.

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.

¹² Florida Department of Law Enforcement, *2019 Legislative Bill Analysis SB 976*, February 19, 2019 (on file with the Senate Committee on Criminal Justice).

By Senator Powell

30-01052-19

2019976__

1 A bill to be entitled
 2 An act relating to care for retired law enforcement
 3 dogs; creating s. 943.69, F.S.; providing a short
 4 title; providing legislative findings; defining terms;
 5 creating the Care for Retired Law Enforcement Dogs
 6 Program within the Department of Law Enforcement;
 7 requiring the department to contract with a
 8 corporation not for profit to administer and manage
 9 the program; providing requirements for the
 10 corporation not for profit; providing requirements for
 11 the disbursement of funds for the veterinary care of
 12 eligible retired law enforcement dogs; placing an
 13 annual cap on the amount of funds available for the
 14 care of an eligible retired law enforcement dog;
 15 prohibiting a former handler or adopter from
 16 accumulating unused funds from a current year for use
 17 in a future year; prohibiting a former handler or
 18 adopter from receiving reimbursement if funds are
 19 depleted for the year for which such reimbursement is
 20 sought; requiring the department to pay to the
 21 corporation not for profit, and authorizing the
 22 corporation not for profit to use, up to a certain
 23 percentage of appropriated funds for administrative
 24 purposes; requiring the department to adopt rules;
 25 providing an appropriation; providing an effective
 26 date.

28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-01052-19

2019976__

30 Section 1. Section 943.69, Florida Statutes, is created to
 31 read:
 32 943.69 Care for Retired Law Enforcement Dogs Program.—
 33 (1) SHORT TITLE.—This section may be cited as the "Care for
 34 Retired Law Enforcement Dogs Program Act."
 35 (2) LEGISLATIVE FINDINGS.—The Legislature finds that:
 36 (a) Law enforcement dogs have become an integral part of
 37 many law enforcement efforts statewide, including the
 38 apprehension of suspects through tracking and searching,
 39 evidence location, drug and bomb detection, and search and
 40 rescue operations;
 41 (b) Law enforcement agencies agree that the use of law
 42 enforcement dogs is an extremely cost-effective means of crime
 43 control and that these dogs possess skills and abilities that
 44 frequently exceed those of existing technology;
 45 (c) The service of law enforcement dogs is often dangerous
 46 and can expose them to injury at a rate higher than that of
 47 nonservice dogs; and
 48 (d) Law enforcement dogs provide significant contributions
 49 to the residents of this state.
 50 (3) DEFINITIONS.—As used in this section, the term:
 51 (a) "Law enforcement agency" means a lawfully established
 52 state or local public agency having primary responsibility for
 53 the prevention and detection of crime or the enforcement of the
 54 penal, traffic, highway, regulatory, game, immigration, postal,
 55 customs, or controlled substance laws.
 56 (b) "Retired law enforcement dog" means a dog that was
 57 previously in the service of or employed by a law enforcement
 58 agency in this state for the principal purpose of aiding in the

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-01052-19

2019976__

detection of criminal activity, enforcement of laws, or apprehension of offenders and that received certification in obedience and apprehension work from a certifying organization such as the National Police Canine Association, Inc., or other certifying organization.

(c) "Veterinarian" has the same meaning as provided in s. 474.202.

(d) "Veterinary care" means the practice of veterinary medicine as defined in s. 474.202 by a veterinarian. The term includes annual wellness examinations, vaccinations, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialty care such as veterinary oncology, euthanasia, and cremation.

(4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law Enforcement Dogs Program is created within the department to provide a stable funding source for veterinary care that is provided to these dogs.

(5) ADMINISTRATION.—The department shall contract with a corporation not for profit organized under chapter 617 to administer and manage the Care for Retired Law Enforcement Dogs Program. Notwithstanding chapter 287, the department shall select the corporation not for profit through a competitive grant award process. The corporation not for profit must meet all of the following criteria:

(a) Be dedicated to the protection or care of retired law enforcement dogs.

(b) Be exempt from taxation under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of

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that code.

(c) Have maintained such tax-exempt status for at least 5 years.

(d) Agree to be subject to review and audit at the discretion of the Auditor General in order to ensure accurate accounting and disbursement of state funds.

(e) Demonstrate the ability to effectively and efficiently disseminate information and to assist former handlers and adopters of retired law enforcement dogs in complying with this section.

(6) FUNDING.—

(a) The corporation not for profit shall be the disbursing authority for funds appropriated by the Legislature to the department for the Care for Retired Law Enforcement Dogs Program. These funds must be disbursed to the former handler or adopter of a retired law enforcement dog upon receipt of:

1. Valid documentation from the law enforcement agency from which the dog retired which verifies that the dog was in the service of or employed by such agency; and

2. A valid invoice from a veterinarian for veterinary care provided in this state to a retired law enforcement dog and documentation establishing payment of the invoice by the former handler or adopter of a retired law enforcement dog.

(b) Annual disbursements to a former handler or adopter to reimburse him or her for the cost of veterinary care provided to a retired law enforcement dog may not exceed \$1,500 per dog. A former handler or adopter of a retired law enforcement dog may not accumulate unused funds from a current year for use in a future year.

30-01052-19

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117 (c) A former handler or adopter of a retired law
118 enforcement dog who seeks reimbursement for veterinary care may
119 not receive reimbursement if funds appropriated for the Care for
120 Retired Law Enforcement Dogs Program are depleted in the year
121 for which the reimbursement is sought.

122 (7) ADMINISTRATIVE FEES.—The department shall pay to the
123 corporation not for profit, and the corporation not for profit
124 may use, up to 10 percent of appropriated funds for its
125 administrative expenses, including salaries and benefits.

126 (8) RULEMAKING AUTHORITY.—The department shall adopt rules
127 pursuant to ss. 120.536(1) and 120.54 to implement this section.

128 Section 2. For the 2019-2020 fiscal year, and each fiscal
129 year thereafter, the sum of \$300,000 in recurring funds is
130 appropriated from the General Revenue Fund to the Department of
131 Law Enforcement for the purpose of implementing and
132 administering the Care for Retired Law Enforcement Dogs Program.

133 Section 3. This act shall take effect July 1, 2019.



2019 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB0976
BILL TITLE:	<u>Care for Retired Law Enforcement Dogs</u>
BILL SPONSOR:	Powell
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Appropriations
3)
4)
5)

CURRENT COMMITTEE

Criminal Justice

SIMILAR BILLS

BILL NUMBER:	HB0841
SPONSOR:	Hogan Johnson

PREVIOUS LEGISLATION

BILL NUMBER:	HB0763 / SB0982
SPONSOR:	Abbruzzo / Powell
YEAR:	2018
LAST ACTION:	Died in Committee

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	February 19, 2019
LEAD AGENCY ANALYST:	Cynthia Barr
ADDITIONAL ANALYST(S):	Rona Kay Cradit, Charlotte Fraser
LEGAL ANALYST:	Jason Jones
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Care for Retired Law Enforcement Dogs; designating the "Care for Retired Law Enforcement Dogs Program Act"; requiring FDLE to contract with a corporation not for profit to administer and manage the program; providing requirements for the disbursement of funds for the veterinary care of eligible retired law enforcement dogs, etc.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

No program currently exists within FDLE.

2. EFFECT OF THE BILL:

Establishes the Care for Retired Law Enforcement Dogs Program and requires FDLE to contract with a not for profit corporation to administer and manage the program. Minimum qualifications for the corporation not for profit are included in the bill. Provides guidance on criteria for qualification as a retired law enforcement dog and outlines the types of veterinary care services that can be funded under the program. Caps the disbursement at \$1,500 annually per retired law enforcement dog. Additionally, the bill prohibits a handler or adopter of a retired law enforcement dog to be reimbursed for veterinary services if funds are not available and prohibits a handler or adopter from accumulating unused funds from one year for use in future years. Requires the contract to include up to ten percent of the appropriation as administrative fees paid to the contract not for profit organization. Allocates \$300,000 recurring General Revenue to fund the program. Provides FDLE with rulemaking authority to implement.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☒ N ☐

If yes, explain:	The bill gives FDLE rulemaking authority to implement the bill.
What is the expected impact to the agency's core mission?	Y ☐ N ☒
Rule(s) impacted (provide references to F.A.C., etc.):	No known existing rules will be impacted.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☐

If yes, provide a description:	
Date Due:	
Bill Section Number:	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☐

Board:	
Board Purpose:	

Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☐

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☐

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	Yes. Beginning in FY 19-20: \$300,000 recurring General Revenue appropriation.
If yes, was this appropriated last year?	No.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☐

Revenues:	
Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☐

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	

What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	
--	--

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	
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ADDITIONAL COMMENTS

- Due to the time that will be required for rulemaking and the competitive solicitation process, the award to the not-for-profit corporation will likely not be made until Spring 2020
- The bill gives the not-for-profit corporation disbursement authority. However, per s. 216.181(16), F.S., FDLE can only provide the not for profit three months of expenditures in startup cash for the program. After that, all payments to the organization will be on a reimbursement basis.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

976

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

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)

976

Meeting Date

Bill Number (if applicable)

Topic Care of Leo dogs

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr.

Phone 850-766-8808

Street

Tallahassee

FL

32301

City

State

Zip

Email lplegislative@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

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)

3.4.19

Meeting Date

976

Bill Number (if applicable)

Topic Care for Retired Law Enforcement Dogs

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

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

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 21, 2019

I respectfully request that **Senate Bill #976**, relating to Care for Retired Law Enforcement Dogs, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in dark ink, appearing to read "Bobby Powell", is written over a horizontal line.

Senator Bobby Powell
Florida Senate, District 30

3/4/19 Pt 1

CourtSmart Tag Report

Room: EL 110

Case No.:

Caption: Senate Committee on Criminal Justice - Part 1

Type:

Judge:

Started: ~~3/8/2019 2:36:26 PM~~

Ends: ~~3/8/2019 3:23:14 PM~~ Length: 00:46:49

2:36:47 PM	Meeting Called to Order
2:36:48 PM	Role call
2:37:01 PM	Tab 4- SB 624 by Senator Montford: Youth in Solitary Confinement
2:38:37 PM	Amendment Barcode 366196
2:38:43 PM	Substitute Amendment Barcode 274848
2:39:32 PM	Amendment Barcode 569312
2:39:40 PM	Substitute Amendment Barcode 448502
2:39:44 PM	Back on SB 624 as amended
2:40:11 PM	Speaker Scott McCoy
2:41:41 PM	Speaker Korina Flores
2:45:22 PM	Speaker Brian Pitts
2:49:29 PM	Speaker Terry Coonan
2:51:52 PM	Speaker Gregg Pound
2:53:14 PM	Close on SB 624
2:53:31 PM	Role call on SB 624
2:53:55 PM	Tab 1- SB 116 by Senator Stewart: Motor Vehicle Racing
2:55:13 PM	Speaker Brian Pitts
2:57:05 PM	Speaker Michael Crabb
2:58:30 PM	Senator Brandes on the difference between a misdemeanor and felony
2:59:07 PM	Close on SB 116
3:00:52 PM	Role call on SB 116
3:01:17 PM	Tab 7- SB 782 by Senator Simmons: Youthful Offenders
3:02:49 PM	Speakers waive in support
3:02:56 PM	Role call on SB 782
3:03:19 PM	Tab 11- SB 976 by Senator Powell: Care for Retired Law Enforcement Dogs
3:04:32 PM	Role call on SB 976
3:04:54 PM	Tab 9- SB 828 by Senator Rader: Lewd or Lascivious Exhibition
3:06:46 PM	Amendment Barcode 860444
3:07:22 PM	Back on SB 828 as amended
3:08:16 PM	Role call on SB 828
3:08:44 PM	Tab 8- SB 822 by Senator Pizzo: Assault or Battery
3:09:19 PM	Amendment Barcode 421210
3:09:41 PM	Temporarily Postponed SB 822
3:09:51 PM	Tab 5- SB 642 by Senator Brandes: Criminal Justice
3:10:54 PM	Amendment Barcode 739966
3:11:36 PM	Senator Bracy with a question on why the 150 mile radius turned into 300 miles
3:13:10 PM	Amendment Barcode 615712
3:14:15 PM	Senator Bracy with a question regarding the impact on voting rights of previously incarcerated individuals
3:16:00 PM	Speaker Scott McCoy
3:17:39 PM	Close on amendment 615712
3:18:35 PM	Back on SB 642 as amended
3:19:08 PM	Speaker Scott McCoy

3/4/19 Pt. 2

CourtSmart Tag Report

Room: LL 37

Case No.:

Caption: Senate Criminal Justice Committee - Part 2

Type:

Judge:

Started: 3/4/2019 1:44:24 PM

Ends: 3/4/2019 2:56:16 PM Length: 01:11:53

1:44:54 PM	Tab 5- SB 642 by Senator Brandes: Criminal Justice
1:45:08 PM	Amendment Barcode 615712
1:46:25 PM	Speaker Scott McCoy, Senior Policy Counsel from SPLC Action Fund
1:53:28 PM	Speaker Barney Bishop from Florida Smart Justice Alliance
1:55:22 PM	Speaker Phillip Suderman from Americans for Prosperity
1:56:37 PM	Speaker Brian Pitts from Justice-2-Jesus
2:02:14 PM	Speaker Cesar Grajales from The Libre Initiative
2:02:45 PM	Speaker Erica Medina
2:08:57 PM	Debate from Senator Bracy
2:10:17 PM	Senator Pizzo makes a comment in regards to the racial impact analysis
2:14:53 PM	Role call on SB 642
2:15:52 PM	Tab 6- SB 766 by Senator Gruters: Expanded Uses of Unmanned Aircraft
2:16:21 PM	Amendment Barcode 712380
2:17:02 PM	Back on SB 766 as amended
2:17:44 PM	Speaker Brian Pitts from Justice-2-Jesus
2:19:41 PM	Debate from Senator Pizzo with the definition of crime scene
2:21:05 PM	Close on SB 766
2:22:06 PM	Role call on SB 766
2:22:24 PM	Tab 2- CS/SB 128 by Children, Families, and Elder Affairs/Bean: Child Abuse
2:26:00 PM	Amendment Barcode 877828
2:27:00 PM	Back on SB 128 as amended
2:27:18 PM	Speaker Brian Pitts from Justice-2-Jesus
2:28:41 PM	Speakers waive in support
2:29:41 PM	Speaker Greg Pound
2:34:29 PM	Debate from the members regarding seatbelt usage
2:37:46 PM	Role call on SB 128
2:38:46 PM	Tab 8- SB 822 by Senator Pizzo: Assault or Battery
2:39:39 PM	Amendment Barcode 421210
2:39:44 PM	Back on SB 822 as amended
2:40:14 PM	Speaker Brian Pitts from Justice-2-Jesus
2:42:41 PM	Speaker Greg Pound
2:46:55 PM	Close on SB 822
2:48:40 PM	Role call on SB 822
2:49:39 PM	Tab 10- SB 966 by Senator Perry: Juvenile Diversion Expungement
2:50:42 PM	Role call on SB 966
2:51:41 PM	Tab 3- SB 534 by Senator Brandes: Pretrial Release
2:52:54 PM	Senator Pizzo with a concern on specific instances
2:55:00 PM	SB 534 Temporarily Postponed
2:56:02 PM	Senator Pizzo moves we adjourn