

Tab 1	SB 346 by Bradley (CO-INTRODUCERS) Brandes, Perry, Diaz, Gruters, Bracy, Rouson; (Compare to H 00259) Controlled Substances				
196590	A	S	RCS	CJ, Bradley	Delete L.46 - 49: btw L.181 - 182:
527338	A	S	RCS	CJ, Bradley	11/12 12:42 PM 11/12 12:42 PM
Tab 2	SB 436 by Montford (CO-INTRODUCERS) Bracy; (Identical to H 00347) Youth in Confinement				
Tab 3	SB 464 by Wright; (Similar to H 00293) Certain Defendants With Mental Illness				
868090	A	S	RCS	CJ, Wright	Delete L.255 - 256: 11/12 12:42 PM
Tab 4	SB 470 by Brandes (CO-INTRODUCERS) Bracy; Searches of Cellular Phones and Other Electronic Devices				
158654	A	S	RCS	CJ, Brandes	btw L.256 - 257: 11/12 12:42 PM
Tab 5	SB 510 by Wright; (Identical to H 00333) Bail Pending Appellate Review				
Tab 6	SB 520 by Gruters (CO-INTRODUCERS) Rouson; (Identical to H 01433) Drones				
Tab 7	SB 556 by Brandes (CO-INTRODUCERS) Perry, Bracy; Inmate Conditional Medical Release				
575744	A	S	RCS	CJ, Brandes	Delete L.134 - 265: 11/12 12:42 PM
Tab 8	SB 560 by Brandes (CO-INTRODUCERS) Perry; Sentencing				
Tab 9	SB 572 by Brandes (CO-INTRODUCERS) Perry; Extension of Confinement				
244404	A	S	RCS	CJ, Brandes	Delete L.74 - 75: 12/10 12:10 PM
100336	A	S	RCS	CJ, Bracy	Delete L.38 - 69: 12/10 12:10 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE

Senator Perry, Chair

Senator Brandes, Vice Chair

MEETING DATE: Tuesday, November 12, 2019

TIME: 10:30 a.m.—12:00 noon

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 346 Bradley (Compare H 259, S 468)	<p>Controlled Substances; Prohibiting the purchase or possession of less than a certain amount of specified substances; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; requiring that a custodial interrogation conducted at a place of detention in connection with certain offenses be electronically recorded in its entirety; providing exceptions to the electronic recording requirement; revising the circumstances under which a wrongfully incarcerated person is eligible for compensation, etc.</p> <p style="text-align: center;">CJ 11/12/2019 Fav/CS ACJ AP</p>	Fav/CS Yea 5 Nays 0
2	SB 436 Montford (Identical H 347, Compare H 165, S 228, S 762)	<p>Youth in Confinement; Prohibiting a youth from being placed in disciplinary confinement; authorizing a youth to be placed in emergency confinement if certain conditions are met; limiting the allowable length of time for emergency confinement; authorizing a youth to be placed in medical confinement under certain circumstances; requiring sheriffs and chief correctional officers to adopt model standards relating to youth, etc.</p> <p style="text-align: center;">CJ 11/12/2019 Favorable ACJ AP</p>	Favorable Yea 5 Nays 0
3	SB 464 Wright (Similar H 293)	<p>Certain Defendants With Mental Illness; Exempting certain fiscally constrained counties from local match requirements for specified grants; encouraging communities to apply for specified grants to establish misdemeanor mental health jail diversion programs; authorizing the court to refer a misdemeanor defendant charged with a misdemeanor crime for certain evaluation or assessment if a party or the court raises a concern regarding the misdemeanor defendant's competency to proceed due to a mental disorder, etc.</p> <p style="text-align: center;">CJ 11/12/2019 Fav/CS ACJ AP</p>	Fav/CS Yea 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, November 12, 2019, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 470 Brandes	Searches of Cellular Phones and Other Electronic Devices; Expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; prohibiting the use of certain communication content in any trial, hearing or other proceeding which was obtained without a specified warrant, etc.	Fav/CS Yea 5 Nays 0
		CJ 11/12/2019 Fav/CS JU RC	
5	SB 510 Wright (Identical H 333)	Bail Pending Appellate Review; Prohibiting a court from granting bail to specified offenders pending review following a conviction for an offense requiring sexual offender or sexual predator registration if the victim was a minor, etc.	Favorable Yea 3 Nays 1
		CJ 11/12/2019 Favorable JU RC	
6	SB 520 Gruters	Drones; Expanding the authorized uses of drones by law enforcement agencies and other specified entities for specified purposes, etc.	Favorable Yea 4 Nays 1
		CJ 11/12/2019 Favorable IS RC	
7	SB 556 Brandes	Inmate Conditional Medical Release; Establishing the conditional medical release program within the Department of Corrections; requiring any inmate who meets certain criteria to be considered for conditional medical release; providing for victim notification in certain circumstances; providing that a medical releasee remains in the care, custody, supervision, and control of the department and is eligible to earn or lose gain-time, etc.	Fav/CS Yea 5 Nays 0
		CJ 11/12/2019 Fav/CS ACJ AP	

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, November 12, 2019, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 560 Brandes	Sentencing; Renaming the Criminal Punishment Code as the Public Safety Code; revising the primary purpose of sentencing under the Public Safety Code from punishing an offender to public safety, etc. CJ 11/12/2019 Favorable ACJ AP	Favorable Yea 5 Nays 0
9	SB 572 Brandes	Extension of Confinement; Specifying that an inmate is not eligible to receive specified incentive gain-time if such gain-time would result in the prisoner's release from the care, custody, supervision, or control of the Department of Corrections; authorizing the department to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; authorizing the department to terminate the inmate's supervised community release under certain circumstances, etc. CJ 11/12/2019 Not Considered ACJ AP	Not Considered

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: CS/SB 346

INTRODUCER: Criminal Justice Committee and Senator Bradley and others

SUBJECT: Criminal Justice

DATE: November 13, 2019 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 346 provides that a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures, may not be imprisoned for a term longer than 12 months.

The bill also authorizes a court to depart from the mandatory minimum term of imprisonment and the mandatory fine for a drug trafficking offense which does not carry a 25-year mandatory minimum term, if the court finds certain circumstances (specified in the bill) exist.

The bill also requires a custodial interrogation relating to a covered offense (specified in the bill) that is conducted at a place of detention be electronically recorded in its entirety. If the custodial interrogation at the place of detention is not electronically recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for not recording it. The bill provides exceptions to the general recording requirement. The bill further provides:

- If a custodial interrogation is not recorded and no exception applies, a court must consider “the circumstances of an interrogation” in its analysis of whether to admit into evidence a statement made at the interrogation;
- If the court decides to admit a statement made during a custodial interrogation that was not electronically recorded, the defendant may require the court to give a cautionary jury instruction regarding the officer’s failure to comply with the recording requirement;

- If a law enforcement agency “has enforced rules” adopted pursuant to the bill which are reasonably designed to comply with the bill’s requirements, the agency is not subject to civil liability for damages arising from a violation of the bill’s requirements; and
- Requirements relating to electronic recording of a custodial interrogation do not create a cause of action against a law enforcement officer.

The bill also eliminates ineligibility for compensation for wrongfully incarcerated persons who had a violent felony or more than one nonviolent felony before their wrongful conviction and incarceration. However, the bill does not change ineligibility status for persons who: commit a violent felony or multiple nonviolent felonies during their wrongful incarceration; are serving a concurrent prison sentence; or have served the incarcerative part of their sentence and commit a violent felony or multiple nonviolent felonies resulting in revocation of parole or community.

The bill also extends the time for a person who was wrongfully incarcerated to file the petition with the court for a determination of eligibility for compensation. The person will have two years rather than the current 90 days to file the petition. Further, persons who missed the 90 days deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill’s effective date.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill has a “negative significant” prison bed impact (a decrease of more than 25 prison beds).

Under the bill, more persons are potentially eligible for compensation for wrongful incarceration. Fiscal impact is indeterminate. Currently, a person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

The drug purchase and possession provision of the bill may have an indeterminate county jail bed impact, and the bill’s requirements relating to electronically recording custodial interrogations may have an indeterminate fiscal impact on law enforcement agencies.

The effective date of the bill is July 1, 2020.

II. Present Situation:

Florida’s Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”¹ of the substance and

¹ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that

whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Purchase or Possession of a Controlled Substance

Section 893.13, F.S., in part, punishes unlawful purchase and possession of a controlled substance.² The penalty for violating s. 893.13, F.S., depends on the unlawful act committed and the substance involved and, in some instances, the quantity of the substance involved and the location in which the unlawful act occurred.

Purchase or possession with intent to purchase a controlled substance is generally punishable as a first degree misdemeanor,³ third degree felony,⁴ or second degree felony,⁵ depending upon the schedule of the controlled substance purchased or possessed with intent to purchase.⁶ However, purchase or possession with intent to purchase more than 10 grams of certain Schedule I controlled substances is a first degree felony.⁷

create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

² Section 893.13(1)(a),(c)-(f) and (h), (2)(a) and (b), and (6)(a)-(d), F.S.

³ A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁴ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁶ Section 893.13(2)(a), F.S.

⁷ Section 893.13(2)(b), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000.

“Simple possession” of a controlled substance has been described as “possession of less than a trafficking amount without intent to sell, manufacture or deliver[.]”⁸ Generally, simple possession of a controlled substance is a third degree felony.⁹ However, simple possession of 20 grams or less of cannabis is a first degree misdemeanor,¹⁰ simple possession of a Schedule V controlled substance is a second degree misdemeanor,¹¹ and simple possession of more than 10 grams of certain Schedule I controlled substances is a first degree felony.¹²

Possession with intent to sell, manufacture, or deliver a controlled substance is generally punishable as a first degree misdemeanor, third degree felony, or second degree felony, depending upon the schedule of the controlled substance possessed.¹³ However, punishment is enhanced when the possession occurs within 1,000 feet of certain locations or facilities.¹⁴ For example, possession with intent to sell cannabis is generally a third degree felony¹⁵ but a second degree felony when the possession occurs within 1,000 feet of the real property of a K-12 school.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, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies and are subject to a mandatory minimum term of imprisonment and a mandatory fine,¹⁷ which is determined by the weight or quantity of the substance.¹⁸ 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 fine of \$50,000.¹⁹ Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.²⁰

⁸ *Tyler v. State*, 107 So.3d 547, 549 (Fla. 1st DCA 2013), *rev. den.*, 130 So.3d 1278 (Fla. 2013).

⁹ Section 893.13(6)(a), F.S.

¹⁰ Section 893.13(6)(b), F.S.

¹¹ Section 893.13(6)(d), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

¹² Section 893.13(6)(c), F.S.

¹³ Section 893.13(1)(a), F.S.

¹⁴ Section 893.13(1)(c)-(f) and (h), F.S.

¹⁵ Section 893.13(1)(a)2., F.S.

¹⁶ Section 893.13(1)(c)2., F.S.

¹⁷ Section 893.135, F.S., provides for mandatory fines which are greater than the maximum \$10,000 fine prescribed in s. 775.083, F.S., for a first degree felony. However, s. 775.083, F.S., which relates to fines, authorizes any higher amount if specifically authorized by statute.

¹⁸ *See* s. 893.135, F.S.

¹⁹ Section 893.135(1)(b)1.a., F.S.

²⁰ Section 893.135(1)(b)1.b., F.S.

Criminal Punishment Code

The Criminal Punishment Code²¹ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).²² Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity 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.²³ Absent mitigation,²⁴ 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.²⁵

Mandatory Minimum Sentences

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. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply."²⁶ 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.

With few exceptions (e.g., youthful offender sentencing²⁷ or a reduced or suspended sentence for substantial assistance rendered²⁸), courts must impose the mandatory minimum term of imprisonment applicable to the drug trafficking offense committed.²⁹

²¹ 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.

²² 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.

²³ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²⁴ 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.

²⁵ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

²⁶ Fla. R. Crim. P. 3.704(d)(26).

²⁷ Section 958.04, F.S. *See Gallimore v. State*, 100 So.3d 1264, 1266-1267 (Fla. 4th DCA 2012).

²⁸ Section 893.135(4) and 921.186, F.S. *See State v. Agerton*, 523 So.2d 1241, 1243 (Fla. 5th DCA 1988), *rev. den.*, 531 So.2d 1352 (Fla. 1988), and *McFadden v. State*, 177 So.3d 562, 566-567 (Fla. 2015). The court cannot *sua sponte* reduce or suspend the sentence because the decision to suspend or reduce a sentence is based upon a motion from the state attorney. The court is not mandated to reduce or suspend a sentence upon a showing of substantial assistance.

²⁹ Mandatory minimum terms under s. 893.135, F.S., do not apply to attempted drug trafficking. *Suarez v. State*, 635 So.2d 154, 155 (Fla. 2d DCA 1994).

State Prison Sentence

Under the Code, any sentence to state prison must exceed one year.³⁰ Notwithstanding s. 948.03, F.S. (terms and conditions of probation), only those persons who are convicted and sentenced in circuit court to a cumulative sentence of incarceration for one year or more, whether the sentence is imposed in the same or separate circuits, may be received by the Department of Corrections into the state correctional system.³¹

Custodial Interrogation

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”³² Similarly, the Florida Constitution extends the same protection.³³

Custodial Interrogation Legal Requirements

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.³⁴ In *Traylor v. State*, the Florida Supreme Court found that “to ensure the voluntariness of confessions, the Self-Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court....”³⁵

The test to determine if a person is in custody for the purposes of his or her *Miranda* rights is whether “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.”³⁶

An interrogation occurs “when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.”³⁷

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.³⁸ The warning must include the right to remain silent as well as the explanation that anything a person

³⁰ Section 921.0024(2), F.S.

³¹ Section 944.17(3)(a), F.S.

³² U.S. Const. amend. V.

³³ “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. article I, s. 9.

³⁴ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

³⁵ 596 So.2d 957, 965-966 (Fla. 1992).

³⁶ *Id.* at 966 n. 16.

³⁷ *Id.* at 966 n. 17.

³⁸ See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waiving such a right.³⁹

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.⁴⁰ For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.⁴¹

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As previously discussed, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.⁴² The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.⁴³ Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.⁴⁴

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.⁴⁵

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

³⁹ *Sliney v. State*, 699 So.2d 662, 669 (Fla. 1997), *cert. den.*, 522 U.S. 1129 (1998).

⁴⁰ *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

⁴¹ *Supra* n. 39 at 667.

⁴² *Supra* n. 36.

⁴³ *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).

⁴⁴ *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).

⁴⁵ *Supra* n. 36 at 668.

Interrogation Recording in Florida

Currently, 26 states and the District of Columbia record custodial interrogations statewide.⁴⁶ These states have statutes, court rules, or court cases that require law enforcement to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.⁴⁷ Although Florida is not one of these states, 58 Florida law enforcement agencies have been identified as recording custodial interrogations, voluntarily, at least to some extent.⁴⁸

Wrongful Incarceration Compensation Eligibility

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.⁴⁹ The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.⁵⁰ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁵¹ To date, four persons have been compensated under the Act for a total of \$4,276,901.⁵²

⁴⁶ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, January 2019, National Association of Criminal Defense Lawyers, p. 7, available at <https://www.nacdl.org/getattachment/581455af-11b2-4632-b584-ab2213d0a2c2/custodial-interrogations-compendium-january-2019-.pdf> (last visited November 5, 2019).

⁴⁷ See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. 4.7 (2012); Cal. Pen. Code s. 859.5 and Cal. Wel. & Inst. Code s. 626.8 (2013); CO. Rev. Stat. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code ss. 5-116.01 and 5-116.03 (2006); Hawaii was verified by the four departments that govern law enforcement in the state; 705 IL Comp. Stat. Ann. 405/5-401.5; 725 ICSA 5/103-2.1 (2003, 2005, 2013); Ind. R. Evid. 617 (2009); Kan. Stat. s. 22-4620 (2017); 25 ME Rev. Stat. Ann. s. 2803-B(1)(K) (2007); MD Code Ann., Crim. Proc. ss. 2-402 and 2-403 (2008); MI Comp. Laws ss. 763.7 – 763.11 (2012); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. ss. 590.700 and 700.1 (2009 and 2015); MT Code Ann. ss. 46-4-406 – 46-4-410 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2005); NM Stat. Ann. s. 29-1-16 (2006); NC Gen. Stat. s. 15A-211 (2007, 2011); N.Y. Crim. Proc. Law s. 60.45 (McKinney 2018); OR Rev. Stat. s. 133.400 (2010); RI PAC, Accreditation Standards Manual, s. 8.10 (2013); Tex. Crim. Proc. Code ss. 2.32 and 38.22; Tex. Fam. Code s. 51.095; Utah R. Evid. Rule 616 (2015); 13 V.S.A. s. 5585 (2014); *State v. Jerrell*, 699 N.W.2d 110 (WI 2005); and WI Stat. ss. 968.073 and 972.115 (2005). See also *supra* n. 46 at p. 8.

⁴⁸ *Supra* n. 46 at pp. 40-41.

⁴⁹ Chapter 961, F.S. (ch. 2008-39, L.O.F.). To date, four persons have been compensated under the Act. E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

⁵⁰ Section 961.05, F.S.

⁵¹ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets certain requirements; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., and immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. Section 961.06, F.S.

⁵² E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication:
 - *Any single violent felony, or more than one nonviolent felony*, or a crime or crimes committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any violent felony offense or more than one nonviolent felony*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.⁵³

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.⁵⁴ Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.⁵⁵

The term "violent felony" is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felonies referenced in s. 961.02(6), F.S., are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;

⁵³ Section 961.04, F.S.

⁵⁴ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. Chapter 82-171, L.O.F., and s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the Florida Commission on Offender Review (ch. 947, F.S.), or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁵⁵ Section 961.06(2), F.S.

- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

III. Effect of Proposed Changes:

The bill reduces the punishment for possessing, purchasing, or possessing with the intent to purchase less than two grams of most controlled substances; authorizes a court to depart from most mandatory minimum terms of imprisonment and mandatory fines, if the court finds that specified circumstances exist; requires electronic recording of a custodial interrogation at a place of detention in connection with certain offenses; and revises the circumstances under which a wrongfully incarcerated person is eligible for compensation for wrongful incarceration. A detailed discussion of the bill is provided below.

Purchase or Possession of a Controlled Substance (Section 1)

Section 1 of the bill amends s. 893.13, F.S., which punishes various unlawful acts involving controlled substances, to provide that, notwithstanding any provision of s. 893.13, F.S., or any other law, a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures,⁵⁶ may not be imprisoned for a term longer than 12 months. This provision appears to preclude a state prison sentence, which must exceed one year.⁵⁷ However, it is unclear if this preclusion would apply if the purchase or possession is a primary offense under the Code and sentencing factors in addition to the primary offense are scored to determine total sentence points and the lowest permissible sentence. Total sentence points and the lowest permissible sentence under the Code are not based solely on the sentence points that accrue for the primary offense, unless the primary offense is the sole sentencing factor accruing sentence points (as may be the

⁵⁶ The bill references s. 893.135(1)(c)4.a.(I)-(VII), F.S., which lists the following substances and mixtures that are applicable to “trafficking in fentanyl”: alfentanil; carfentanil; fentanyl; sufentanil; a fentanyl derivative; a controlled substance analog of any of these substances; and a mixture containing any of these substances.

⁵⁷ See ss. 921.0024(2), and 944.17(3)(a), F.S.

case with a first-time offender). For example, an offender may have prior offenses and additional offenses, which also accrue sentence points under the Code.⁵⁸

Drug Trafficking Mandatory Minimum Terms of Imprisonment and Mandatory Fines (Sections 2 and 5)

Section 2 of the bill amends s. 893.135, F.S., which punishes drug trafficking, to provide that, notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory term of imprisonment and the mandatory fine, if the court finds on the record that specified circumstances exist. However, this departure provision does not apply to a drug trafficking offense which carries a mandatory minimum term of imprisonment of 25 years.

The specified circumstances the court must find on the record include the following:

- The defendant has no prior conviction for a forcible felony as defined in s. 776.08, F.S.⁵⁹
- The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.
- The offense did not result in the death of or serious bodily injury to any person.
- The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20, F.S.⁶⁰
- At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.
- The defendant has not previously benefited from the application of this departure provision.

Section 5 of the bill amends s. 893.03, F.S., to correct a cross-reference to s. 893.135, F.S.

Custodial Interrogation (Section 3)

The bill creates s. 900.06, F.S., which creates a statutory requirement, and exceptions to that requirement, that a law enforcement officer conducting a custodial interrogation must electronically record the interrogation in its entirety.

The bill provides the following definitions for terms used in the bill:

- “Custodial interrogation” means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which

⁵⁸ Section 921.0024, F.S.

⁵⁹ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁶⁰ 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.

occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;

- “Electronic recording” means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” means any of the following criminal offenses:
 - Arson.
 - Sexual battery.
 - Robbery.
 - Kidnapping.
 - Aggravated child abuse.
 - Aggravated abuse of an elderly person or disabled adult.
 - Aggravated assault with a deadly weapon.
 - Murder.
 - Manslaughter.
 - Aggravated manslaughter of an elderly person or disabled adult.
 - Aggravated manslaughter of a child.
 - The unlawful throwing, placing, or discharging of a destructive device or bomb.
 - Armed burglary.
 - Aggravated battery.
 - Aggravated stalking.
 - Home-invasion robbery.
 - Carjacking.
- “Place of detention” means a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- “Statement” means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation relating to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If a custodial interrogation at a place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance.

If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place, and summarize the custodial interrogation process and the individual’s statements.

The general recording requirement does not apply under the following circumstances:

- If there is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;

- If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- Due to an equipment operator error that prevents the recording of the custodial interrogation in its entirety;
- If the statement is made spontaneously and not in response to a custodial interrogation question;
- If a statement is made during the processing of the arrest of a suspect;
- If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court decides to admit the statement, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and that are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Wrongful Incarceration Compensation Eligibility (Sections 4, 6, and 7)

Section 4 of the bill amends s. 961.04, F.S., which relates to eligibility for compensation for wrongful incarceration, to eliminate ineligibility for compensation for wrongfully incarcerated persons who had a violent felony or more than one nonviolent felony before their wrongful conviction and incarceration. However, the bill does not change ineligibility status for persons who: commit a violent felony or multiple nonviolent felonies during their wrongful incarceration; are serving a concurrent prison sentence; or have served the incarcerative part of their sentence and commit a violent felony or multiple nonviolent felonies resulting in revocation of parole or community supervision.⁶¹

The bill also extends the time for a person who was wrongfully incarcerated to file the petition with the court for a determination of eligibility for compensation. The person will have two years rather than the current 90 days to file the petition. Further, persons who missed the nine month deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill's effective date.

⁶¹ See s. 961.06(2), F.S.

Sections 6 and 7 of the bill reenact, respectively, ss. 961.02 and 961.03, F.S., which relate to eligibility for compensation of wrongfully incarcerated persons.

Effective Date (Section 8)

Section 8 of the bill provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill provides that a person who purchases or possesses less than two grams of a controlled substance, other than fentanyl, may not be imprisoned for a term longer than 12 months. This section may have an indeterminate but positive county jail bed impact, if a state prison sanction is precluded. Further, Section 3 of the bill relating to electronic recording of custodial interrogations may result in indeterminate local fund expenditures for equipment, maintenance, and operation. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of article VII, subsection 18(d) of the Florida Constitution, relating to unfunded mandates.

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:

It is possible that more persons will be eligible for compensation under the provisions of the bill. A person who is entitled to compensation under the Victims of Wrongful Incarceration Compensation Act will be paid at the rate of \$50,000 per year of wrongful

incarceration up to a limit of \$2 million.⁶² Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person.⁶³

C. Government Sector Impact:

Local Government Impact

The drug purchase and possession provision of the bill may have an indeterminate jail bed impact if defendants who might be sentenced to prison under current law are instead sentenced to jail under the provisions of the bill. The requirements of the bill relating to electronic recording of custodial interrogation may have an indeterminate fiscal impact on local law enforcement agencies if agencies determine that expenditures to purchase recording equipment, retain recorded statements, and store electronic recordings are necessary to comply with the requirements of the bill relating to electronically recording custodial interrogations.

State Government Impact

Prison Bed Impact

The Criminal Justice Impact Conference, which provides the financial, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill has a "negative significant" prison bed impact (a decrease of more than 25 prison beds).⁶⁴ Regarding specific sections of the bill in which impact is noted, the EDR's preliminary estimate is that Section 1 of the bill, which reduces the punishment for purchasing or possessing less than two grams of a controlled substance excluding fentanyl, has a "negative significant" prison bed impact.⁶⁵ Section 2 of the bill, which authorizes a court to depart from most mandatory minimum terms of imprisonment and mandatory fines, if the court finds that specified circumstances exist, has a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).⁶⁶

Compensation for Wrongful Incarceration

More persons are potentially eligible for compensation for wrongful incarceration under provisions of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

⁶² Section 961.06(1), F.S.

⁶³ Section 961.06(4), F.S.

⁶⁴ The EDR's preliminary estimate of SB 346 is on file with the Senate Committee on Criminal Justice.

⁶⁵ *Id.*

⁶⁶ *Id.*

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, 893.135, and 961.04.

This bill creates section 900.06 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 961.02 and 961.03.

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 November 12, 2019:

The Committee Substitute:

- Changes the subject of the bill from “controlled substances” to “criminal justice.”
- Provides that a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures, may not be imprisoned for a term longer than 12 months.
- Provides that a person who has been found to have been wrongfully incarcerated will have two years to file a petition with the court for a determination of eligibility for compensation rather than the current 90 days to file a petition.
- Provides that persons who missed the 90 days deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill’s effective date.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 46 - 49

4 and insert:

5 other law relating to the punishment for possessing, purchasing,
6 or possessing with the intent to purchase a controlled
7 substance, a person who possesses, purchases, or possesses with
8 the intent to purchase less than 2 grams of a controlled
9 substance, other than fentanyl or any substance or mixture
10 described in s. 893.135(1)(c)4.a.(I)-(VII), may not be



11 imprisoned for a term longer than 12

12

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

14 And the title is amended as follows:

15 Delete lines 2 - 5

16 and insert:

17 An act relating to criminal justice; amending s.
18 893.13, F.S.; prohibiting the imprisonment for longer
19 than a certain time for persons who possess, purchase,
20 or possess with the intent to purchase less than a
21 specified amount of a controlled substance; providing
22 exceptions; amending s. 893.135,



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Between lines 181 and 182

4 insert:

5 Section 4. Paragraph (b) of subsection (1) of section
6 961.03, Florida Statutes, is amended to read:

7 961.03 Determination of status as a wrongfully incarcerated
8 person; determination of eligibility for compensation.—

9 (1)

10 (b) The person must file the petition with the court:



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11 1. Within 2 years ~~90~~ days after the order vacating a
12 conviction and sentence becomes final and the criminal charges
13 against the person are dismissed if the person's conviction and
14 sentence is vacated, or the person is retried and found not
15 guilty, on or after July 1, 2008. If a person had a claim
16 dismissed or did not file a claim because of the former 90-day
17 petition filing period under this subparagraph, he or she may
18 file a petition with the court within 2 years after July 1,
19 2020.

20 2. By July 1, 2010, if the person's conviction and sentence
21 was vacated by an order that became final before prior to July
22 1, 2008.

23
24 ===== T I T L E A M E N D M E N T =====
25 And the title is amended as follows:

26 Delete line 30
27 and insert:

28 officer; amending s. 961.03, F.S.; revising the
29 circumstances under which a wrongfully incarcerated
30 person must file a petition with the court to
31 determine eligibility for compensation; authorizing
32 certain persons to petition the court to determine
33 eligibility for compensation within a specified
34 timeframe; amending s. 961.04, F.S.; revising the

By Senator Bradley

5-00220B-20

2020346

A bill to be entitled

An act relating to controlled substances; amending s. 893.13, F.S.; prohibiting the purchase or possession of less than a certain amount of specified substances; providing criminal penalties; amending s. 893.135, F.S.; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; creating s. 900.06, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation conducted at a place of detention in connection with certain offenses be electronically recorded in its entirety; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a location other than a place of detention to prepare a specified report; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirement in determining the admissibility of a statement, unless an exception applies; requiring a court, upon the request of a defendant, to give certain cautionary instructions to a jury under certain circumstances; providing immunity from civil liability to law enforcement agencies that enforce certain rules; providing that a cause of action is not created against a law enforcement

Page 1 of 13

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5-00220B-20

2020346

officer; amending s. 961.04, F.S.; revising the circumstances under which a wrongfully incarcerated person is eligible for compensation; amending s. 893.03, F.S.; conforming a cross-reference; reenacting ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4), F.S., all relating to eligibility for compensation for wrongfully incarcerated persons; providing an effective date.

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

Section 1. Present subsection (10) of section 893.13, Florida Statutes, is redesignated as subsection (11), and a new subsection (10) is added to that section, to read:

893.13 Prohibited acts; penalties.—
(10) Notwithstanding any provision of this section or any other law relating to the punishment for purchasing or possessing a controlled substance, a person who purchases or possesses less than 2 grams of a controlled substance, other than fentanyl, may not be imprisoned for a term longer than 12 months.

Section 2. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

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

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than

Page 2 of 13

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5-00220B-20

2020346

59 the mandatory minimum term of imprisonment and mandatory fine if
 60 the court finds on the record that all of the following
 61 circumstances exist:

62 (a) The defendant has no prior conviction for a forcible
 63 felony as defined in s. 776.08.
 64 (b) The defendant did not use violence or credible threats
 65 of violence, or possess a firearm or other dangerous weapon, or
 66 induce another participant to use violence or credible threats
 67 of violence, in connection with the offense.
 68 (c) The offense did not result in the death of or serious
 69 bodily injury to any person.
 70 (d) The defendant was not an organizer, leader, manager, or
 71 supervisor of others in the offense and was not engaged in a
 72 continuing criminal enterprise as defined in s. 893.20.
 73 (e) At the time of the sentencing hearing or earlier, the
 74 defendant has truthfully provided to the state all information
 75 and evidence that he or she possesses concerning the offense or
 76 offenses that were part of the same course of conduct or of a
 77 common scheme or plan.
 78 (f) The defendant has not previously benefited from the
 79 application of this subsection.

80
 81 A court may not apply this subsection to an offense under this
 82 section which carries a mandatory minimum term of imprisonment
 83 of 25 years.

84 Section 3. Section 900.06, Florida Statutes, is created to
 85 read:
 86 900.06 Recording of custodial interrogations for certain
 87 offenses.

Page 3 of 13

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5-00220B-20

2020346

88 (1) As used in this section, the term:
 89 (a) "Custodial interrogation" means questioning or other
 90 conduct by a law enforcement officer which is reasonably likely
 91 to elicit an incriminating response from an individual and which
 92 occurs under circumstances in which a reasonable individual in
 93 the same circumstances would consider himself or herself to be
 94 in the custody of a law enforcement agency.
 95 (b) "Electronic recording" means an audio recording or an
 96 audio and video recording that accurately records a custodial
 97 interrogation.
 98 (c) "Covered offense" includes:
 99 1. Arson.
 100 2. Sexual battery.
 101 3. Robbery.
 102 4. Kidnapping.
 103 5. Aggravated child abuse.
 104 6. Aggravated abuse of an elderly person or disabled adult.
 105 7. Aggravated assault with a deadly weapon.
 106 8. Murder.
 107 9. Manslaughter.
 108 10. Aggravated manslaughter of an elderly person or
 109 disabled adult.
 110 11. Aggravated manslaughter of a child.
 111 12. The unlawful throwing, placing, or discharging of a
 112 destructive device or bomb.
 113 13. Armed burglary.
 114 14. Aggravated battery.
 115 15. Aggravated stalking.
 116 16. Home-invasion robbery.

Page 4 of 13

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5-00220B-20 2020346

117 17. Carjacking.

118 (d) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

123 (e) "Statement" means a communication that is oral, written, electronic, nonverbal, or in sign language.

125 (2) (a) A custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual being questioned, and the waiver of any rights by the individual, must be electronically recorded in its entirety if the interrogation is related to a covered offense.

131 (b) If a law enforcement officer conducts a custodial interrogation at a place of detention without electronically recording the interrogation, the officer must prepare a written report explaining why he or she did not record the interrogation.

136 (c) As soon as practicable, a law enforcement officer who conducts a custodial interrogation at a location other than a place of detention shall prepare a written report explaining the circumstances of the interrogation and summarizing the custodial interrogation process and the individual's statements.

141 (d) Paragraph (a) does not apply:

142 1. If an unforeseen equipment malfunction prevents recording the custodial interrogation in its entirety;

144 2. If a suspect refuses to participate in a custodial interrogation if his or her statements are to be electronically

Page 5 of 13

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5-00220B-20 2020346

146 recorded;

147 3. If an equipment operator error prevents recording the custodial interrogation in its entirety;

149 4. If the statement is made spontaneously and not in response to a custodial interrogation question;

151 5. If the statement is made during the processing of the arrest of a suspect;

153 6. If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;

158 7. If the law enforcement officer conducting the custodial interrogation reasonably believes that making an electronic recording would jeopardize the safety of the officer, the individual being interrogated, or others; or

162 8. If the custodial interrogation is conducted outside of this state.

164 (3) Unless a court finds that one or more of the circumstances specified in paragraph (2) (d) apply, the court must consider the circumstances of an interrogation conducted by a law enforcement officer in which he or she did not electronically record all or part of a custodial interrogation in determining whether a statement made during the interrogation is admissible. If the court admits into evidence a statement made during a custodial interrogation that was not electronically recorded as required under paragraph (2) (a), the court must, upon request of the defendant, give cautionary instructions to the jury regarding the law enforcement officer's

Page 6 of 13

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5-00220B-20
 175 ~~failure to comply with that requirement.~~

176 (4) A law enforcement agency in this state which has
 177 enforced rules adopted pursuant to this section which are
 178 reasonably designed to ensure compliance with the requirements
 179 of this section is not subject to civil liability for damages
 180 arising from a violation of this section. This section does not
 181 create a cause of action against a law enforcement officer.

182 Section 4. Section 961.04, Florida Statutes, is amended to
 183 read:

184 961.04 Eligibility for compensation for wrongful
 185 incarceration.—A wrongfully incarcerated person is not eligible
 186 for compensation under the act if any of the following apply:

187 ~~(1) Before the person's wrongful conviction and~~
 188 ~~incarceration, the person was convicted of, or pled guilty or~~
 189 ~~nolo contendere to, regardless of adjudication, any violent~~
 190 ~~felony, or a crime committed in another jurisdiction the~~
 191 ~~elements of which would constitute a violent felony in this~~
 192 ~~state, or a crime committed against the United States which is~~
 193 ~~designated a violent felony, excluding any delinquency~~
 194 ~~disposition;~~

195 ~~(2) Before the person's wrongful conviction and~~
 196 ~~incarceration, the person was convicted of, or pled guilty or~~
 197 ~~nolo contendere to, regardless of adjudication, more than one~~
 198 ~~felony that is not a violent felony, or more than one crime~~
 199 ~~committed in another jurisdiction, the elements of which would~~
 200 ~~constitute a felony in this state, or more than one crime~~
 201 ~~committed against the United States which is designated a~~
 202 ~~felony, excluding any delinquency disposition;~~

203 ~~(1) (3) During the person's wrongful incarceration, the~~

2020346

5-00220B-20
 2020346

204 person was convicted of, or pled guilty or nolo contendere to,
 205 regardless of adjudication, any violent felony.~~or~~

206 ~~(2) (4) During the person's wrongful incarceration, the~~
 207 person was convicted of, or pled guilty or nolo contendere to,
 208 regardless of adjudication, more than one felony that is not a
 209 violent felony.~~or~~

210 ~~(3) (5) During the person's wrongful incarceration, the~~
 211 person was also serving a concurrent sentence for another felony
 212 for which the person was not wrongfully convicted.

213 Section 5. Paragraph (c) of subsection (3) of section
 214 893.03, Florida Statutes, is amended to read:

215 893.03 Standards and schedules.—The substances enumerated
 216 in this section are controlled by this chapter. The controlled
 217 substances listed or to be listed in Schedules I, II, III, IV,
 218 and V are included by whatever official, common, usual,
 219 chemical, trade name, or class designated. The provisions of
 220 this section shall not be construed to include within any of the
 221 schedules contained in this section any excluded drugs listed
 222 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 223 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 224 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 225 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 226 Anabolic Steroid Products."

227 (3) SCHEDULE III.—A substance in Schedule III has a
 228 potential for abuse less than the substances contained in
 229 Schedules I and II and has a currently accepted medical use in
 230 treatment in the United States, and abuse of the substance may
 231 lead to moderate or low physical dependence or high
 232 psychological dependence or, in the case of anabolic steroids,

Page 8 of 13

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

Page 7 of 13

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5-00220B-20

2020346

233 may lead to physical damage. The following substances are
 234 controlled in Schedule III:

235 (c) Unless specifically excepted or unless listed in
 236 another schedule, any material, compound, mixture, or
 237 preparation containing limited quantities of any of the
 238 following controlled substances or any salts thereof:

239 1. Not more than 1.8 grams of codeine per 100 milliliters
 240 or not more than 90 milligrams per dosage unit, with an equal or
 241 greater quantity of an isoquinoline alkaloid of opium.

242 2. Not more than 1.8 grams of codeine per 100 milliliters
 243 or not more than 90 milligrams per dosage unit, with recognized
 244 therapeutic amounts of one or more active ingredients which are
 245 not controlled substances.

246 3. Not more than 300 milligrams of hydrocodone per 100
 247 milliliters or not more than 15 milligrams per dosage unit, with
 248 a fourfold or greater quantity of an isoquinoline alkaloid of
 249 opium.

250 4. Not more than 300 milligrams of hydrocodone per 100
 251 milliliters or not more than 15 milligrams per dosage unit, with
 252 recognized therapeutic amounts of one or more active ingredients
 253 that are not controlled substances.

254 5. Not more than 1.8 grams of dihydrocodeine per 100
 255 milliliters or not more than 90 milligrams per dosage unit, with
 256 recognized therapeutic amounts of one or more active ingredients
 257 which are not controlled substances.

258 6. Not more than 300 milligrams of ethylmorphine per 100
 259 milliliters or not more than 15 milligrams per dosage unit, with
 260 one or more active, nonnarcotic ingredients in recognized
 261 therapeutic amounts.

Page 9 of 13

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

5-00220B-20

2020346

262 7. Not more than 50 milligrams of morphine per 100
 263 milliliters or per 100 grams, with recognized therapeutic
 264 amounts of one or more active ingredients which are not
 265 controlled substances.

266 For purposes of charging a person with a violation of s. 893.135
 267 involving any controlled substance described in subparagraph 3.
 268 or subparagraph 4., the controlled substance is a Schedule III
 269 controlled substance pursuant to this paragraph but the weight
 270 of the controlled substance per milliliters or per dosage unit
 271 is not relevant to the charging of a violation of s. 893.135.
 272 The weight of the controlled substance shall be determined
 273 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

274 Section 6. For the purpose of incorporating the amendment
 275 made by this act to section 961.04, Florida Statutes, in a
 276 reference thereto, subsection (4) of section 961.02, Florida
 277 Statutes, is reenacted to read:

278 961.02 Definitions.—As used in ss. 961.01-961.07, the term:
 279 (4) "Eligible for compensation" means that a person meets
 280 the definition of the term "wrongfully incarcerated person" and
 281 is not disqualified from seeking compensation under the criteria
 282 prescribed in s. 961.04.

283 Section 7. For the purpose of incorporating the amendments
 284 made by this act to section 961.04, Florida Statutes, in
 285 references thereto, paragraph (a) of subsection (1) and
 286 subsections (2), (3), and (4) of section 961.03, Florida
 287 Statutes, are reenacted to read:

288 961.03 Determination of status as a wrongfully incarcerated
 289 person; determination of eligibility for compensation.—

Page 10 of 13

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5-00220B-20 2020346

291 (1) (a) In order to meet the definition of a "wrongfully
 292 incarcerated person" and "eligible for compensation," upon entry
 293 of an order, based upon exonerating evidence, vacating a
 294 conviction and sentence, a person must set forth the claim of
 295 wrongful incarceration under oath and with particularity by
 296 filing a petition with the original sentencing court, with a
 297 copy of the petition and proper notice to the prosecuting
 298 authority in the underlying felony for which the person was
 299 incarcerated. At a minimum, the petition must:
 300 1. State that verifiable and substantial evidence of actual
 301 innocence exists and state with particularity the nature and
 302 significance of the verifiable and substantial evidence of
 303 actual innocence; and
 304 2. State that the person is not disqualified, under the
 305 provisions of s. 961.04, from seeking compensation under this
 306 act.
 307 (2) The prosecuting authority must respond to the petition
 308 within 30 days. The prosecuting authority may respond:
 309 (a) By certifying to the court that, based upon the
 310 petition and verifiable and substantial evidence of actual
 311 innocence, no further criminal proceedings in the case at bar
 312 can or will be initiated by the prosecuting authority, that no
 313 questions of fact remain as to the petitioner's wrongful
 314 incarceration, and that the petitioner is not ineligible from
 315 seeking compensation under the provisions of s. 961.04; or
 316 (b) By contesting the nature, significance, or effect of
 317 the evidence of actual innocence, the facts related to the
 318 petitioner's alleged wrongful incarceration, or whether the
 319 petitioner is ineligible from seeking compensation under the

Page 11 of 13

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

5-00220B-20 2020346

320 provisions of s. 961.04.
 321 (3) If the prosecuting authority responds as set forth in
 322 paragraph (2)(a), the original sentencing court, based upon the
 323 evidence of actual innocence, the prosecuting authority's
 324 certification, and upon the court's finding that the petitioner
 325 has presented clear and convincing evidence that the petitioner
 326 committed neither the act nor the offense that served as the
 327 basis for the conviction and incarceration, and that the
 328 petitioner did not aid, abet, or act as an accomplice to a
 329 person who committed the act or offense, shall certify to the
 330 department that the petitioner is a wrongfully incarcerated
 331 person as defined by this act. Based upon the prosecuting
 332 authority's certification, the court shall also certify to the
 333 department that the petitioner is eligible for compensation
 334 under the provisions of s. 961.04.
 335 (4) (a) If the prosecuting authority responds as set forth
 336 in paragraph (2)(b), the original sentencing court shall make a
 337 determination from the pleadings and supporting documentation
 338 whether, by a preponderance of the evidence, the petitioner is
 339 ineligible for compensation under the provisions of s. 961.04,
 340 regardless of his or her claim of wrongful incarceration. If the
 341 court finds the petitioner ineligible under the provisions of s.
 342 961.04, it shall dismiss the petition.
 343 (b) If the prosecuting authority responds as set forth in
 344 paragraph (2)(b), and the court determines that the petitioner
 345 is eligible under the provisions of s. 961.04, but the
 346 prosecuting authority contests the nature, significance or
 347 effect of the evidence of actual innocence, or the facts related
 348 to the petitioner's alleged wrongful incarceration, the court

Page 12 of 13

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5-00220B-20

2020346__

349 shall set forth its findings and transfer the petition by
350 electronic means through the division's website to the division
351 for findings of fact and a recommended determination of whether
352 the petitioner has established that he or she is a wrongfully
353 incarcerated person who is eligible for compensation under this
354 act.

355 Section 8. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

11/12/2019

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

SB 346

Meeting Date

Bill Number (if applicable)

Topic Substances

Amendment Barcode (if applicable)

Name Scott D. 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 Southern Poverty Law Center 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)

11/12/19

Meeting Date

346

Bill Number (if applicable)

~~101-2019-Sub B~~

Amendment Barcode (if applicable)

Topic Controlled Substances

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St Ste 401
Street

Tallahassee

FL

32301

Phone (850) 606-1000

Email andy.thomas@flpd2.com

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/12/2019

Meeting Date

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

SB 346

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name CESAR GRASALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

FL.

City

State

Zip

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)

11/12/19
Meeting Date

346
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee FL 32301

State

Zip

City

Email

TegLobby@aol.com

Speaking: For Against Information

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

Representing ACLU of FL

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)

11/12/13
Meeting Date

SB 346

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Scott Miller

Job Title Exec. Director

Address 1100 E Park Avenue
Street

Phone 850-561-6761

Tallahassee FL 32301
City State Zip

Email smiller@floridamatters.org

Speaking: For Against Information

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

Representing Florida Project 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)

November 12, 2019

346

Meeting Date

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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

11/12/19

Meeting Date

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

346

Bill Number (if applicable)

Topic Controlled substances

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street
Street Tallahassee, FL Zip 32301

Phone (850) 681-0024

Email jorge@flapartners.com

City State Zip

Speaking: For Against Information

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

Representing FACDL

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)

11-12-19

Meeting Date

346

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Florida Director

Address
Street

Phone 954.557.0016

City _____ State _____ Zip _____

Email cmurphy@rightoncrime.com

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.

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)

11-12-19

Meeting Date

346

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Florida Director

Address Po Box 142933

Phone 352.682.2542

Street

Gainesville FC

32614

State

Zip

Email gnewburn@famn.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

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)

11/12/19

Meeting Date

346

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Phillip Sudermann

Job Title Policy Director

Address _____
Street _____

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

11/12/2019

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

SB 346

Meeting Date

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

10/12/14

Meeting Date

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

SB 346

Bill Number (if applicable)

527338

Amendment Barcode (if applicable)

Topic Controlled Substances

Name Seth Miller

Job Title Executive Director

Address 1100 E. Park Ave
Street

Tallahassee FL 32301
City State Zip

Phone 850-361-6767

Email smith@fladvocacy.org

Speaking: For Against Information

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

Representing Innocence Project 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

11/13/19

Meeting Date

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

346

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Melisse Villar

Job Title Executive Director

Address P.O. Box 11254
Street

Tallahassee FL 32302
City State Zip

Phone (850) 354-8424

NORMLTallahassee@gmail.com
Email

Speaking: For Against Information

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

Representing NORML Tallahassee

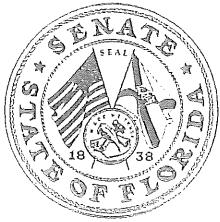
Appearing at request of Chair: Yes No

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

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY
5th District

October 15, 2019

Senator Keith Perry, Chairman
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 346 be placed on the agenda for the Criminal Justice Committee at your earliest convenience. The bill pertains to sentencing, controlled substances and compensation for wrongly incarcerated individuals.

Thank you for your kind consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "RB".

Rob Bradley

REPLY TO:

- 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

Cellon, Connie

From: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Sent: Wednesday, October 16, 2019 3:40 PM
To: Cellon, Connie
Subject: RE: wrongful incarceration information
Attachments: Wrongful Incarceration Claims Successful, Denied and Pending.doc

FYI. There is one new request that we have not started to review.

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Wednesday, October 16, 2019 3:30 PM
To: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Subject: RE: wrongful incarceration information

Your convenience.

From: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Sent: Wednesday, October 16, 2019 3:29 PM
To: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Subject: RE: wrongful incarceration information

Hello,
On phone and will call when I get off. c

From: Cellon, Connie <CELLON.CONNIE@flsenate.gov>
Sent: Wednesday, October 16, 2019 3:27 PM
To: Carolyn Snurkowski <Carolyn.Snurkowski@myfloridalegal.com>
Subject: wrongful incarceration information

Hey, Miss Carolyn, hope all is well with you! It's time for 2020 Session Committee meetings. I have a bill on wrongful incarceration compensation.
I need to know how who, if anyone, has successfully applied for and been awarded wrongful incarceration compensation since James Richardson in 2015 – if there is anyone, any additional information you can provide would be helpful – especially the amount awarded.

As always, thank you for everything you do to help!

Connie Cellon
Senate Criminal Justice
850-487-5192

Wrongful Incarceration Claims (961.03, F.S.)

Successful Claims

- (1) Leroy McGee (2010) (\$179,166.66)
- (2) James Bain (2011) (\$1,754,794.51)
- (3) Luis Diaz (2012) (\$2,397,569.28)
- (4) James Richardson (2015) (\$1,045,370.69)

Denied Claims

- (1) Jarvis McBride (2012)

Ineligible/Incomplete Applications

- (1) Robert Lewis (incomplete) (2011)
- (2) Edwin Lampkin (incomplete) (2012)
- (3) Ricardo Johnson (ineligible/incarcerated) (2013)
- (4) Robert Glenn Mosley (incomplete) (2014)
- (5) Joseph McGowan (Court reconsidered and determined applicant ineligible. Order issued 1/11/2016)
- (6) Jessie Brinson (ineligible) (2016)

SB 346 – Controlled Substances

This bill amends s. 893.13, F.S., adding that “Notwithstanding any provision of this section or any other law relating to the punishment for purchasing or possessing a controlled substance, a person who purchases or possesses less than 2 grams of a controlled substance, other than fentanyl, may not be imprisoned for a term longer than 12 months.” Currently, a Level 2, 3rd degree felony exists for possession of any substance under 10 grams (other than cannabis), with purchasing or possessing with intent to purchase any substance under 10 grams (other than cannabis) falling under either a Level 2, 3rd degree felony or a Level 4, 2nd degree felony, depending on the substance. Per DOC, in FY 18-19, there were 2,571 new commitments for these offenses. Given the current threshold breakdown, it is not possible to quantify how many of those new commitments fall at or below the 2 grams threshold, nor is it possible to separate fentanyl offenses from these admissions. However, there are large numbers of people admitted each year for these penalties.

EDR PROPOSED ESTIMATE: Negative Significant

This bill also amends s. 893.135, F.S., adding that for an offense under this section the court may impose a sentence other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

- (a) The defendant has no prior conviction for a forcible felony as defined in s. 776.08, F.S.
- (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 use violence or credible threats of violence, in connection with the offense.
- (c) The offense did not result in the death of or serious bodily injury to any person.
- (d) The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20, F.S.
- (e) At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.
- (f) The defendant has not previously benefited from the application of this subsection.

Furthermore, “a court may not apply this subsection to an offense under this section which carries a mandatory minimum term of imprisonment of 25 years.”

Per DOC, in FY 18-19, there were 1,027 offenders fitting the criteria for eligibility under the above language. Of those, 41.8% received a sentence under the mandatory minimum, with 217 receiving a prison sentence under the mandatory minimum and 212

receiving a probation sentence. Therefore, it cannot be quantified how judges' sentences would be impacted under this new language.

EDR PROPOSED ESTIMATE: Negative Indeterminate

EDR PROPOSED ESTIMATE FOR ENTIRE BILL: Negative Significant

Requested by: Senate

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 436**

INTRODUCER: Senator Montford

SUBJECT: Youth in Confinement

DATE: November 8, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Wagoner</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2. _____	_____	<u>ACJ</u>	_____
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 436 creates s. 945.425, F.S., which prohibits a youth in the custody of the Department of Corrections (DOC) from being placed in disciplinary confinement and limits the circumstances for placing a youth into emergency or medical confinement. 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 confinement 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 limits the placement of a youth into emergency or medical confinement 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 disease 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.

Additionally, the bill amends s. 944.09, F.S., authorizing the DOC to create rules to address youth in confinement in compliance with the bill.

The bill will likely have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) to the DOC 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 October 1, 2020.

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

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

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 November 4, 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 November 4, 2019).

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.

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

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 nine inmates under the age of 18 years and 1,992 inmates between the ages of 18 years and 21 years imprisoned in its facilities.¹⁴

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 *Id.*

¹² *Id.*

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 November 4, 2019).

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 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

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, *2019 Agency Analysis for SB 624*, p. 3 and 4, February 28, 2019 (hereinafter cited as "The DOC SB 624 Agency Analysis (2019)") (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 (2019), 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.

²¹ The DOC SB 624 Agency Analysis (2019), p. 5.

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

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.

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 (2019), p. 3-5; Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

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:

- A psychological screening assessment by a mental health professional to determine his or her mental condition.³³

³⁰ The DOC SB 624 Agency Analysis (2019), 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).

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.

- 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

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.³⁶

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.³⁷ "Disciplinary confinement" is defined to mean the segregation of an inmate for disciplinary reasons.³⁸

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 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.³⁹

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

³⁴ Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the State Classification Office (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 The Florida Sheriff's Association (FSA), *Florida Model Jail Standards as of 1/1/2019, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited November 4, 2019) (hereinafter cited as "FMJS Rule").

³⁷ The FMJS Rule 1.2.

³⁸ The FMJS Rule 1.17.

³⁹ The FMJS Rule 13.13.

the general population except as justified by his or her classification status or special needs inmate status.^{40, 41} Further, special needs inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.⁴² 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.⁴³

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.⁴⁴

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.⁴⁵

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 s. 945.425, F.S., prohibiting youth in the custody of DOC 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 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 placed in disciplinary confinement. The bill establishes criteria for placing a youth 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 bill

⁴⁰ *Id.*

⁴¹ The FMJS Rule 5.4 defines "special needs inmates" as "inmates who have been determined by the health authority to be mentally ill, suicidal, alcoholic or drug addicted going through withdrawal and in need of close monitoring."

⁴² *Supra*, n. 39.

⁴³ The FMJS Rule 13.14.

⁴⁴ The FMJS Rule 7.23.

⁴⁵ The FMJS Rule 21.11(e).

specifies that a youth may be placed in emergency confinement pending a disciplinary hearing so long as such confinement complies with all other provisions of this bill.

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

Definitions

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

- “Youth,” which means a person in the custody of the DOC who is under the age of 19 years.
- “Disciplinary confinement,” which means the involuntary placement of a youth in an isolated room to separate them from the general inmate population as a disciplinary action for violating DOC rules.
- “Emergency confinement,” which means the involuntary placement of a youth in an isolated room to separate him or her from the general inmate population 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 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 disease.
- “Mental health clinician,” which means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician assistant.

Emergency Confinement

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

- A nonphysical intervention with the youth would not be effective in preventing harm or danger to the youth or others.
- There is an 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.
- All less-restrictive means have been exhausted.

The bill also requires facility staff to document the placement of a youth in emergency confinement, including the justification for the placement and a description of the less-restrictive options that the facility staff exercised before the youth was placed in emergency confinement.

The bill requires a mental health clinician to evaluate a youth 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 evaluation of the youth every two hours thereafter to determine whether the youth 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 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 would imminently threaten the safety of the youth, 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 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 his or her needs. The bill requires a youth 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 may be placed in medical confinement if all of the following conditions are met:

- 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 disease.
- A medical professional deems such placement necessary.
- 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 disease.

The bill prohibits a youth 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 disease to others in the facility. Additionally, facility staff is required to document the placement of a youth in medical confinement and include a medical professional's justification for the placement.

Subsequent to a youth being placed in medical confinement, a medical professional must evaluate the youth 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 to review its policies and procedures relating to youth in confinement to determine whether such policies and procedures comply with the bill. Further, the DOC is 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, 2021.

The bill also amends s. 944.09, F.S., authorizing the DOC to create rules to address youth in confinement in compliance with the bill. Lastly, the bill reenacts s. 944.279(1), F.S., for purposes of incorporating changes made in the act.

The bill is effective October 1, 2020.

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

The bill requires all county detention facilities 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 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 DOC reported for a substantially similar bill during the 2019 Legislative Session that the overall impact is indeterminate, but would likely result in a positive significant fiscal impact (i.e. a significant increase in costs). The DOC further stated that it is unable to determine how many additional mental health and correctional staff will be necessary to perform the increased volume of checks that would be required by this bill, but that it is anticipated to be significant.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 945.425 of the Florida Statutes.

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

This bill reenacts section 944.279 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.

⁴⁶ The DOC SB 624 Agency Analysis (2019), p. 9.

By Senator Montford

3-00110A-20

A bill to be entitled

2020436

Page 1 of 9

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

3-00110A-20

2020436

30 951.23, F.S.; requiring sheriffs and chief
31 correctional officers to adopt model standards
32 relating to youth; amending s. 944.09, F.S.;
33 authorizing the Department of Corrections to adopt
34 rules; reenacting s. 944.279(1), F.S., relating to
35 disciplinary procedures applicable to a prisoner for
36 filing frivolous or malicious actions or bringing
37 false information before a court, to incorporate the
38 amendment made to s. 944.09, F.S., in a reference
39 thereto; providing an effective date.

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

43 Section 1. Section 945.425, Florida Statutes, is created to
44 read:

45 945.425 Youth in confinement.—

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

Page 2 of 9

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

3-00110A-20

2020436

59 general inmate population to allow him or her to recover from an
 60 illness or to prevent the spread of a communicable disease.
 61 (d) "Mental health clinician" means a licensed
 62 psychiatrist, psychologist, social worker, mental health
 63 counselor, nurse practitioner, or physician assistant.
 64 (e) "Youth" means a person in the custody of the department
 65 who is under 19 years of age.
 66 (2) PROHIBITION ON THE USE OF CONFINEMENT.—
 67 (a) A youth may not be placed in disciplinary confinement.
 68 (b) A youth may be placed in emergency confinement pending
 69 a disciplinary hearing only if such confinement complies with
 70 this section.
 71 (c) This section does not prohibit the department from
 72 applying less restrictive penalties to a youth who is found in a
 73 disciplinary hearing to have committed a rule violation.
 74 (3) PROTECTING YOUTH IN EMERGENCY CONFINEMENT.—
 75 (a) A youth may be placed in emergency confinement if all
 76 of the following conditions are met:
 77 1. A nonphysical intervention with the youth would not be
 78 effective in preventing harm or danger to the youth or others.
 79 2. There is imminent risk of the youth physically harming
 80 himself or herself, staff, or others or the youth is engaged in
 81 major property destruction that is likely to compromise the
 82 security of the program or jeopardize the safety of the youth or
 83 others.
 84 3. All less-restrictive means have been exhausted.
 85 (b) Facility staff shall document the placement of a youth
 86 in emergency confinement. The documentation must include
 87 justification for the placement, in addition to a description of

Page 3 of 9

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3-00110A-20

2020436

88 the less-restrictive options that the facility staff exercised
 89 before the youth was so placed.
 90 (c) A mental health clinician shall evaluate a youth who is
 91 placed in emergency confinement within 1 hour after the
 92 placement to ensure that the confinement is not detrimental to
 93 the mental or physical health of the youth. Following the
 94 initial evaluation, a mental health clinician shall conduct a
 95 face-to-face evaluation of the youth every 2 hours thereafter to
 96 determine whether the youth should remain in emergency
 97 confinement. The mental health clinician shall document each
 98 evaluation and provide justification for continued placement in
 99 emergency confinement.
 100 (d) A youth may not be placed in emergency confinement for
 101 more than 24 hours unless an extension is sought and obtained by
 102 a mental health clinician.
 103 1. If a mental health clinician determines that release of
 104 the youth would imminently threaten the safety of the youth or
 105 others, the mental health clinician may grant a one-time
 106 extension of 24 hours for continued placement in emergency
 107 confinement.
 108 2. If, at the conclusion of the 48-hour period, a mental
 109 health clinician determines that it is not safe for the youth to
 110 be released from emergency confinement, the facility staff must
 111 prepare to transfer the youth to a facility that is able to
 112 provide specialized treatment to address the youth's needs.
 113 (e) A youth who is placed in emergency confinement must be
 114 provided access to the same meals and drinking water, clothing,
 115 medical treatment, contact with parents and legal guardians, and
 116 legal assistance as provided to youth in the general inmate

Page 4 of 9

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3-00110A-20 2020436

117 population.

118 (f) The use of emergency confinement is strictly prohibited

119 for the purposes of punishment or discipline.

120 (4) PROTECTING YOUTH IN MEDICAL CONFINEMENT.—

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

122 the following conditions are met:

123 1. Isolation from the general inmate population and staff

124 is required to allow the youth to rest and recover from his or

125 her illness or to prevent the spread of a communicable disease.

126 2. A medical professional deems such placement necessary.

127 3. The use of other less-restrictive means would not be

128 sufficient to allow the youth to recover from his or her illness

129 or to prevent the spread of a communicable disease.

130 (b) A youth may be placed in medical confinement for a

131 period not to exceed the time necessary for the youth to recover

132 from his or her illness or to prevent the spread of a

133 communicable disease to other inmates or staff in the facility.

134 (c) Facility staff shall document the placement of a youth

135 in medical confinement. The documentation must include a medical

136 professional's justification for the placement.

137 (d) A medical professional must conduct a face-to-face

138 evaluation of a youth held in medical confinement at least once

139 every 12 hours to determine whether the youth should remain in

140 medical confinement. The medical professional shall document

141 each evaluation and provide justification for continued

142 placement in medical confinement.

143 (e) The use of medical confinement is strictly prohibited

144 for the purposes of punishment or discipline.

145 (5) IMPLEMENTATION.—

Page 5 of 9

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3-00110A-20 2020436

146 (a) The department shall review its policies and procedures

147 relating to youth in confinement to determine whether the

148 policies and procedures comply with this section.

149 (b) The department shall certify compliance with this

150 section in a report that the department shall submit to the

151 Governor, the President of the Senate, and the Speaker of the

152 House of Representatives by January 1, 2021.

153 (c) The department shall adopt policies and procedures

154 necessary to administer this section.

155 (d) This section does not supersede any law providing

156 greater or additional protections to a youth in this state.

157 Section 2. Paragraph (a) of subsection (4) of section

158 951.23, Florida Statutes, is amended to read:

159 951.23 County and municipal detention facilities;

160 definitions; administration; standards and requirements.—

161 (4) STANDARDS FOR SHERIFFS AND CHIEF CORRECTIONAL

162 OFFICERS.—

163 (a) ~~There shall be established~~ A five-member working group

164 is established which ~~consists~~ consists of three persons

165 appointed by the Florida Sheriffs Association and two persons

166 appointed by the Florida Association of Counties to develop

167 model standards for county and municipal detention facilities.

168 At a minimum ~~By~~ October 1, 1996, each sheriff and chief

169 correctional officer shall adopt, ~~at a minimum~~, the model

170 standards with reference to:

171 1.a. The construction, equipping, maintenance, and

172 operation of county and municipal detention facilities.

173 b. The cleanliness and sanitation of county and municipal

174 detention facilities; the number of county and municipal

Page 6 of 9

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3-00110A-20

2020436

175 prisoners who may be housed therein per specified unit of floor
 176 space; the quality, quantity, and supply of bedding furnished to
 177 such prisoners; the quality, quantity, and diversity of food
 178 served to them and the manner in which it is served; the
 179 furnishing to them of medical attention and health and comfort
 180 items; and the disciplinary treatment that which may be meted
 181 out to them.

182
 183 Notwithstanding the provisions of the otherwise applicable
 184 building code, a reduced custody housing area may be occupied by
 185 inmates or may be used for sleeping purposes as allowed in
 186 subsection (7). The sheriff or chief correctional officer shall
 187 provide that a reduced custody housing area shall be governed by
 188 fire and life safety standards that which do not interfere with
 189 the normal use of the facility and that which affect a
 190 reasonable degree of compliance with rules of the State Fire
 191 Marshal for correctional facilities.

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

203 3. The confinement of prisoners by classification on the

Page 7 of 9

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3-00110A-20

2020436

204 basis of age and a strict prohibition on the use of disciplinary
 205 confinement for prisoners under 19 years of age, in compliance
 206 with s. 945.425.

207 Section 3. Paragraph (s) is added to subsection (1) of
 208 section 944.09, Florida Statutes, to read:

209 944.09 Rules of the department; offenders, probationers,
 210 and parolees.—

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

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

215 Section 4. For the purpose of incorporating the amendment
 216 made by this act to section 944.09, Florida Statutes, in a
 217 reference thereto, subsection (1) of section 944.279, Florida
 218 Statutes, is reenacted to read:

219 944.279 Disciplinary procedures applicable to prisoner for
 220 filing frivolous or malicious actions or bringing false
 221 information before court.—

222 (1) At any time, and upon its own motion or on motion of a
 223 party, a court may conduct an inquiry into whether any action or
 224 appeal brought by a prisoner was brought in good faith. A
 225 prisoner who is found by a court to have brought a frivolous or
 226 malicious suit, action, claim, proceeding, or appeal in any
 227 court of this state or in any federal court, which is filed
 228 after June 30, 1996, or to have brought a frivolous or malicious
 229 collateral criminal proceeding, which is filed after September
 230 30, 2004, or who knowingly or with reckless disregard for the
 231 truth brought false information or evidence before the court, is
 232 subject to disciplinary procedures pursuant to the rules of the

Page 8 of 9

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3-00110A-20

2020436__

233 Department of Corrections. The court shall issue a written
234 finding and direct that a certified copy be forwarded to the
235 appropriate institution or facility for disciplinary procedures
236 pursuant to the rules of the department as provided in s.
237 944.09.

238 Section 5. This act shall take effect October 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/12/19

Meeting Date

436

Bill Number (if applicable)

Topic Youth in Confinement

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St., Ste. 401

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/12/19

Meeting Date

436

Bill Number (if applicable)

Topic Youth in Confinement

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee Fl 32301

State

Zip

City

Speaking: For Against Information

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

Representing ACLU of FL

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)

11/12/19
Meeting Date

436
Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Alison Marshall

Job Title Student Intern

Address 425 W. Jefferson St.
Street

Phone (850)645-7900

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing FSU Public Interest Law Center

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)

11/12/19
Meeting Date

436

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Caitlyn Kio

Job Title Graduate Fellow

Address 425 W. Jefferson St.

Phone (850)645-7908

Street
Tallahassee FL 32306

City State Zip

Speaking: For Against Information

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

Representing FSU Public Interest Law Center

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)

11/12/19

Meeting Date

436

Bill Number (if applicable)

Topic Youth in solitary confinement

Amendment Barcode (if applicable)

Name Karina Flores

Job Title student intern

Address 425 W. Jefferson St
Street

Phone 850-645-7900

Tallahassee

FL

32300

City

State

Zip

Email KMF17@my.fsu.edu

Speaking: For Against Information

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

Representing FSU Public Interest Law Center

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)

11-12-19
Meeting Date

436
Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Alex Lavelle

Job Title Student Intern

Address 425 W Jefferson
Street

Phone 440-829-4158

Tallahassee FL Zip 32306 Email AL17M@my.fsu.edu
City State Zip

Speaking: For Against Information

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

Representing FSU Public Interest Law Center

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

11-12-19

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

0434

Bill Number (if applicable)

Topic Youth In Confinement

Amendment Barcode (if applicable)

Name Ken Kriemann

Job Title Associate

Address 201 W Park

Phone 850-~~54~~⁵⁷⁰-0552

Street Tallahassee

Email _____

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing Florida Conference Catholic Bishops

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)

November 12, 2019

436

Meeting Date

Bill Number (if applicable)

Topic Youth in Coonfinement

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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)

11/12/19
Meeting Date

SB 436
Bill Number (if applicable)

Topic Youth in Confinement

Amendment Barcode (if applicable)

Name Olivia Babis

Job Title Public Policy Analyst

Address 24473 Care Dr. Ste 200
Street

Phone 850-617-9718

Tallahassee FL 32308
City State Zip

Email oliviab@disability
rightsflorida.org

Speaking: For Against Information

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

Representing Disability Rights 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

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

October 21, 2019

Senator Keith Perry, Chair
Senate Criminal Justice Committee
316 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Chair Perry,

I respectfully request that the following bills be placed on the next Criminal Justice Committee Agenda.

SB 436 – A bill relating to Youth in Confinement.

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Bill Montford".

William J. Montford III

WJM:rm

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



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

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) Appropriations Subcommittee on Criminal and Civil Justice
- 3) Appropriations
- 4)
- 5)

CURRENT COMMITTEE

--

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 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?	<input checked="" type="checkbox"/> <input type="checkbox"/> 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? 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? N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** 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:	<p>The overall impact to the department is indeterminate, but likely significant.</p> <p>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.</p>
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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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 464

INTRODUCER: Criminal Justice Committee and Senator Wright

SUBJECT: Certain Defendants With Mental Illness

DATE: November 12, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	<u>Fav/CS</u>
2.		ACJ	
3.		AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 464 provides that fiscally constrained counties that are awarded reinvestment grants to establish programs to divert misdemeanor defendants with mental disorders from jails to community-based treatment pursuant to proposed s. 916.135, F.S., are not required to provide matching funds. The application criteria for these grants are provided in s. 394.658, F.S.

Additionally, this bill creates a new section of law in ch. 916, F.S., that provides a model process for diverting misdemeanor defendants with mental illness. The process may be modified according to each community's particular resources. Communities that obtain grants pursuant to s. 394.658, F.S., must adhere to the model process to the extent that local resources are available to do so.

This bill will likely have a fiscal impact on local mental health facilities, including Baker Act receiving facilities, courts, local law enforcement, and county jails.

This bill is effective July 1, 2020.

II. Present Situation:

Mental Health Needs in the Criminal Justice System

Individuals who experience a mental health crisis are more likely to encounter law enforcement than to get medical assistance. Approximately 44 percent of jail inmates have been told that they have a mental disorder, and 26 percent of jail inmates reported incidents of serious psychological distress.¹ A person with mental illness who is jailed is likely to get worse after incarceration. They are less likely to get treatment in jail, are vulnerable to victimization, and may have less access to healthcare when released. While in jail, at least 83 percent of individuals with mental illness do not have access to proper treatment.²

Legislative Intent

The Legislature sets forth its intent regarding mentally ill and intellectually disabled defendants in s. 916.105, F.S. It is the intent of the Legislature:

- That the Department of Children and Families and the Agency for Persons with Disabilities establish and maintain facilities for the purpose of treatment or training of felony defendants who have been found incompetent or not guilty by reason of insanity.³
- That treatment programs under this chapter are provided in a manner that ensures the rights of defendants.⁴
- That evaluations and services provided under this chapter should be provided in a community setting, community residential facilities, or civil facilities, whenever this is a feasible alternative to a state forensic facility.⁵
- To minimize and achieve an ongoing reduction in the use of restraint and seclusion of persons committed under this chapter.⁶

Grant Program

In 2007, the Legislature created the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.⁷ The purpose of the program is to provide funding to counties to plan, implement, or expand initiatives that increase public safety, avert increased spending on criminal justice, and improve the accessibility and effectiveness of treatment services. These services are for adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders and who are in, or at risk of entering, the criminal or juvenile justice systems.⁸

¹ *BJS Finds Inmates Have Higher Rates of Serious Psychological Distress Than the U.S. General Population*, Bureau of Justice Statistics, June 22, 2017, available at, <https://www.bjs.gov/content/pub/press/imhprpj1112pr.cfm> (last visited November 6, 2019).

² *Jailing People With Mental Illness*, National Alliance on Mental Illness, available at, <https://www.nami.org/Learn-More/Public-Policy/Jailing-People-with-Mental-Illness> (last visited November 6, 2019).

³ Section 916.105(1), F.S.

⁴ Section 916.105(2), F.S.

⁵ Section 916.105(3), F.S.

⁶ Section 916.105(4), F.S.

⁷ Chapter 2007-200 L.O.F.

⁸ Section 394.656(1), F.S.

The Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee (Committee) is the advisory body that reviews policy and funding issues to help reduce the impact of persons with mental illness and substance abuse disorders on communities, criminal justice agencies, and the court system.⁹

Section 394.658, F.S., authorizes the Committee, in collaboration with the Department of Children and Families, the Department of Corrections, the Department of Juvenile Justice, the Department of Elderly Affairs, and the Office of the State Courts Administrator, to establish criteria to be used when reviewing grant applications.¹⁰

This section provides criteria for 1-year planning grants and 3-year implementation or expansion grants. Each county application must include:

- An analysis of the current jail population.
- Proposed strategies to serve the target population.
- The projected effect on the target population and budget of the jail or juvenile detention facility.
- Proposed strategies to preserve and enhance its community based programs.
- Proposed strategies to continue the implemented or expanded programs that have resulted from funding.¹¹

Additionally, applicant counties that want to obtain a 1-year planning grant must provide:¹²

- A strategic plan to initiate systemic change to identify and treat individuals who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorder who are in, or at risk of entering the criminal or juvenile justice system.
- The grant will be used to develop collaboration among affected government agencies, whose efforts must be the basis for developing the problem solving model and strategic plan.¹³
- Strategies to divert individuals from judicial commitment to community-based services offered by the DCF in accordance with s. 916.13, F.S.,¹⁴ and s. 916.17, F.S.¹⁵

Applicant counties that want to obtain a 3-year implementation or expansion grant must provide information demonstrating that it has completed a well-established collaboration plan that uses evidence based practices. These grants may be used to support programs including but not limited to:

- Mental health courts.
- Diversion programs.
- Alternative prosecution and sentencing programs.
- Crisis intervention teams.
- Treatment accountability services.

⁹ Section 394.656(3), F.S.

¹⁰ Section 394.658(1), F.S.

¹¹ Section 394.658(1)(c), F.S.

¹² Section 394.658(1)(a), F.S.

¹³ Section 394.658(1)(a), F.S., provides that affected agencies include the criminal, juvenile, and civil justice systems, mental health and substance abuse treatment service providers, transportation programs, and housing assistance programs.

¹⁴ Section 916.13, F.S., governs the involuntary commitment of defendants who are adjudicated incompetent.

¹⁵ Section 916.17, F.S., governs the conditional release of defendants who are adjudicated incompetent or found guilty by reason of insanity.

- Specialized training for criminal justice, juvenile justice, and treatment service professionals.
- Service delivery of collateral services such as housing, transitional housing, and supported employment.
- Reentry services to create or expand mental health and substance abuse services and supports for affected persons.¹⁶

Counties are required to make available resources equal to the total amount of the grant. Fiscally constrained counties are only required to make available resources that total 50 percent of the grant.¹⁷

Baker Act

The Legislature passed the Florida Mental Health Act, also known as the Baker Act, in 1971. The Baker Act provided comprehensive mental health treatment reform, as well as established rights and due process for persons with mental illness.¹⁸ The Baker Act is contained in ch. 394, F.S.

A person may be involuntary examined to determine whether a person qualifies for involuntary services.¹⁹ Involuntary services include court-ordered outpatient services or inpatient placement for mental health treatment.²⁰ A person may be taken to a receiving facility for an involuntarily examination if there is reason to believe that the person has a mental illness²¹ and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is unable to determine for himself or herself whether examination is necessary; **and**
- Either of the following applies:
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being, and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **or**
 - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.²²

¹⁶ Section 394.658(1)(b), F.S.

¹⁷ Section 394.658(2), F.S., provides that “available resources,” includes in-kind contributions.

¹⁸ *History of the Baker Act, It’s Development & Intent*, Department of Children and Families, available at, <https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/histba.pdf> (last visited October 24, 2019).

¹⁹ Section 394.455(22), F.S.

²⁰ Section 394.455(23), F.S.

²¹ “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse.

Section 394.455(28), F.S.

²² Section 394.463(1), F.S.

There are three means of initiating an involuntary examination. First, a court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based.²³

Second, a law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.²⁴

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a professional certificate²⁵ stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based.²⁶

A person cannot be held in a receiving facility²⁷ for involuntary examination for more than 72 hours.²⁸ Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must occur:

- The patient must be released, unless there is a jail hold, in which case law enforcement will resume custody.
- The patient must be released into voluntary outpatient treatment.
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended.
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.²⁹

A patient is entitled to a hearing within five working days after a petition for involuntary placement is filed. A patient is entitled to representation at the hearing for involuntary inpatient placement.³⁰ The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that:

- The patient is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- The patient is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely to suffer neglect to such an extent that it poses a real and present threat of substantial harm to the patient's well-being; or

²³ Section 394.463(2)(a)1., F.S.

²⁴ Section 394.463(2)(a)2., F.S.

²⁵ Florida Department of Children and Families, Form CF-MH 3052B, available at, <https://eds.myflfamilies.com/DCFFormsInternet/Search/DCFFormSearch.aspx> (last visited October 25, 2019).

²⁶ Section 394.463(2)(a)3., F.S.

²⁷ Section 394.455(39), F.S., defines "receiving facility" as a public or private facility or hospital designated by the department to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. The term does not include a county jail.

²⁸ Section 394.463(2)(g), F.S.

²⁹ *Id.*

³⁰ Section 394.467(4) and (6), F.S.

- A substantial likelihood exists that in the near future the patient will inflict serious bodily harm on himself or herself or another person.³¹

Competency to Proceed

Any party or the court may raise the issue of a defendant's competency at any time.³² A defendant may be found incompetent to proceed due to a mental illness, or due to intellectual disability or autism.³³

When incompetency due to mental illness is raised, the court must appoint no more than three experts to determine competency to proceed. The expert must be a psychiatrist, licensed psychologist, or physician, and to the extent possible must have completed forensic evaluator training approved by the department.³⁴

A defendant is incompetent to proceed if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.³⁵

When determining competency to proceed, an expert must consider and include in the report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant.
- Appreciate the range and nature of possible penalties.
- Understand the adversarial nature of the legal process.
- Disclose to counsel facts pertinent to the proceedings.
- Manifest appropriate courtroom behavior.
- Testify relevantly.
- Any other factor deemed relevant by the expert.³⁶

If an expert finds a defendant incompetent to proceed they must include the following in the report:

- The mental illness causing incompetency.
- Explanation of each possible treatment option in the order of recommendation by the expert.
- Availability of acceptable treatment and whether treatment is available in the community.
- The likelihood the defendant will attain competency under the recommended treatment and the probable duration of treatment to restore competency.³⁷

If the defendant is charged with a felony and is found incompetent due to mental illness, he or she may be subject to involuntary commitment for competency restoration. The court may order

³¹ Section 394.467(1), F.S.

³² *Lane v. State*, 388 So. 2d 1022, 1025 (Fla. 1980).

³³ Sections 916.12 and 916.3012, F.S.

³⁴ Section 916.115(1), F.S.

³⁵ Section 916.12(1), F.S.

³⁶ Section 916.12(2), F.S.

³⁷ Section 916.12(4), F.S.

conditional release in lieu of involuntary commitment for a defendant who has been found incompetent due to mental illness and is in need of competency training.³⁸

It appears there is no mandatory competency restoration for misdemeanor defendants provided in the Florida Statutes.

Mental Health Court

Mental health courts are problem-solving courts that were implemented as a response to repeat offenders with untreated serious mental illness. As of August 2019, Florida has 27 mental health courts.³⁹ Mental health court guidelines are provided in s. 394.47892, F.S., and include, in part, that programs may include pretrial intervention programs, postadjudicatory mental health court programs, and review of the status of compliance or non-compliance of sentenced defendants through a mental health court program.

Mental health court programs may include pretrial intervention programs or postadjudicatory mental health court programs. Entry into a pretrial mental health court program is voluntary.⁴⁰ Entry into a postadjudicatory mental health court program as a condition of probation or community control must be based on:

- The sentencing court's assessment of the defendant's criminal history, mental health screening outcome, the defendant's amenability to the services of the program, and the total sentencing points;
- The recommendation of the state attorney and the victim, if any; and
- The defendant's agreement to enter the program.⁴¹

III. Effect of Proposed Changes:

Legislative Intent

The bill amends s. 916.105, F.S., to include the following Legislative intent:

- Misdemeanor defendants with mental illness, intellectual disability, or autism are evaluated and provided services in a community setting.
- Law enforcement agencies provide officers with crisis intervention team training.
- All communities are encouraged to apply for Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grants pursuant to s. 394.656, F.S., to establish programs for misdemeanor defendants who have mental disorders and to divert these persons from jails to community based treatment.

³⁸ Section 916.17, F.S.

³⁹ Florida Courts, *Mental Health Courts*, available at, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Mental-Health-Courts> (last visited October 24, 2019).

⁴⁰ Section 394.47892(2) and (3), F.S.

⁴¹ Section 394.47892(4)(a), F.S.

Misdemeanor Mental Health Diversion and Competency Program

The bill creates s. 916.135, F.S., relating to misdemeanor mental health diversion and competency programs. This bill encourages communities to establish and expand programs by applying for funding pursuant to s. 394.658, F.S.

The bill provides a model process for diverting misdemeanor defendants who have a mental illness. While the process may be tailored to each community's particular need, the applicant community must adhere to the process to the extent it is possible in order to receive funding under s. 394.656, F.S.

The model process provides that within 24 hours of booking, a misdemeanor defendant may be screened by the jail's corrections or medical staff to determine if there is an indication of a mental disorder. If a mental disorder is indicated, the defendant may be evaluated by a qualified professional for involuntary commitment under the Baker Act.⁴² The qualified professional must evaluate the defendant as if they were in the community and may not rely on the defendant's incarcerated status when determining whether they are a danger to themselves or others.

If the defendant meets criteria, the qualified professional may issue a professional certificate pursuant to the Baker Act, and the defendant must be transported within 72 hours to a qualified crisis stabilization unit. The jail may place a hold on the defendant so that the defendant will only be released back to the custody of the jail, or the misdemeanor court may order that the defendant be transported to appear before the misdemeanor court.

Once the defendant is at the receiving facility, he or she will be evaluated pursuant to the Baker Act. If Baker Act criteria is met, the treatment center may forward the misdemeanor court a discharge plan or an outpatient treatment plan. If the defendant does not meet criteria, the treatment center may create an outpatient treatment plan and forward it to the misdemeanor court. The court may consider releasing the defendant on his or her own recognizance on the condition that the defendant comply with the plan created by the treatment facility.

If a defendant is found to have a mental disorder but a professional certificate is not issued, the misdemeanor court is required to order that the defendant be assessed for outpatient treatment. The assessment may be completed:

- By jail medical staff.
- At the jail via tele-assessment by the local mental health treatment center.
- By transport of the defendant to and from the local mental health treatment center by the sheriff or jail authorities.
- By release of the defendant on his or her own recognizance on the condition that the assessment be completed at the local mental health treatment center within 48 hours after his or her release, and that all treatment recommendations must be followed.

⁴² Section 394.463(2)(a)3., F.S., provides that a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a professional certificate.

If an outpatient treatment plan is recommended as a result of this assessment, and the defendant is still in custody, the court may release the defendant on his or her own recognizance with the condition that all treatment recommendations are followed.

If a defendant is released from custody on pretrial release at any time prior to the assessment or evaluation process provided by this bill, the court or either party may request the court to order the defendant to be assessed or evaluated. The court may use any treatment recommendations as a result of the assessment or evaluation as a condition of pre-trial release.

The bill also provides that if the court or either party raises a competency concern at any state of the proceedings, the court may appoint a qualified professional to evaluate the defendant under the baker act. If it appears the defendant meets criteria, the qualified professional may issue a professional certificate.

Speedy trial is tolled immediately upon the issuance of a professional certificate. The tolling period ends when the misdemeanor court finds that the defendant:

- Completed mandatory treatment under the Baker Act; or
- Is no longer subject to mandatory treatment under the Baker Act.

If the defendant does not meet criteria under the Baker Act and a professional certificate is not issued, the defendant may be evaluated for the criteria provided below. The criteria will be provided in a report to the misdemeanor court. The court will hold a hearing to determine by clear and convincing evidence whether the defendant meets any one or more of the following:

- The defendant is manifestly incapable of surviving alone or without the help of willing, able, and responsible family or friends, including available alternative services, and without treatment the misdemeanor defendant is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to the misdemeanor defendant's well-being.
- There is substantial likelihood that in the near future the misdemeanor defendant will inflict serious harm on himself or herself or another person, as evidenced by recent behavior, actions, or omissions causing, attempting, or threatening such harm. Such harm includes, but is not limited to significant property damage.
- There is substantial likelihood that a mental disorder played a central role in the behavior leading to the misdemeanor defendant's current arrest or there is a substantial likelihood that a mental disorder will lead to repeated future arrests for criminal behavior if the misdemeanor defendant does not receive treatment.

If any one or more of the above criteria is met, Speedy trial will be immediately tolled. The court may then order the defendant to submit to a full mental health assessment within 48 hours at the nearest local mental health treatment center. If the defendant is in custody, the defendant may be transported by law enforcement for the assessment, a tele-assessment may be completed by the treatment facility, or the defendant may be released on the condition that he or she report for the assessment.

The results of the assessment must be provided to the court, state, and defense. The court may enter an order setting or amending the conditions of pre-trial release to compel the defendant's

compliance with treatment recommendations. If none of the criteria are met at the hearing, the defendant may pursue a traditional competency evaluation.

Upon completion of all treatment recommendations, the following may be considered:

- Dismissal of the charges.
- Referral to mental health court or another mental health diversion program.
- The defendant may contest the misdemeanor charges.

If the defendant fails to comply with conditions of release, the court may revoke the defendant's pretrial release and the defendant will be returned to jail.

Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program Requirements

The bill amends s. 394.658, F.S., to create an exception for the matching of funds by fiscally constrained counties. Fiscally constrained counties that are awarded reinvestment grants to establish programs to divert misdemeanor defendants with mental disorders from jails to community-based treatment pursuant to s. 916.135, F.S., (created in the bill) may not be required to provide matching funds.

This new exception only applies to fiscally constrained counties who apply for grants to create the program pursuant to proposed s. 916.135, F.S.

This bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the bill related to certain defendants with mental illness may result in local fund expenditures for housing, transporting, or evaluating offenders in county jail. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution 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:**State Government**

This bill may increase the demand on Baker Act receiving facilities serving defendants charged with misdemeanors who meet criteria for involuntary examination.

Local Government

The bill may increase the need for additional staff to screen misdemeanor offenders, or to transport them to and from receiving facilities. It may also have an impact on courts if additional staff are needed to process the new Baker Act cases resulting from the bill or to hold hearings when competency is raised for misdemeanor defendants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.658 and 916.105.

This bill creates section 916.135 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 November 12, 2019:

The committee substitute ensures that the results of a full mental health assessment ordered by the court will be provided to the court, State, and defense attorney.

B. **Amendments:**

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment**

2

3 Delete lines 255 - 256

4 and insert:

5 (d) The results of the assessment shall immediately be
6 relayed to the misdemeanor court, which shall provide the
7 results

By Senator Wright

14-00444B-20

2020464

1 A bill to be entitled
 2 An act relating to certain defendants with mental
 3 illness; amending s. 394.658, F.S.; exempting certain
 4 fiscally constrained counties from local match
 5 requirements for specified grants; amending s.
 6 916.105, F.S.; providing legislative intent; creating
 7 s. 916.135, F.S.; defining the terms "misdemeanor
 8 court" and "misdemeanor defendant"; encouraging
 9 communities to apply for specified grants to establish
 10 misdemeanor mental health jail diversion programs;
 11 outlining a suggested process for such programs;
 12 authorizing the court to refer a misdemeanor defendant
 13 charged with a misdemeanor crime for certain
 14 evaluation or assessment if a party or the court
 15 raises a concern regarding the misdemeanor defendant's
 16 competency to proceed due to a mental disorder;
 17 requiring the tolling of speedy trial periods and the
 18 following of certain provisions if a professional
 19 certificate is issued; authorizing the court to hold
 20 an evidentiary hearing to make a certain determination
 21 by clear and convincing evidence; authorizing the
 22 court to execute certain orders to require the
 23 misdemeanor defendant to complete a mental health
 24 assessment under certain circumstances; authorizing
 25 the state attorney to consider dismissal of the
 26 charges upon a misdemeanor defendant's successful
 27 completion of all treatment recommendations from a
 28 mental health assessment; authorizing the court to
 29 exhaust therapeutic intervention before a misdemeanor

Page 1 of 10

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14-00444B-20

2020464

30 defendant is returned to jail; providing an effective
 31 date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Subsection (2) of section 394.658, Florida
 36 Statutes, is amended to read:
 37 394.658 Criminal Justice, Mental Health, and Substance
 38 Abuse Reinvestment Grant Program requirements.—
 39 (2)(a) As used in this subsection, the term "available
 40 resources" includes in-kind contributions from participating
 41 counties.
 42 (b) A 1-year planning grant may not be awarded unless the
 43 applicant county makes available resources in an amount equal to
 44 the total amount of the grant. A planning grant may not be used
 45 to supplant funding for existing programs. For fiscally
 46 constrained counties, the available resources may be at 50
 47 percent of the total amount of the grant, except that fiscally
 48 constrained counties that are awarded reinvestment grants to
 49 establish programs to divert misdemeanor defendants with mental
 50 disorders from jails to community-based treatment pursuant to s.
 51 916.135 may not be required to provide local matching funds.
 52 (c) A 3-year implementation or expansion grant may not be
 53 awarded unless the applicant county or consortium of counties
 54 makes available resources equal to the total amount of the
 55 grant. For fiscally constrained counties, the available
 56 resources may be at 50 percent of the total amount of the grant,
 57 except that fiscally constrained counties that are awarded
 58 reinvestment grants to establish programs to divert misdemeanor

Page 2 of 10

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14-00444B-20

2020464

59 defendants with mental disorders from jails to community-based
 60 treatment pursuant to s. 916.135 may not be required to provide
 61 local matching funds. This match shall be used for expansion of
 62 services and may not supplant existing funds for services. An
 63 implementation or expansion grant must support the
 64 implementation of new services or the expansion of services and
 65 may not be used to supplant existing services.

66 Section 2. Present subsection (4) of section 916.105,
 67 Florida Statutes, is renumbered as subsection (5), and a new
 68 subsection (4) and subsections (6) and (7) are added to that
 69 section, to read:

70 916.105 Legislative intent.—

71 (4) It is the intent of the Legislature that a defendant
 72 who is charged with a misdemeanor or an ordinance violation and
 73 who has a mental disorder, intellectual disability, or autism be
 74 evaluated and provided services in a community setting.

75 (6) It is the intent of the Legislature that law
 76 enforcement agencies in this state provide law enforcement
 77 officers with crisis intervention team training.

78 (7) It is the intent of the Legislature that all
 79 communities in this state be encouraged to apply for Criminal
 80 Justice, Mental Health, and Substance Abuse Reinvestment Grants
 81 pursuant to s. 394.656 to establish programs for defendants who
 82 are charged with misdemeanors or ordinance violations and who
 83 have mental disorders to divert these persons from jails to
 84 community-based treatment to increase public safety, improve the
 85 accessibility of treatment services, and avert increased
 86 spending on criminal justice.

87 Section 3. Section 916.135, Florida Statutes, is created to

Page 3 of 10

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14-00444B-20

88 read:

89 916.135 Misdemeanor mental health diversion and competency
 90 program.—

91 (1) As used in this section, the term:

92 (a) "Misdemeanor court" means the county court or any court
 93 presiding over misdemeanors or ordinance violations under the
 94 laws of this state or any of its political subdivisions.

95 (b) "Misdemeanor defendant" means an adult who has been
 96 charged by law enforcement or the state attorney with a
 97 misdemeanor offense or an ordinance violation under the laws of
 98 this state or any of its political subdivisions.

99 (2) Communities desiring to establish programs to divert
 100 clinically appropriate misdemeanor defendants from jails to
 101 treatment are encouraged to apply for Criminal Justice, Mental
 102 Health, and Substance Abuse Reinvestment Grants pursuant to s.
 103 394.656 for the purpose of obtaining funds to plan, implement,
 104 or expand such programs. This section provides a model process
 105 for diverting such misdemeanor defendants to treatment, but this
 106 process may be modified according to each community's particular
 107 resources. Communities that obtain grants pursuant to s. 394.658
 108 must adhere to the processes in this section to the extent that
 109 local resources are available to do so.

110 (3) Within 24 hours after a misdemeanor defendant is booked
 111 into a jail, the jail's corrections or medical staff may screen
 112 the misdemeanor defendant using a standardized validated mental
 113 health screening instrument to determine if there is an
 114 indication of a mental disorder. If there is an indication of a
 115 mental disorder, the misdemeanor defendant may be promptly
 116 evaluated for involuntary commitment under the Baker Act by a

Page 4 of 10

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14-00444B-20

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117 qualified mental health professional. In conducting this
 118 evaluation, the qualified mental health professional may
 119 evaluate the misdemeanor defendant as though he or she were at
 120 liberty in the community and may not rely on the person's
 121 incarcerated status to defeat a finding of imminent danger under
 122 the Baker Act criteria.

123 (a) If the evaluation demonstrates that the misdemeanor
 124 defendant meets the criteria for involuntary examination under
 125 the Baker Act, the mental health professional may issue a
 126 professional certificate referring the misdemeanor defendant to
 127 a qualified crisis stabilization unit.

128 (b) Upon the issuance of a professional certificate, the
 129 misdemeanor defendant must be transported within 72 hours to a
 130 qualified crisis stabilization unit for further evaluation under
 131 the Baker Act pursuant to the professional certificate. Such
 132 transport may be made with a hold for jail custody notation so
 133 that the qualified crisis stabilization unit may only release
 134 the misdemeanor defendant back to jail custody. Alternatively,
 135 the misdemeanor court may request on its transport order that
 136 the misdemeanor defendant be transported back to appear before
 137 the misdemeanor court, depending upon the outcome of the
 138 evaluation at the qualified crisis stabilization unit and the
 139 misdemeanor court's availability of other resources and
 140 diversion programs.

141 (c) Once at the designated receiving facility, the
 142 misdemeanor defendant may be assessed and evaluated to determine
 143 whether he or she meets the criteria for involuntary commitment
 144 or involuntary outpatient treatment under the Baker Act. If
 145 either set of criteria is met, the crisis stabilization unit

Page 5 of 10

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146 staff or staff at the local mental health treatment center may
 147 forward to the misdemeanor court a discharge plan or an
 148 outpatient treatment plan, as appropriate, as soon as the plan
 149 is developed. If the misdemeanor defendant is found not to meet
 150 either set of criteria, the qualified crisis stabilization unit
 151 staff or staff at the local mental health treatment center may
 152 issue an outpatient treatment plan and forward it promptly to
 153 the misdemeanor court, or may notify the misdemeanor court that
 154 no treatment is necessary.

155 (d) Upon receipt of a discharge plan or an outpatient
 156 treatment plan, the misdemeanor court may consider releasing the
 157 misdemeanor defendant on his or her own recognizance on the
 158 condition that he or she comply fully with the discharge plan or
 159 outpatient treatment plan.

160 (e) If no professional certificate is issued under
 161 paragraph (a), but the misdemeanor defendant has been found to
 162 have a mental disorder, the misdemeanor court must order that
 163 the misdemeanor defendant be assessed for outpatient treatment.
 164 This assessment may be completed by a local mental health
 165 treatment center. This assessment may be completed by jail
 166 medical staff, at the jail via tele-assessment by the local
 167 mental health treatment center, by transport of the misdemeanor
 168 defendant to and from the local mental health treatment center
 169 by the sheriff or jail authorities, or by release of the
 170 misdemeanor defendant on his or her own recognizance on the
 171 conditions that the assessment be completed at the local mental
 172 health treatment center within 48 hours after his or her release
 173 and that all treatment recommendations must be followed. If the
 174 assessment results in an outpatient treatment plan, and the

Page 6 of 10

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175 misdemeanor defendant has not already been released, the
 176 misdemeanor defendant may be released on his or her own
 177 recognizance on the condition that all treatment recommendations
 178 must be followed.

179 (f) If the misdemeanor defendant is released from the
 180 custody of the jail on pretrial release at any point before
 181 completion of the process in this section, evaluation or
 182 assessment of the misdemeanor defendant under this section by a
 183 qualified mental health professional may be initiated at any
 184 time by order of the misdemeanor court at the request of either
 185 party or on the misdemeanor court's own motion. If this process
 186 results in the creation of a discharge plan by a qualified
 187 crisis stabilization unit or an outpatient treatment plan by the
 188 local mental health treatment center, the misdemeanor court may
 189 set as a condition of the misdemeanor defendant's continued
 190 pretrial release compliance with all terms of the discharge plan
 191 or outpatient treatment plan.

192 (4)(a)1. At any stage of the criminal proceedings, if a
 193 party or the misdemeanor court raises a concern regarding a
 194 misdemeanor defendant's competency to proceed due to a mental
 195 disorder, the misdemeanor court may appoint a qualified mental
 196 health professional to evaluate the misdemeanor defendant for
 197 issuance of a professional certificate under the Baker Act. If
 198 the jail has agreed to permit its medical staff to be used for
 199 this purpose, the misdemeanor court may order jail medical staff
 200 to conduct this evaluation.

201 2. If a professional certificate is issued, the speedy
 202 trial period is tolled immediately until the misdemeanor court
 203 finds the misdemeanor defendant either to have completed all

Page 7 of 10

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2020464

204 treatment that has been mandated under the Baker Act or to no
 205 longer be subject to any mandatory treatment under the Baker
 206 Act, and the parties may follow the procedures in paragraph
 207 (3)(b), adjusting such procedures according to the
 208 jurisdiction's available resources and preferred procedures.

209 (b) If the qualified mental health professional finds that
 210 the misdemeanor defendant does not meet the criteria for
 211 issuance of a professional certificate under the Baker Act, then
 212 the professional or another qualified community-based mental
 213 health professional may evaluate the misdemeanor defendant
 214 regarding the criteria in this paragraph, and may promptly issue
 215 a report to the misdemeanor court regarding the evaluation.
 216 Following issuance of the report, the misdemeanor court may
 217 promptly hold an evidentiary hearing to determine whether clear
 218 and convincing evidence exists to conclude that the misdemeanor
 219 defendant meets any one or more of the following criteria:

220 1. The misdemeanor defendant is manifestly incapable of
 221 surviving alone or without the help of willing, able, and
 222 responsible family or friends, including available alternative
 223 services, and without treatment the misdemeanor defendant is
 224 likely to suffer from neglect or refuse to care for himself or
 225 herself and such neglect or refusal poses a real and present
 226 threat of substantial harm to the misdemeanor defendant's well-
 227 being.

228 2. There is a substantial likelihood that in the near
 229 future the misdemeanor defendant will inflict serious harm on
 230 himself or herself or another person, as evidenced by recent
 231 behavior, actions, or omissions causing, attempting, or
 232 threatening such harm. Such harm includes, but is not limited

Page 8 of 10

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14-00444B-20
 233 to, significant property damage.

234 3. There is a substantial likelihood that a mental disorder
 235 played a central role in the behavior leading to the misdemeanor
 236 defendant's current arrest or there is a substantial likelihood
 237 that a mental disorder will lead to repeated future arrests for
 238 criminal behavior if the misdemeanor defendant does not receive
 239 treatment.

240 (c) If the misdemeanor court concludes that any of the
 241 criteria in paragraph (b) are met, it must immediately enter an
 242 order tolling the speedy trial period in the case and requiring
 243 the misdemeanor defendant to appear within 48 hours at the
 244 nearest local mental health treatment center to submit to a full
 245 mental health assessment. If the misdemeanor defendant is in
 246 jail custody, the misdemeanor court may execute an order
 247 directing the sheriff or jail authorities to transport the
 248 misdemeanor defendant to and from the local mental health
 249 treatment center for purposes of having the assessment
 250 completed. Alternatively, a tele-assessment may be completed at
 251 the jail by the local mental health treatment center, or the
 252 misdemeanor court may release the misdemeanor defendant on his
 253 or her own recognizance on the condition that he or she report
 254 for the assessment within 48 hours after release.

255 (d) The results of the assessment may immediately be
 256 relayed to the misdemeanor court, which may provide the results
 257 to counsel for the state and defense. The misdemeanor court may
 258 then enter an order setting or amending the conditions of the
 259 misdemeanor defendant's pretrial release to compel the
 260 misdemeanor defendant to comply with all recommendations for
 261 treatment from the assessment. The misdemeanor defendant must be

Page 9 of 10

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14-00444B-20
 262 advised in the order that failure to comply with the order may
 263 result in the issuance of a warrant revoking the misdemeanor
 264 defendant's pretrial release and directing the sheriff to arrest
 265 and return the misdemeanor defendant to the jail.

266 (e) If the misdemeanor court concludes that none of the
 267 criteria in paragraph (b) are met, the misdemeanor defendant may
 268 elect to pursue a traditional competency evaluation pursuant to
 269 Rule 3.210, Florida Rules of Criminal Procedure, or may invoke
 270 any other rights or procedures available in misdemeanor and
 271 ordinance violation cases.

272 (5) Upon the misdemeanor defendant's successful completion
 273 of all treatment recommendations from any mental health
 274 evaluation or assessment completed pursuant to this section, the
 275 state attorney may consider dismissal of the charges. If
 276 dismissal is deemed inappropriate by the state attorney, the
 277 parties may consider referral of the misdemeanor defendant's
 278 case to mental health court or another available mental health
 279 diversion program. Alternatively, the misdemeanor defendant may
 280 avail himself or herself of the Florida Rules of Criminal
 281 Procedure to contest the misdemeanor charges.

282 (6) If the misdemeanor defendant fails to comply with any
 283 aspect of his or her discharge or outpatient treatment plan
 284 under this section, the misdemeanor court may exhaust
 285 therapeutic interventions aimed at improving compliance before
 286 considering returning the misdemeanor defendant to the jail.

287 Section 4. This act shall take effect July 1, 2020.

Page 10 of 10

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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)

November 12, 2019

464

Meeting Date

Bill Number (if applicable)

Topic Certain Defendants with Mental Illness

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, Chair
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

October 15, 2019

The Honorable Keith Perry
316, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 464 – Certain Defendants with Mental Illness

Dear Chair Perry:

Senate Bill 464, relating to Certain Defendants with Mental Illness has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 464 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive ink that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Lauren Jones, Staff Director of the Committee on Criminal Justice
Sue Arnold, Administrative Assistant of the Committee on Criminal Justice

REPLY TO:

- 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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 470

INTRODUCER: Criminal Justice Committee and Senators Brandes and Bracy

SUBJECT: Searches of Cellular Phones and Other Electronic Devices

DATE: November 12, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2. _____	_____	<u>JU</u>	_____
3. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 470 amends chs. 933 and 934, F.S., relating to search warrants and the security of communications, to address privacy issues related to the use of communication technology and the contents of stored electronic communications.

The bill amends ch. 933, F.S., by:

- Codifying the Constitutional provision that extends the security against unreasonable searches or seizures to the interception of private communications by any means; and
- Expanding the reasons for law enforcement to obtain a search warrant to include the content within certain communication devices.

The bill amends ch. 934, F.S., by:

- Providing legislative intent;
- Defining the terms “portable electronic communication device,” “microphone-enabled household device,” “mobile tracking device,” “real-time location tracking,” and “historical location data”;
- Amending the definition of oral communication to include the use of a microphone-enabled household device;
- Amending the definition of electronic communication, adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted; removing the exception of “any

communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition;

- Requiring a search warrant for the interception of wire, oral, or electronic communications, or the use of a tracking device;
- Setting forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;
- Allowing for emergency tracking or the interception of oral communications under certain circumstances; and
- Clarifying that certain conduct relating to access to stored communications is not a criminal offense.

The bill is effective July 1, 2020.

II. Present Situation:

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy, such as one’s home.² A warrantless search is generally *per se* unreasonable,³ unless an exception to the warrant requirement applies.⁴

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ The Florida Constitution also explicitly protects against the “unreasonable interception of private communications by any means.”⁶

Both the Florida and federal constitutions require a search warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and the persons or things to be seized.⁷

¹ U.S. CONST. AMEND. IV.

² *Katz v. United States*, 389 U.S. 347 (1967).

³ *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir. 2012).

⁴ Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.

⁵ FLA. CONST. art. I, s. 12.

⁶ “No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained.” *Id.*

⁷ *Id.* and *supra*, n. 1.

Advancing technology has presented law enforcement with new means of investigation and surveillance, and the courts with new questions about the Fourth Amendment implications of this technology.⁸

Chapter 933, F.S., Search Warrants

Chapter 933, F.S., contains grounds related to when and why a search warrant may be issued to a law enforcement officer by a judge authorizing the search and seizure of evidence, and the procedures for executing the search warrant.⁹

The issuance of a search warrant is based upon probable cause therefore an application made under oath to a judge for a search warrant must “set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.”¹⁰ The application must particularly describe the place to be searched and the person and thing to be seized.¹¹ If the judge finds that probable cause exists for the issuance of the search warrant, the judge must issue the search warrant.¹²

The grounds for the issuance of a search warrant include:

- When the property has been stolen or embezzled in violation of law;
- When any property has been used:
 - As a means to commit any crime;
 - In connection with gambling, gambling implements and appliances; or
 - In violation of s. 847.011, F.S., or other laws in reference to obscene prints and literature;
- When any property constitutes evidence relevant to proving that a felony has been committed;
- When any property is being held or possessed:
 - In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
 - In violation of the fish and game laws;
 - In violation of the laws relative to food and drug; or
 - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.; or

⁸ See *United States v. Jones*, 565 U.S. 400 (2012), where, in a 5-4 decision the Court found (in a narrow holding eschewing the “reasonable expectation of privacy” analysis most often used by the Court) that attaching a GPS real-time tracker on the suspect’s vehicle for the purpose of tracking his whereabouts was a “trespass” upon his “effects” by the Government and therefore a warrant is required; *Smallwood v. State*, 113 So.3d 724, 741 (Fla. 2013), in which the Court, in what it called a decision “narrowly limited to the legal question and facts with which we were presented,” decided that for a search incident to arrest of the contents of a suspect’s cell phone, a warrant is required if there are no search incident to arrest justifications (officer protection or evidence preservation) for searching the contents; *Tracey v. State*, 152 So.3d 504 (Fla. 2014), is a case involving real-time cell site location information, where the Court determined that the use of Tracey’s cell site location information to track him in real-time was a search for which probable cause was required. (Further, the Court held that the exclusionary rule was not applicable under the facts of the case; therefore, the evidence derived from the real-time tracking should be excluded as evidence in the case.); *Carpenter v. United States*, 138 S.Ct. 2206 (2018), found that obtaining a court order, rather than a warrant requiring a showing of probable cause, to access historical cell-site records implicates the Fourth Amendment therefore the Government will generally need a warrant.

⁹ Sections 933.01- 933.19, F.S.

¹⁰ Section 933.06, F.S.

¹¹ Section 933.04, F.S.

¹² Section 933.07, F.S.

- When the laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are violated in any particular building or place.¹³

A search warrant may also be issued for the search for and seizure of “any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.”¹⁴ Section 933.18, F.S., limits the grounds for the issuance of a search warrant for a private dwelling to particular circumstances. No search warrant may be issued for a private dwelling under ch. 933, F.S., or any other law of the state unless:

- It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;
- Stolen or embezzled property is contained therein;
- It is being used to carry on gambling;
- It is being used to perpetrate frauds and swindles;
- The law relating to narcotics or drug abuse is being violated therein;
- A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;
- One or more of the following child abuse offenses is being committed there:
 - Interference with custody, in violation of s. 787.03, F.S.;
 - Commission of an unnatural and lascivious act with a child, in violation of s. 800.02, F.S.; or
 - Exposure of sexual organs to a child, in violation of s. 800.03, F.S.
- It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, boardinghouse, or lodginghouse;
- It is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein;
- The laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are being violated therein; or
- An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, F.S., or evidence relevant to proving that sexual cyberharassment has been committed in violation of s. 784.049, F.S., is contained therein.¹⁵

After a law enforcement officer executes a search warrant, he or she must then bring the property seized and any person arrested in connection with the property before the judge or another court having jurisdiction of the offense.¹⁶ A copy of the search warrant and an inventory of any property seized during the execution of the warrant must either be delivered to the person whose property is the subject of the search warrant, or may be left upon the premises if no one is there.¹⁷ The search warrant and a sworn copy of any required inventory must be returned to the judge.¹⁸

¹³ Section 933.02(1)-(5), F.S.

¹⁴ Section 933.02, F.S.

¹⁵ Section 933.18, F.S.

¹⁶ Section 933.07(1), F.S.

¹⁷ Section 933.11, F.S.

¹⁸ Section 933.12, F.S.

Chapter 934, F.S., Security of Communications; Surveillance – Interception of Wire, Oral, or Electronic Communications

Sections 934.03-934.09, F.S., govern the interception of wire, oral, or electronic communications. “Intercept” is defined as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.¹⁹ These sections of law are patterned after federal law, and address the relationships between citizens, communications service providers, and investigative and law enforcement officers with respect to the obtainment and use of wire, oral, or electronic communications.²⁰

Intentionally intercepting another person’s wire, oral, or electronic communication is generally prohibited under s. 934.03, F.S. However, under circumstances where a communications service provider is served with a court order, the service provider is allowed to provide information, facilities, or technical assistance to a person who is authorized to intercept wire, oral, or electronic communications.²¹ If a person’s wire or oral communications are intercepted under circumstances not permitted in ss. 934.03-934.09, F.S., none of the content or evidence derived from the content may be used as evidence.²²

The Governor, Attorney General, statewide prosecutor, or any state attorney can authorize a law enforcement agency to apply to a judge for a court order permitting the interception of wire, oral, or electronic communications.²³ Intercepting the communication is authorized when the interception may provide or has provided evidence of the commission of the crimes enumerated in s. 934.07(1), F.S.²⁴

Section 934.09, F.S., contains the procedures related to the interception of wire, oral, or electronic communications. The procedures include what the application for a court order for the interception must contain, the time limitations for the interception, extensions of time, notice to

¹⁹ Section 934.02(3), F.S.

²⁰ Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. s. 2510-22. The ECPA updated the Federal Wiretap Act of 1968, which addressed interception of conversations using “hard” telephone lines, but did not apply to interception of computer and other digital and electronic communications. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Justice Information Sharing, Privacy & Civil Liberties*, available at <https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1285> (last viewed November 4, 2019).

²¹ Section 934.03(2)(a)2., F.S.

²² The content of the wire or oral communications or evidence derived from the content may not be admitted as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof. Section 934.06, F.S.

²³ Section 934.07(1), F.S.

²⁴ The crimes listed in s. 934.07(1)(a), F.S., are murder, kidnapping, aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, F.S. (offenses for destructive devices); inclusive; any violation of s. 787.06, F.S. (human trafficking); any violation of ch. 893, F.S. (drug abuse prevention and control); any violation of the provisions of the Florida Anti-Fencing Act; any violation of ch. 895, F.S., (offenses concerning racketeering and illegal debts); any violation of ch. 896, F.S. (offenses related to financial transactions); any violation of ch. 815, F.S. (computer-related crimes); any violation of ch. 847, F.S. (offenses related to obscenity); any violation of s. 827.071, F.S. (sexual performance by a child); any violation of s. 944.40, F.S. (offenses related to escape); or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes listed. Section 934.07(1)(b), F.S., authorizes FDLE to seek a court order to intercept wire, oral, or electronic communications when the interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy or solicitation to commit any such violation.

the person whose communication has been intercepted, and special procedures in emergency situations.

To issue an order authorizing the interception, a court must determine that there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as listed in s. 934.07, F.S., and that there is probable cause for belief that particular communications concerning that offense will be obtained through such interception.²⁵

Section 934.10, F.S., contains the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S.

Advancing Technology - Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.²⁶ There are essentially three methods of locating a mobile device:

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device²⁷ can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.²⁸

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as " beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as "GPS devices."²⁹

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.³⁰ Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a court order approving the "installation and use of a mobile

²⁵ Section 934.09(3), F.S.

²⁶ *Locational Privacy, Cell Phone Tracking Methods*, Electronic Privacy Information Center, available at <https://epic.org/privacy/location> (last viewed November 4, 2019).

²⁷ A service provider is the company that provides the Internet to the mobile device. *Id.*

²⁸ *Id.*

²⁹ Ian Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkley J. of Crim. Law, Vol. 16, Issue 2, p. 442, n. 1 (Fall 2011), available at http://www.bjcl.org/articles/16_2%20herbert_formatted.pdf (last viewed November 4, 2019).

³⁰ Section 934.42(6), F.S.

tracking device.”³¹ If the court grants the order, the officer installs and uses the device.³² The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation;
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency;
- A statement of the offense to which the information likely to be obtained relates; and
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.³³

The court then must review the application and if it finds that the above-described requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information than the information listed above.³⁴

The installation and the monitoring of a mobile tracking device are governed by the standards established by the United States Supreme Court.³⁵

Cellular-Site Location Data

In the United States, it has been reported that there are 327.6 million cell phones in use, which is more than the current U.S. population (315 million people).³⁶ “As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created[.]”³⁷ The cell phone’s location record is held by the telecommunications company that services the device.³⁸

Cellular-site location information (CSLI) is information generated when a cell phone connects and identifies its location to a nearby cell tower that, in turn, processes the phone call or text message made by the cell phone. “CSLI can be ‘historic,’ in which case the record is of a cell phone’s past movements, or it can be ‘real-time’ or prospective, in which case the information reveals the phone’s current location.”³⁹ Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.⁴⁰ Real-time location information helps law enforcement trace the current whereabouts of a suspect.⁴¹

³¹ Section 934.42(1)-(2), F.S.

³² Section 934.42(3), F.S.

³³ Section 934.42(2), F.S.

³⁴ Section 934.42(3) and (4), F.S.

³⁵ Section 934.42(5), F.S.

³⁶ Mana Azarmi, *Location Data: The More They Know*, Center for Democracy and Technology (November 27, 2017), available at <https://cdt.org/blog/location-data-the-more-they-know/> (last viewed November 4, 2019).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Cell Phone Location Tracking*, National Association of Criminal Defense Lawyers, available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last viewed November 4, 2019).

⁴¹ *Id.*

GPS Location Data

A cell phone's GPS capabilities allow it to be tracked to within 5 to 10 feet.⁴² GPS provides users with positioning, navigation, and timing services based on data available from satellites orbiting the earth.⁴³ If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.⁴⁴

Microphone-Enabled Household Devices

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Home⁴⁵ or Amazon Echo,⁴⁶ are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.⁴⁷

Although the term “always on” is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or “listening,” for the “wake words.” The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider.⁴⁸

Chapter 934, F.S., Security of Communications Definitions

Several definitions in ch. 934, F.S., are pertinent to the bill:

- “Contents,” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.⁴⁹
- “Electronic communication” means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or

⁴² *Id.*

⁴³ *GPS Location Privacy*, GPS.gov (October 31, 2018), available at <https://www.gps.gov/policy/privacy> (last viewed November 4, 2019).

⁴⁴ Patrick Bertagna, *How does a GPS tracking system work?* (October 26, 2010), EE Times, available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last viewed November 4, 2019).

⁴⁵ *Google Home*, Google Store, available at https://store.google.com/product/google_home (last viewed November 4, 2019).

⁴⁶ *Echo & Alexa*, Amazon, available at <https://www.amazon.com/all-new-amazon-echo-speaker-with-wifi-alexa-dark-charcoal/dp/B06XCM9LJ4> (last viewed November 4, 2019).

⁴⁷ Jocelyn Baird, *Smart Speakers and Voice Recognition: Is Your Privacy at Risk?*, NextAdvisor (April 4, 2017), available at <https://www.nextadvisor.com/blog/2017/04/04/smart-speakers-and-voice-recognition-is-your-privacy-at-risk/> (last viewed November 4, 2019).

⁴⁸ *Id. See also* Stacey Gray, *Always On: Privacy Implications Of Microphone-Enabled Devices*, The Future of Privacy Forum (April 2016), available at https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last viewed November 4, 2019).

⁴⁹ Section 934.02(7), F.S.

an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.⁵⁰

- “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.⁵¹
- “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.⁵²
- “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:
 - Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
 - Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.⁵³
- “Electronic storage” means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.⁵⁴
- “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.⁵⁵
- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.⁵⁶
- “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.⁵⁷
- “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.⁵⁸

⁵⁰ Section 934.02(12), F.S.

⁵¹ Section 934.02(15), F.S.

⁵² Section 934.02(14), F.S.

⁵³ Section 934.02(4), F.S.

⁵⁴ Section 934.02(17), F.S.

⁵⁵ Section 934.02(3), F.S.

⁵⁶ Section 934.02(6), F.S.

⁵⁷ Section 934.02(2), F.S.

⁵⁸ Section 934.02(19), F.S.

- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.⁵⁹

Prohibited Access to Stored Communications

Under certain circumstances, Florida law prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or
- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.⁶⁰

The penalties for this offense vary based on the specific intent and the number of offenses.⁶¹ It is a first degree misdemeanor⁶² if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.⁶³ Any subsequent offense with this intent is a third degree felony.⁶⁴ If the person did not have the above-described intent then the above-described offense is a second degree misdemeanor.⁶⁵

III. Effect of Proposed Changes:

Chapter 933, F.S., Search Warrants (Sections 1 and 2)

The bill amends s. 933.02, F.S., to incorporate content held within a cellular phone, portable electronic communication device, or microphone-enabled household device as among the grounds upon which a search warrant may be issued by a judge, if the content constitutes evidence relevant to proving that a felony has been committed.

Section 933.04, F.S., is amended to add the constitutional provision found in Article I, section 12 of the Constitution of Florida that protects private communications from unreasonable interception just as persons, houses, and effects are protected from unreasonable searches and seizures.

⁵⁹ Section 934.02(1), F.S.

⁶⁰ Section 934.21(1), F.S.

⁶¹ See s. 934.21(2), F.S.

⁶² A first degree misdemeanor is punishable by up to one year in jail, a fine of up \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁶³ Section 934.21(2), F.S.

⁶⁴ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁵ A second degree misdemeanor is punishable by up to 60 days in county jail, a fine of up to \$500, or both. Sections 775.082 and 775.083, F.S.

Chapter 934, F.S., Legislative Findings (Section 3)

The bill amends s. 934.01, F.S., by adding the term “electronic” to the current terminology of “wire and oral” communications in the legislative findings.

The bill also creates new legislative findings:

- Recognizing a subjective and objectively reasonable expectation of privacy in real-time cell-site location data, real-time precise GPS location data, and historical precise GPS location data. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.
- Recognizing that the use of portable electronic devices is growing at a rapidly increasing rate. These devices can store, and encourage the storage of, an almost limitless amount of personal and private information. Further recognizing that these devices are commonly used to access personal and business information and other data stored in computers and servers that can be located anywhere in the world. Recognizing a person who uses a portable electronic device has a reasonable and justifiable expectation of privacy in the information contained in the portable electronic device.
- Recognizing that microphone-enabled household devices often contain microphones that listen for and respond to environmental triggers. Further recognizing that these devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in a device itself or in a remote computing service. Finding that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one’s home.

Chapter 934, F.S., Security of Communications Definitions (Section 4)

The bill amends s. 934.02, F.S., by amending current definitions, and creating new definitions:

- The current definition of “oral communication” is amended to include the use of a microphone-enabled household device.
- The definition of “electronic communication” is amended by:
 - Adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted and;
 - Removing the exception of “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition;
- The definition of “microphone-enabled household device” is created and is defined as a device, sensor, or other physical object within a residence:
 - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
 - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
 - Which communicates with, by any means, another device, entity, or individual; and
 - Which contains a microphone designed to listen for and respond to environmental cues.

- The definition of “portable electronic communication device” is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Interception of Wire, Oral, or Electronic Communications (Sections 5 – 9)

Section 5: The bill amends s. 934.03(2)(a), F.S., to require a search warrant, rather than a court order, for a law enforcement officer authorized by law to intercept wire, oral, or electronic communications to obtain information, facilities, or technical assistance from a wire, oral, or electronic communication service provider.

Section 6: Section 934.06, F.S., currently prohibits the use of intercepted wire or oral communication as evidence if the disclosure of that information would violate a provision of ch. 934, F.S. The bill adds the content of a cellular phone, microphone-enabled household device, or portable electronic communication device to this prohibition, and requires a search warrant to obtain that content. The bill also specifically provides that the communication may be used as evidence if the communication is lawfully obtained under circumstances where a search warrant is not required.

Section 7: The bill amends s. 934.07(1) and (2), F.S., to require a search warrant, rather than a court order, for the interception of wire, oral, or electronic communications.

Section 8: The bill amends the procedures found in s. 934.09, F.S., for intercepting the contents of wire, oral, or electronic communications to require that a judge issue a search warrant, rather than a court order.

Section 9: The bill retains current law relating to the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S., while replacing the terms court order, subpoena, and legislative authorization with the term search warrant.

Penalties for Accessing Stored Communications (Section 10)

The bill amends s. 934.21, F.S., to specify that the penalty for accessing a facility through which an electronic communication service is provided without authorization to obtain, alter, or prevent authorized access to a wire or electronic communication does not apply to conduct authorized:

- By the provider⁶⁶ or user⁶⁷ of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- In ss. 934.09, 934.23, or 934.24, F.S.;
- Under ch. 933, F.S.;⁶⁸ or
- For legitimate business purposes that do not identify the user.

⁶⁶ Section 934.21(3)(a), F.S.

⁶⁷ Section 934.21(3)(b), F.S.

⁶⁸ Chapter 933, F.S., authorizes search and inspection warrants.

Location Tracking (Section 11)

The bill creates new definitions related to location tracking in s. 934.42, F.S. The bill provides that:

- “Mobile tracking device” means an electronic or mechanical device that tracks the movement of a person or an object.
- “Real-time location tracking” means the:
 - Installation and use of a mobile tracking device on the object to be tracked;
 - Acquisition of real-time cell-site location data; or
 - Acquisition of real-time precise GPS location data.
- “Historical location data” means historical precise GPS location data in the possession of a provider.

The bill also amends s. 934.42, F.S., to require a search warrant rather than a court order for an investigative or law enforcement officer to engage in real-time location tracking or to acquire historical location data in the possession of a provider. This means that an investigative or law enforcement officer must meet the higher standard of having probable cause for purposes of a search warrant rather than the lower standard of having a reasonable, articulable suspicion.

The bill requires that the application for a search warrant set forth a reasonable length of time that the mobile tracking device may be used or the location data may be obtained in real-time. This time period may not exceed 45 days from the date the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. When seeking historical location data the applicant must specify a date range for the data sought.

If the court issues a search warrant, the search warrant must also require the investigative or law enforcement officer to complete any authorized installation within a specified time-frame no longer than 10 days. A search warrant that permits the use of a mobile tracking device must be returned to the issuing judge within 10 days of the time period specified in the search warrant ending. Additionally, a search warrant authorizing the collection of historical GPS data must be returned to the issuing judge within 10 days after receiving the records.

Also, within 10 days after the use of the tracking device has ended or the historical location has been received from the service provider, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person who was tracked, whose property was tracked, or whose historical location data was received.⁶⁹ Upon a showing of good cause for postponement, the court may grant a postponement of this notice in 90 day increments.

⁶⁹ Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained; or by leaving a copy at the person’s residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person’s last known address.

The bill requires that, in addition to the United States Supreme Court standards, standards established by Florida courts apply to the installation, use, or monitoring of any mobile tracking device as authorized by s. 934.42, F.S.

The bill retains current provisions for real-time tracking without a search warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the real-time tracking before a warrant authorizing such tracking can, with due diligence, be obtained; and if
- There are grounds upon which a warrant could be issued to authorize the real-time tracking.⁷⁰

Within 48 hours after the tracking has occurred or begins to occur, a search warrant approving the real-time tracking must be issued in accordance with s. 934.42, F.S. When an application for a search warrant is denied, when the information sought has been obtained, or when 48 hours have lapsed since the tracking began, whichever is earlier, the tracking must be terminated immediately.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁷⁰ This exception is similar to that found in s. 934.09(7), F.S., related to intercepting wire, oral, or electronic communication.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement reports that it does not anticipate a fiscal impact related to this bill.⁷¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 933.02, 933.04, 934.01, 934.02, 934.03, 934.06, 934.07, 934.08, 934.09, 934.10, 934.21, and 934.42.

The bill reenacts the following sections of Florida Statutes: 934.22, 934.23, 934.24, 934.25, 934.27, and 934.28.

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 November 12, 2019:

The committee substitute amends the definition of “electronic communication” in s. 934.02(12), F.S. by:

- Adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted and;
- Removing the exception of “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition.

B. Amendments:

None.

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

⁷¹ 2020 FDLE Legislative Bill Analysis, November 5, 2019 (on file with the Senate Committee on Criminal Justice).



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with directory and title amendments)**

2

3 Between lines 256 and 257

4 insert:

5 (12) "Electronic communication" means any transfer of
6 signs, signals, writing, images, sounds, data, or intelligence
7 of any nature transmitted in whole or in part by a wire, radio,
8 communication tower, satellite, electromagnetic,
9 photoelectronic, or photooptical system that affects intrastate,
10 interstate, or foreign commerce, but does not include:



11 (a) Any wire or oral communication;
12 (b) Any communication made through a tone-only paging
13 device; or
14 ~~(c) Any communication from an electronic or mechanical~~
15 ~~device which permits the tracking of the movement of a person or~~
16 ~~an object; or~~
17 (c) (d) Electronic funds transfer information stored by a
18 financial institution in a communications system used for the
19 electronic storage and transfer of funds.

20
21 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====
22 And the directory clause is amended as follows:

23 Delete line 246
24 and insert:
25 Section 4. Subsections (2) and (12) of section 934.02,
26 Florida

27
28 ===== T I T L E A M E N D M E N T =====
29 And the title is amended as follows:

30 Delete line 15
31 and insert:
32 terms "oral communication" and "electronic
33 communication"; defining the terms

By Senator Brandes

24-00120-20

2020470

Page 1 of 43

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24-00120-20

30 proceeding which was obtained without a specified
31 warrant; providing an exception; amending s. 934.07,
32 F.S.; authorizing a judge to issue a search warrant,
33 rather than grant a court order, in conformity with
34 specified provisions; authorizing the Department of
35 Law Enforcement to request a law enforcement agency
36 that provided certain information to join the
37 department in seeking a new search warrant; amending
38 s. 934.09, F.S.; requiring that each application for a
39 search warrant, rather than an order, authorizing or
40 approving the interception of wire, oral, or
41 electronic communications be made in writing and state
42 the applicant's authority; authorizing a judge to
43 authorize a search warrant *ex parte*, rather than an *ex*
44 *parte* order, based on the application under certain
45 circumstances; specifying requirements for search
46 warrants, rather than orders, issued under certain
47 circumstances; authorizing an aggrieved person to move
48 to suppress the contents of certain wire, oral, or
49 electronic communications before, as well as during, a
50 trial, hearing, or proceeding; providing for
51 inadmissibility of certain evidence if a certain
52 motion is granted; authorizing a judge of competent
53 jurisdiction to authorize interception of wire, oral,
54 or electronic communications within this state under
55 specified circumstances; amending s. 934.10, F.S.;
56 providing that a good faith reliance on a search
57 warrant, rather than a court order, subpoena, or
58 legislative authorization, issued under certain

Page 2 of 43

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24-00120-20

2020470

provisions constitutes a complete defense against specified actions; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; conforming a provision to changes made by the act; amending s. 934.42, F.S.; defining the terms "mobile tracking device," "real-time location tracking," and "historical location data"; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a search warrant, rather than an order, authorizing real-time location tracking or acquisition of historical location data; requiring an application for a search warrant to include a statement setting forth a reasonable period of time the mobile tracking device may be used or the location data may be obtained in real time, not to exceed a specified limit; authorizing a court to grant extensions, for good cause, that do not individually exceed a specified limit; requiring an applicant seeking historical location data to specify a date range for the data sought; deleting a provision requiring a certification to be included in the application; requiring the court, if it finds probable cause and that the application contains the required statements, to grant a search warrant; specifying that the search warrant may authorize real-time location tracking or acquisition of historical location data; providing that the search warrant may authorize the tracking as specified; requiring the search warrant to

Page 3 of 43

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24-00120-20

2020470

command the investigative or law enforcement officer to complete any initiation of the location tracking or execution of the search warrant for historical location data authorized by the search warrant within a certain timeframe; providing requirements for the return of the search warrant to the judge and for service of a copy of the search warrant on the person who was tracked or whose property was tracked; providing requirements for returning and serving a search warrant authorizing the acquisition of historical location data; authorizing a court, for good cause, to postpone the notice requirement for a specified time period; requiring that the standards established by Florida courts for the installation, use, or monitoring of mobile tracking devices and the acquisition of location data apply to the installation, use, or monitoring of any devices and the acquisition of location data as authorized by certain provisions; deleting the definition of "tracking device"; authorizing any investigative or law enforcement officer who is specially designated by certain persons and who makes specified determinations to engage in real-time location tracking if a search warrant is obtained, as specified, after the tracking has occurred or begins to occur; providing requirements for engaging in real-time location tracking; specifying when real-time location tracking must terminate; reenacting s. 934.22(2)(b), F.S., relating to voluntary disclosure of customer

Page 4 of 43

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24-00120-20

2020470

117 communications or records, to incorporate the
 118 amendments made to ss. 934.03 and 934.07, F.S., in
 119 references thereto; reenacting s. 934.27(1) and (4),
 120 F.S., relating to relief, damages, and defenses for
 121 certain civil actions, to incorporate the amendments
 122 made to ss. 934.09 and 934.21, F.S., in references
 123 thereto; reenacting ss. 934.23(6), 934.24(6) and (7),
 124 934.25(5), and 934.28, F.S., relating to required
 125 disclosures of customer communications or records, a
 126 subscriber or customer filing a motion for certain
 127 relief and customer notification, delayed notice, and
 128 the exclusivity of remedies and sanctions for certain
 129 violations, respectively, to incorporate the amendment
 130 made to s. 934.21, F.S., in references thereto;
 131 providing an effective date.

132
 133 Be It Enacted by the Legislature of the State of Florida:

134
 135 Section 1. Section 933.02, Florida Statutes, is amended to
 136 read:

137 933.02 Grounds for issuance of search warrant.—Upon proper
 138 affidavits being made, a search warrant may be issued under the
 139 provisions of this chapter upon any of the following grounds:

140 (1) When the property shall have been stolen or embezzled
 141 in violation of law.⁺
 142 (2) When any property shall have been used:
 143 (a) As a means to commit any crime;
 144 (b) In connection with gambling, gambling implements and
 145 appliances; or

Page 5 of 43

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24-00120-20

2020470

146 (c) In violation of s. 847.011 or other laws in reference
 147 to obscene prints and literature.⁺
 148 (3) When any property, or when content held within a
 149 cellular phone, a portable electronic communication device as
 150 defined in s. 934.02, or a microphone-enabled household device
 151 as defined in s. 934.02, constitutes evidence relevant to
 152 proving that a felony has been committed.⁺
 153 (4) When any property is being held or possessed:
 154 (a) In violation of any of the laws prohibiting the
 155 manufacture, sale, and transportation of intoxicating liquors;
 156 (b) In violation of the fish and game laws;
 157 (c) In violation of the laws relative to food and drug; or
 158 (d) In violation of the laws relative to citrus disease
 159 pursuant to s. 581.184.⁺ or
 160 (5) When the laws in relation to cruelty to animals, as
 161 provided in chapter 828, have been or are violated in any
 162 particular building or place.

163
 164 This section also applies to any papers or documents used as a
 165 means of or in aid of the commission of any offense against the
 166 laws of the state.

167 Section 2. Section 933.04, Florida Statutes, is amended to
 168 read:

169 933.04 Affidavits.—The right of the people to be secure in
 170 their persons, houses, papers and effects against unreasonable
 171 seizures and searches and against the unreasonable interception
 172 of private communications by any means shall not be violated and
 173 no search warrant shall be issued except upon probable cause,
 174 supported by oath or affirmation particularly describing the

Page 6 of 43

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24-00120-20

2020470

175 place to be searched and the person and thing to be seized.
 176 Section 3. Section 934.01, Florida Statutes, is amended to
 177 read:
 178 934.01 Legislative findings.—On the basis of its own
 179 investigations and of published studies, the Legislature makes
 180 the following findings:
 181 (1) Wire communications are normally conducted through the
 182 use of facilities which form part of an intrastate network. The
 183 same facilities are used for interstate and intrastate
 184 communications.
 185 (2) In order to protect effectively the privacy of wire, and oral, and electronic communications, to protect the
 186 integrity of court and administrative proceedings, and to
 187 prevent the obstruction of intrastate commerce, it is necessary
 188 for the Legislature to define the circumstances and conditions
 189 under which the interception of wire, and oral, and electronic
 190 communications may be authorized and to prohibit any
 191 unauthorized interception of such communications and the use of
 192 the contents thereof in evidence in courts and administrative
 193 proceedings.
 194 (3) Organized criminals make extensive use of wire, and oral, and electronic communications in their criminal
 195 activities. The interception of such communications to obtain
 196 evidence of the commission of crimes or to prevent their
 197 commission is an indispensable aid to law enforcement and the
 198 administration of justice.
 199 (4) To safeguard the privacy of innocent persons, the
 200 interception of wire, or oral, or electronic communications when
 201 none of the parties to the communication has consented to the

Page 7 of 43

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24-00120-20

2020470

204 interception should be allowed only when authorized by a court
 205 of competent jurisdiction and should remain under the control
 206 and supervision of the authorizing court. Interception of wire, and oral, and electronic communications should further be
 207 limited to certain major types of offenses and specific
 208 categories of crime with assurance that the interception is
 209 justified and that the information obtained thereby will not be
 210 misused.
 211 (5) To safeguard the privacy of innocent persons, the Legislature recognizes the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise global positioning system location data which society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a search warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.
 212 (6) The Legislature recognizes the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication

Page 8 of 43

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24-00120-20

2020470

233 device has a reasonable and justifiable expectation of privacy
 234 in the information that these devices contain.
 235 (7) The Legislature recognizes the use of household
 236 electronic devices, including microphone-enabled household
 237 devices, is growing rapidly. These devices often contain
 238 microphones that listen for and respond to environmental cues.
 239 These household devices are generally connected to and
 240 communicate through the Internet, resulting in the storage of
 241 and accessibility to daily household information in the device
 242 itself or in a remote computing service. Persons should not have
 243 to choose between using household technological enhancements and
 244 conveniences or preserving the right to privacy in their own
 245 homes.

246 Section 4. Subsection (2) of section 934.02, Florida
 247 Statutes, is amended, and subsections (27) and (28) are added to
 248 that section, to read:

249 934.02 Definitions.—As used in this chapter:

250 (2) "Oral communication" means any oral communication
 251 uttered by a person exhibiting an expectation that such
 252 communication is not subject to interception under circumstances
 253 justifying such expectation, including the use of a microphone-
enabled household device, and does not mean any public oral
 254 communication uttered at a public meeting or any electronic
 255 communication.

256 (27) "Microphone-enabled household device" means a device,
 257 sensor, or other physical object within a residence which:

258 (a) Is capable of connecting to the Internet, directly or
 259 indirectly, or to another connected device;
 260 (b) Is capable of creating, receiving, accessing,

Page 9 of 43

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24-00120-20

2020470

262 processing, or storing electronic data or communications;
 263 (c) Communicates with, by any means, another entity or
 264 individual; and
 265 (d) Contains a microphone designed to listen for and
 266 respond to environmental cues.

267 (28) "Portable electronic communication device" means an
 268 object that may be easily transported or conveyed by a person;
 269 is capable of creating, receiving, accessing, processing, or
 270 storing electronic data or communications; and communicates
 271 with, by any means, another device, entity, or individual.

272 Section 5. Subsection (2) of section 934.03, Florida
 273 Statutes, is amended to read:

274 934.03 Interception and disclosure of wire, oral, or
 275 electronic communications prohibited.—

276 (2) (a) 1. It is lawful under this section and ss. 934.04-
 277 934.09 for an operator of a switchboard, or an officer,
 278 employee, or agent of a provider of wire or electronic
 279 communication service whose facilities are used in the
 280 transmission of a wire or electronic communication, to
 281 intercept, disclose, or use that communication in the normal
 282 course of his or her employment while engaged in any activity
 283 which is a necessary incident to the rendition of his or her
 284 service or to the protection of the rights or property of the
 285 provider of that service, except that a provider of wire
 286 communication service to the public shall not utilize service
 287 observing or random monitoring except for mechanical or service
 288 quality control checks.

289 2. Notwithstanding any other law, a provider of wire, oral,
 290 or electronic communication service, or an officer, employee, or

Page 10 of 43

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24-00120-20

2020470

291 agent thereof, or landlord, custodian, or other person, may
 292 provide information, facilities, or technical assistance to a
 293 person authorized by law to intercept wire, oral, or electronic
 294 communications if such provider, or an officer, employee, or
 295 agent thereof, or landlord, custodian, or other person, has been
 296 provided with:

297 a. ~~A court order directing such assistance signed by the~~
 298 ~~authorizing judge; or~~

299 b. ~~A certification in writing by a person specified in s.~~
 300 ~~934.09(7) that no search warrant or court order is required by~~
 301 ~~law, that all statutory requirements have been met, and that the~~
 302 ~~specified assistance is required, setting forth the period of~~
 303 ~~time during which the provision of the information, facilities,~~
 304 ~~or technical assistance is authorized and specifying the~~
 305 ~~information, facilities, or technical assistance required; or~~

306 b. A search warrant issued by a judge of competent
 307 jurisdiction as required by law.

308 3. A provider of wire, oral, or electronic communication
 309 service, or an officer, employee, or agent thereof, or landlord,
 310 custodian, or other person may not disclose the existence of any
 311 interception or the device used to accomplish the interception
 312 with respect to which the person has been served with a search
 313 warrant furnished an order under this section and ss. 934.04-
 314 934.09, except as may otherwise be required by legal process and
 315 then only after prior notice to the Governor, the Attorney
 316 General, the statewide prosecutor, or a state attorney, as may
 317 be appropriate. Any such disclosure renders such person liable
 318 for the civil damages provided under s. 934.10, and such person
 319 may be prosecuted under s. 934.43. An action may not be brought

Page 11 of 43

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24-00120-20

2020470

320 against any provider of wire, oral, or electronic communication
 321 service, or an officer, employee, or agent thereof, or landlord,
 322 custodian, or other person for providing information,
 323 facilities, or assistance in accordance with the terms of a
 324 search warrant court order under this section and ss. 934.04-
 325 934.09.

326 (b) It is lawful under this section and ss. 934.04-934.09
 327 for an officer, employee, or agent of the Federal Communications
 328 Commission, in the normal course of his or her employment and in
 329 discharge of the monitoring responsibilities exercised by the
 330 commission in the enforcement of 47 U.S.C. chapter 5, to
 331 intercept a wire, oral, or electronic communication transmitted
 332 by radio or to disclose or use the information thereby obtained.

333 (c) It is lawful under this section and ss. 934.04-934.09
 334 for an investigative or law enforcement officer or a person
 335 acting under the direction of an investigative or law
 336 enforcement officer to intercept a wire, oral, or electronic
 337 communication when such person is a party to the communication
 338 or one of the parties to the communication has given prior
 339 consent to such interception and the purpose of such
 340 interception is to obtain evidence of a criminal act.

341 (d) It is lawful under this section and ss. 934.04-934.09
 342 for a person to intercept a wire, oral, or electronic
 343 communication when all of the parties to the communication have
 344 given prior consent to such interception.

345 (e) It is unlawful to intercept any wire, oral, or
 346 electronic communication for the purpose of committing any
 347 criminal act.

348 (f) It is lawful under this section and ss. 934.04-934.09

Page 12 of 43

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24-00120-20

2020470

349 for an employee of a telephone company to intercept a wire
 350 communication for the sole purpose of tracing the origin of such
 351 communication when the interception is requested by the
 352 recipient of the communication and the recipient alleges that
 353 the communication is obscene, harassing, or threatening in
 354 nature. The individual conducting the interception shall notify
 355 local police authorities within 48 hours after the time of the
 356 interception.

357 (g) It is lawful under this section and ss. 934.04-934.09
 358 for an employee of:

359 1. An ambulance service licensed pursuant to s. 401.25, a
 360 fire station employing firefighters as defined by s. 633.102, a
 361 public utility, a law enforcement agency as defined by s.
 362 934.02(10), or any other entity with published emergency
 363 telephone numbers;

364 2. An agency operating an emergency telephone number "911"
 365 system established pursuant to s. 365.171; or

366 3. The central abuse hotline operated pursuant to s. 39.201
 367 to intercept and record incoming wire communications; however,
 368 such employee may intercept and record incoming wire
 369 communications on designated "911" telephone numbers and
 370 published nonemergency telephone numbers staffed by trained
 371 dispatchers at public safety answering points only. It is also
 372 lawful for such employee to intercept and record outgoing wire
 373 communications to the numbers from which such incoming wire
 374 communications were placed when necessary to obtain information
 375 required to provide the emergency services being requested. For
 376 the purpose of this paragraph, the term "public utility" has the
 377

Page 13 of 43

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24-00120-20

2020470

378 same meaning as provided in s. 366.02 and includes a person,
 379 partnership, association, or corporation now or hereafter owning
 380 or operating equipment or facilities in the state for conveying
 381 or transmitting messages or communications by telephone or
 382 telegraph to the public for compensation.

383 (h) It shall not be unlawful under this section and ss.
 384 934.04-934.09 for any person:

385 1. To intercept or access an electronic communication made
 386 through an electronic communication system that is configured so
 387 that such electronic communication is readily accessible to the
 388 general public.

389 2. To intercept any radio communication which is
 390 transmitted:

391 a. By any station for the use of the general public, or
 392 that relates to ships, aircraft, vehicles, or persons in
 393 distress;

394 b. By any governmental, law enforcement, civil defense,
 395 private land mobile, or public safety communications system,
 396 including any police or fire communications system, readily
 397 accessible to the general public;

398 c. By a station operating on an authorized frequency within
 399 the bands allocated to the amateur, citizens band, or general
 400 mobile radio services; or

401 d. By any marine or aeronautical communications system.

402 3. To engage in any conduct which:

403 a. Is prohibited by s. 633 of the Communications Act of
 404 1934; or

405 b. Is excepted from the application of s. 705(a) of the
 406 Communications Act of 1934 by s. 705(b) of that act.

Page 14 of 43

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24-00120-20

2020470

407 4. To intercept any wire or electronic communication the
 408 transmission of which is causing harmful interference to any
 409 lawfully operating station of consumer electronic equipment to
 410 the extent necessary to identify the source of such
 411 interference.

412 5. To intercept, if such person is another user of the same
 413 frequency, any radio communication that is not scrambled or
 414 encrypted made through a system that utilizes frequencies
 415 monitored by individuals engaged in the provision or the use of
 416 such system.

417 6. To intercept a satellite transmission that is not
 418 scrambled or encrypted and that is transmitted:

419 a. To a broadcasting station for purposes of retransmission
 420 to the general public; or

421 b. As an audio subcarrier intended for redistribution to
 422 facilities open to the public, but not including data
 423 transmissions or telephone calls, when such interception is not
 424 for the purposes of direct or indirect commercial advantage or
 425 private financial gain.

426 7. To intercept and privately view a private satellite
 427 video communication that is not scrambled or encrypted or to
 428 intercept a radio communication that is transmitted on
 429 frequencies allocated under subpart D of part 74 of the rules of
 430 the Federal Communications Commission that is not scrambled or
 431 encrypted, if such interception is not for a tortious or illegal
 432 purpose or for purposes of direct or indirect commercial
 433 advantage or private commercial gain.

434 (i) It shall not be unlawful under this section and ss.
 435 934.04-934.09:

Page 15 of 43

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24-00120-20

2020470

436 1. To use a pen register or a trap and trace device as
 437 authorized under ss. 934.31-934.34 or under federal law; or
 438 2. For a provider of electronic communication service to
 439 record the fact that a wire or electronic communication was
 440 initiated or completed in order to protect such provider,
 441 another provider furnishing service toward the completion of the
 442 wire or electronic communication, or a user of that service,
 443 from fraudulent, unlawful, or abusive use of such service.

444 (j) It is not unlawful under this section and ss. 934.04-
 445 934.09 for a person acting under color of law to intercept the
 446 wire or electronic communications of a computer trespasser which
 447 are transmitted to, through, or from a protected computer if:

448 1. The owner or operator of the protected computer
 449 authorizes the interception of the communications of the
 450 computer trespasser;

451 2. The person acting under color of law is lawfully engaged
 452 in an investigation;

453 3. The person acting under color of law has reasonable
 454 grounds to believe that the contents of the communications of
 455 the computer trespasser will be relevant to the investigation;
 456 and

457 4. The interception does not acquire communications other
 458 than those transmitted to, through, or from the computer
 459 trespasser.

460 (k) It is lawful under this section and ss. 934.04-934.09
 461 for a child under 18 years of age to intercept and record an
 462 oral communication if the child is a party to the communication
 463 and has reasonable grounds to believe that recording the
 464 communication will capture a statement by another party to the

Page 16 of 43

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24-00120-20

2020470

465 communication that the other party intends to commit, is
 466 committing, or has committed an unlawful sexual act or an
 467 unlawful act of physical force or violence against the child.

468 Section 6. Section 934.06, Florida Statutes, is amended to
 469 read:

470 934.06 Prohibition of use as evidence of intercepted wire
 471 or oral communications; content of cellular phone, microphone-
enabled household device, or portable electronic communication
 472 device; exceptions exception.—Whenever any wire or oral
 473 communication has been intercepted, or when the content of a
 474 cellular phone, microphone-enabled household device, or portable
 475 electronic communication device is obtained without a search
 476 warrant supported by probable cause, no part of the contents of
 477 such communication or content and no evidence derived therefrom
 478 may be received in evidence in any trial, hearing, or other
 479 proceeding in or before any court, grand jury, department,
 480 officer, agency, regulatory body, legislative committee, or
 481 other authority of the state, or a political subdivision
 482 thereof, if the disclosure of that information would be in
 483 violation of this chapter. The prohibition of use as evidence
 484 provided in this section does not apply in cases of prosecution
 485 for criminal interception in violation of the provisions of this
 486 chapter, or in cases where the content of a cellular phone,
 487 microphone-enabled household device, or portable electronic
 488 communication device is lawfully obtained under circumstances
 489 where a search warrant is not required.

490 Section 7. Subsections (1) and (2) of section 934.07,
 491 Florida Statutes, are amended to read:

492 934.07 Authorization for interception of wire, oral, or

Page 17 of 43

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2020470

24-00120-20

494 electronic communications.—

495 (1) The Governor, the Attorney General, the statewide
 496 prosecutor, or any state attorney may authorize an application
 497 to a judge of competent jurisdiction for, and such judge may
 498 issue a search warrant as required by law grant in conformity
 499 ~~with ss. 934.03-934.09~~ an order authorizing or approving the
 500 interception of, wire, oral, or electronic communications by:

501 (a) The Department of Law Enforcement or any law
 502 enforcement agency as defined in s. 934.02 having responsibility
 503 for the investigation of the offense as to which the application
 504 is made when such interception may provide or has provided
 505 evidence of the commission of the offense of murder, kidnapping,
 506 aircraft piracy, arson, gambling, robbery, burglary, theft,
 507 dealing in stolen property, criminal usury, bribery, or
 508 extortion; any felony violation of ss. 790.161-790.166,
 509 inclusive; any violation of s. 787.06; any violation of chapter
 510 893; any violation of the provisions of the Florida Anti-Fencing
 511 Act; any violation of chapter 895; any violation of chapter 896;
 512 any violation of chapter 815; any violation of chapter 847; any
 513 violation of s. 827.071; any violation of s. 944.40; or any
 514 conspiracy or solicitation to commit any violation of the laws
 515 of this state relating to the crimes specifically enumerated in
 516 this paragraph.

517 (b) The Department of Law Enforcement, together with other
 518 assisting personnel as authorized and requested by the
 519 department under s. 934.09(5), for the investigation of the
 520 offense as to which the application is made when such
 521 interception may provide or has provided evidence of the
 522 commission of any offense that may be an act of terrorism or in

Page 18 of 43

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24-00120-20

2020470

523 furtherance of an act of terrorism or evidence of any conspiracy
 524 or solicitation to commit any such violation.

525 (2)(a) If, during the course of an interception of
 526 communications by a law enforcement agency as authorized under
 527 paragraph (1)(a), the law enforcement agency finds that the
 528 intercepted communications may provide or have provided evidence
 529 of the commission of any offense that may be an act of terrorism
 530 or in furtherance of an act of terrorism, or evidence of any
 531 conspiracy or solicitation to commit any such violation, the law
 532 enforcement agency shall promptly notify the Department of Law
 533 Enforcement and apprise the department of the contents of the
 534 intercepted communications. The agency notifying the department
 535 may continue its previously authorized interception with
 536 appropriate minimization, as applicable, and may otherwise
 537 assist the department as provided in this section.

538 (b) Upon its receipt of information of the contents of an
 539 intercepted communications from a law enforcement agency, the
 540 Department of Law Enforcement shall promptly review the
 541 information to determine whether the information relates to an
 542 actual or anticipated act of terrorism as defined in this
 543 section. If, after reviewing the contents of the intercepted
 544 communications, there is probable cause that the contents of the
 545 intercepted communications meet the criteria of paragraph
 546 (1)(b), the Department of Law Enforcement may make application
 547 for the interception of wire, oral, or electronic communications
 548 consistent with paragraph (1)(b). The department may make an
 549 independent new application for interception based on the
 550 contents of the intercepted communications. Alternatively, the
 551 department may request the law enforcement agency that provided

Page 19 of 43

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24-00120-20

2020470

552 the information to join with the department in seeking a new
 553 search warrant as required by law or an amendment of the
 554 original interception search warrant order, or may seek
 555 additional authority to continue intercepting communications
 556 under the direction of the department. In carrying out its
 557 duties under this section, the department may use the provisions
 558 for an emergency interception provided in s. 934.09(7) if
 559 applicable under statutory criteria.

560 Section 8. Section 934.09, Florida Statutes, is amended to
 561 read:

562 934.09 Procedure for interception of wire, oral, or
 563 electronic communications.—

564 (1) Each application for a search warrant an order
 565 authorizing or approving the interception of a wire, oral, or
 566 electronic communication under ss. 934.03-934.09 shall be made
 567 in writing upon oath or affirmation to a judge of competent
 568 jurisdiction and shall state the applicant's authority to make
 569 such application. Each application shall include the following
 570 information:

571 (a) The identity of the investigative or law enforcement
 572 officer making the application and the officer authorizing the
 573 application.

574 (b) A full and complete statement of the facts and
 575 circumstances relied upon by the applicant to justify his or her
 576 belief that a search warrant an order should be issued,
 577 including:

578 1. Details as to the particular offense that has been, is
 579 being, or is about to be committed.

580 2. Except as provided in subsection (11), a particular

Page 20 of 43

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24-00120-20 2020470

581 description of the nature and location of the facilities from
 582 which, or the place where, the communications are to be
 583 intercepted.

584 3. A particular description of the type of communications
 585 sought to be intercepted.

586 4. The identity of the person, if known, committing the
 587 offense and whose communications are to be intercepted.

588 (c) A full and complete statement as to whether or not
 589 other investigative procedures have been tried and failed or why
 590 they reasonably appear to be unlikely to succeed if tried or to
 591 be too dangerous.

592 (d) A statement of the period of time for which the
 593 interception is required to be maintained and, if the nature of
 594 the investigation is such that the authorization for
 595 interception should not automatically terminate when the
 596 described type of communication has been first obtained, a
 597 particular description of facts establishing probable cause to
 598 believe that additional communications of the same type will
 599 occur thereafter.

600 (e) A full and complete statement of the facts concerning
 601 all previous applications known to the individual authorizing
 602 and making the application, made to any judge for authorization
 603 to intercept, or for approval of interceptions of, wire, oral,
 604 or electronic communications involving any of the same persons,
 605 facilities, or places specified in the application, and the
 606 action taken by the judge on each such application.

607 (f) When the application is for the extension of a search
 608 warrant an order, a statement setting forth the results thus far
 609 obtained from the interception or a reasonable explanation of

Page 21 of 43

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24-00120-20 2020470

610 the failure to obtain such results.

611 (2) The judge may require the applicant to furnish
 612 additional testimony or documentary evidence in support of the
 613 application.

614 (3) Upon such application, the judge may authorize a search
 615 warrant enter an ex parte order, as requested or as modified,
 616 authorizing or approving interception of wire, oral, or
 617 electronic communications within the territorial jurisdiction of
 618 the court in which the judge is sitting, and outside such
 619 jurisdiction but within the State of Florida in the case of a
 620 mobile interception device authorized by the judge within such
 621 jurisdiction, if the judge determines on the basis of the facts
 622 submitted by the applicant that:

623 (a) There is probable cause for belief that an individual
 624 is committing, has committed, or is about to commit an offense
 625 as provided in s. 934.07.

626 (b) There is probable cause for belief that particular
 627 communications concerning that offense will be obtained through
 628 such interception.

629 (c) Normal investigative procedures have been tried and
 630 have failed or reasonably appear to be unlikely to succeed if
 631 tried or to be too dangerous.

632 (d) Except as provided in subsection (11), there is
 633 probable cause for belief that the facilities from which, or the
 634 place where, the wire, oral, or electronic communications are to
 635 be intercepted are being used, or are about to be used, in
 636 connection with the commission of such offense, or are leased
 637 to, listed in the name of, or commonly used by such person.

638 (4) Each search warrant order authorizing or approving the

Page 22 of 43

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24-00120-20

2020470

639 | interception of any wire, oral, or electronic communication
640 | shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted.

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application.

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

656 A search warrant ~~An order~~ authorizing the interception of a
657 wire, oral, or electronic communication shall, upon the request
658 of the applicant, direct that a provider of wire or electronic
659 communication service, landlord, custodian, or other person
660 shall furnish the applicant forthwith all information,
661 facilities, and technical assistance necessary to accomplish the
662 interception unobtrusively and with a minimum of interference
663 with the services that such service provider, landlord,
664 custodian, or person is according the person whose
665 communications are to be intercepted. The obligation of a
666 provider of wire, oral, or electronic communication service
667 under such a search warrant ~~an order~~ may include, but is not

Page 23 of 43

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24-00120-20

2020470

668 limited to, conducting an in-progress trace during an
669 interception, or providing other assistance to support the
670 investigation as may be specified in the search warrant order.
671 Any provider of wire or electronic communication service,
672 landlord, custodian, or other person furnishing such facilities
673 or technical assistance shall be compensated therefor by the
674 applicant for reasonable expenses incurred in providing such
675 facilities or assistance.

676 (5) No search warrant order entered under this section may
677 authorize or approve the interception of any wire, oral, or
678 electronic communication for any period longer than is necessary
679 to achieve the objective of the authorization or in any event
680 longer than 30 days. Such 30-day period begins on the day on
681 which the agent or officer of the law enforcement agency first
682 begins to conduct an interception under the search warrant order
683 or 10 days after the search warrant is approved order is
684 entered, whichever occurs earlier. Extensions of a search
685 warrant an order may be granted but only upon application for an
686 extension made in accordance with subsection (1) and upon the
687 court making the findings required by subsection (3). The period
688 of extension shall be no longer than the authorizing judge deems
689 necessary to achieve the purposes for which it was granted and
690 in no event for longer than 30 days. Every search warrant order
691 and extension thereof shall contain a provision that the
692 authorization to intercept shall be executed as soon as
693 practicable, shall be conducted in such a way as to minimize the
694 interception of communications not otherwise subject to
695 interception under ss. 934.03-934.09, and must terminate upon
696 attainment of the authorized objective or in any event in 30

Page 24 of 43

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24-00120-20

2020470

697 days. If the intercepted communication is in code or foreign
 698 language and an expert in that foreign language or code is not
 699 reasonably available during the interception period,
 700 minimization may be accomplished as soon as practicable after
 701 such interception. An interception under ss. 934.03-934.09 may
 702 be conducted in whole or in part by government personnel or by
 703 an individual operating under a contract with the government,
 704 acting under the supervision of an agent or officer of the law
 705 enforcement agency authorized to conduct the interception.

706 (6) Whenever a search warrant an order authorizing
 707 interception is granted entered pursuant to ss. 934.03-934.09,
 708 the search warrant order may require reports to be made to the
 709 judge who issued the search warrant order showing what progress
 710 has been made toward achievement of the authorized objective and
 711 the need for continued interception. Such reports shall be made
 712 at such intervals as the judge may require.

713 (7) Notwithstanding any other provision of this chapter,
 714 any investigative or law enforcement officer specially
 715 designated by the Governor, the Attorney General, the statewide
 716 prosecutor, or a state attorney acting under this chapter, who
 717 reasonably determines that:

718 (a) An emergency exists that:

719 1. Involves immediate danger of death or serious physical
 720 injury to any person, the danger of escape of a prisoner, or
 721 conspiratorial activities threatening the security interest of
 722 the nation or state; and

723 2. Requires that a wire, oral, or electronic communication
 724 be intercepted before a search warrant an order authorizing such
 725 interception can, with due diligence, be obtained; and

Page 25 of 43

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24-00120-20

2020470

726 (b) There are grounds upon which a search warrant an order
 727 could be entered under this chapter to authorize such
 728 interception

729 may intercept such wire, oral, or electronic communication if an
 730 application for a search warrant an order approving the
 731 interception is made in accordance with this section within 48
 732 hours after the interception has occurred or begins to occur. In
 733 the absence of a search warrant an order, such interception
 734 shall immediately terminate when the communication sought is
 735 obtained or when the application for the search warrant order is
 736 denied, whichever is earlier. If such application for approval
 737 is denied, or in any other case in which the interception is
 738 terminated without a search warrant an order having been issued,
 739 the contents of any wire, oral, or electronic communication
 740 intercepted shall be treated as having been obtained in
 741 violation of s. 934.03(4), and an inventory shall be served as
 742 provided for in paragraph (8)(e) on the person named in the
 743 application.

744 (8)(a) The contents of any wire, oral, or electronic
 745 communication intercepted by any means authorized by ss. 934.03-
 746 934.09 shall, if possible, be recorded on tape or wire or other
 747 comparable device. The recording of the contents of any wire,
 748 oral, or electronic communication under this subsection shall be
 749 kept in such a way as will protect the recording from editing or
 750 other alterations. Immediately upon the expiration of the period
 751 of the search warrant order, or extensions thereof, such
 752 recordings shall be made available to the judge approving the
 753 search warrant issuing such order and sealed under his or her

Page 26 of 43

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24-00120-20

2020470

755 directions. Custody of the recordings shall be wherever the
 756 judge orders. They shall not be destroyed except upon an order
 757 of the issuing or denying judge, or that judge's successor in
 758 office, and in any event shall be kept for 10 years. Duplicate
 759 recordings may be made for use or disclosure pursuant to the
 760 provisions of s. 934.08(1) and (2) for investigations, or for
 761 purposes of discovery as required by law.

762 (b) The presence of the seal provided for by this
 763 subsection, or a satisfactory explanation for the absence
 764 thereof, shall be a prerequisite for the use or disclosure of
 765 the contents of any wire, oral, or electronic communication or
 766 evidence derived therefrom under s. 934.08(3), as required by
 767 federal law.

768 (c) Applications made and search warrants ~~orders~~ granted
 769 under ss. 934.03-934.09 shall be sealed by the judge. Custody of
 770 the applications and search warrants ~~orders~~ shall be wherever
 771 the judge directs. As required by federal law, such applications
 772 and search warrants ~~orders~~ shall be disclosed only for purposes
 773 of discovery or upon a showing of good cause before a judge of
 774 competent jurisdiction and shall not be destroyed except on
 775 order of the issuing or denying judge, or that judge's successor
 776 in office, and in any event shall be kept for 10 years.

777 (d) Any violation of the provisions of this subsection may
 778 be punished as contempt of the issuing or denying judge.

779 (e) Within a reasonable time but not later than 90 days
 780 after the termination of the period of a search warrant ~~an order~~
 781 or extensions thereof, the issuing or denying judge shall cause
 782 to be served on the persons named in the search warrant ~~order~~ or
 783 the application, and such other parties to intercept

Page 27 of 43

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24-00120-20

2020470

784 communications as the judge may determine in his or her
 785 discretion to be in the interest of justice, an inventory which
 786 shall include notice of:

787 1. The fact of the approval of the search warrant entry of
 788 ~~the order~~ or the application.

789 2. The date of the approval of the search warrant entry and
 790 the period of authorized, approved, or disapproved interception,
 791 or the denial of the application.

792 3. The fact that during the period wire, oral, or
 793 electronic communications were or were not intercepted.
 794

795 The judge, upon the filing of a motion, may make available to
 796 such person or the person's counsel for inspection such portions
 797 of the intercepted communications, applications, and search
 798 warrants ~~orders~~ as the judge determines to be in the interest of
 799 justice. On an ex parte showing of good cause to a judge of
 800 competent jurisdiction, the serving of the inventory required by
 801 this paragraph may be postponed.

802 (9) ~~As required by federal law,~~ The contents of any
 803 intercepted wire, oral, or electronic communication or evidence
 804 derived therefrom shall not be received in evidence or otherwise
 805 disclosed in any trial, hearing, or other proceeding unless each
 806 party, not less than 10 days before the trial, hearing, or
 807 proceeding, has been furnished with a copy of the search warrant
 808 ~~court order~~ and accompanying application under which the
 809 interception was authorized or approved. This 10-day period may
 810 be waived by the judge if he or she finds that it was not
 811 possible to furnish the party with the above information 10 days
 812 before the trial, hearing, or proceeding and that the party will

Page 28 of 43

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24-00120-20

2020470

813 not be prejudiced by the delay in receiving such information.

814 (10) (a) An Any aggrieved person before or in any trial,
 815 hearing, or proceeding in or before any court, department,
 816 officer, agency, regulatory body, or other authority may move to
 817 suppress the contents of any intercepted wire, oral, or
 818 electronic communication, or evidence derived therefrom, on the
 819 grounds that:

820 1. The communication was unlawfully intercepted;

821 2. The search warrant order of authorization or approval
 822 under which it was intercepted is insufficient on its face; or

823 3. The interception was not made in conformity with the
search warrant order of authorization or approval.

824 (b) Except as otherwise provided in the applicable Florida
Rules of Criminal Procedure, in a criminal matter:

825 1. Such motion shall be made before the trial, hearing, or
 826 proceeding unless there was no opportunity to make such motion
 827 or the person was not aware of the grounds of the motion.

828 2. If the motion is granted, the contents of the
 829 intercepted wire or oral communication, or evidence derived
 830 therefrom, shall be treated as having been obtained in violation
 831 of ss. 934.03-934.09 and are not admissible as evidence.

832 3. The judge, upon the filing of such motion by the
 833 aggrieved person, may make available to the aggrieved person or
 834 his or her counsel for inspection such portions of the
 835 intercepted communication or evidence derived therefrom as the
 836 judge determines to be in the interest of justice.

837 (c) ~~(b)~~ In addition to any other right to appeal, the state
 838 shall have the right to appeal from an order granting a motion
 839 to suppress made under paragraph (a) or the denial of an

Page 29 of 43

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24-00120-20

2020470

842 application for a search warrant ~~an order of approval~~ if the
 843 attorney shall certify to the judge or other official granting
 844 such motion or denying such application that the appeal is not
 845 taken for purposes of delay. Such appeal shall be taken within
 846 30 days after the date the order was entered and shall be
 847 diligently prosecuted.

848 (d) ~~(e)~~ The remedies and sanctions described in ss. 934.03-
 849 934.10 with respect to the interception of electronic
 850 communications are the only judicial remedies and sanctions for
 851 violations of those sections involving such communications.

852 (11) The requirements of subparagraph (1)(b)2. and
 853 paragraph (3)(d) relating to the specification of the facilities
 854 from which, or the place where, the communication is to be
 855 intercepted do not apply if:

856 (a) In the case of an application with respect to the
 857 interception of an oral communication:

858 1. The application is by an agent or officer of a law
 859 enforcement agency and is approved by the Governor, the Attorney
 860 General, the statewide prosecutor, or a state attorney.

861 2. The application contains a full and complete statement
 862 as to why such specification is not practical and identifies the
 863 person committing the offense and whose communications are to be
 864 intercepted.

865 3. The judge finds that such specification is not
 866 practical.

867 (b) In the case of an application with respect to a wire or
 868 electronic communication:

869 1. The application is by an agent or officer of a law
 870 enforcement agency and is approved by the Governor, the Attorney

Page 30 of 43

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24-00120-20

2020470

871 General, the statewide prosecutor, or a state attorney.

872 2. The application identifies the person believed to be
 873 committing the offense and whose communications are to be
 874 intercepted and the applicant makes a showing that there is
 875 probable cause to believe that the person's actions could have
 876 the effect of thwarting interception from a specified facility
 877 or that the person whose communications are to be intercepted
 878 has removed, or is likely to remove, himself or herself to
 879 another judicial circuit within the state.

880 3. The judge finds that such showing has been adequately
 881 made.

882 4. The search warrant order authorizing or approving the
 883 interception is limited to interception only for such time as it
 884 is reasonable to presume that the person identified in the
 885 application is or was reasonably proximate to the instrument
 886 through which such communication will be or was transmitted.

888 ~~Consistent with this paragraph, a judge of competent
 889 jurisdiction may authorize interception within this state,
 890 whether the interception is within or outside the court's
 891 jurisdiction, if the application for the interception makes a
 892 showing that some activity or conspiracy believed to be related
 893 to, or in furtherance of, the criminal predicate for the
 894 requested interception has occurred or will likely occur, or the
 895 communication to be intercepted or expected to be intercepted is
 896 occurring or will likely occur, in whole or in part, within the
 897 jurisdiction of the court where the order is being sought.~~

898 (12) If an interception of a communication is to be carried
 899 out pursuant to subsection (11), such interception may not begin

Page 31 of 43

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24-00120-20

2020470

900 until the facilities from which, or the place where, the
 901 communication is to be intercepted is ascertained by the person
 902 implementing the interception search warrant order. A provider
 903 of wire or electronic communications service that has received a
 904 search warrant an order as provided under paragraph (11)(b) may
 905 petition the court to modify or quash the search warrant order
 906 on the ground that the interception cannot be performed in a
 907 timely or reasonable fashion. The court, upon notice to the
 908 state, shall decide such a petition expeditiously.

909 (13) Consistent with this section, a judge of competent
 910 jurisdiction may authorize interception within this state,
 911 whether the interception is within or outside the court's
 912 jurisdiction, if the application for the interception makes a
 913 showing that some activity or conspiracy believed to be related
 914 to, or in furtherance of, the criminal predicate for the
 915 requested interception has occurred or will likely occur, or the
 916 communication to be intercepted or expected to be intercepted is
 917 occurring or will likely occur, in whole or in part, within the
 918 jurisdiction of the court where the search warrant is being
 919 sought.

920 Section 9. Subsection (2) of section 934.10, Florida
 921 Statutes, is amended, and subsection (1) of that section is
 922 republished, to read:

923 934.10 Civil remedies.—

924 (1) Any person whose wire, oral, or electronic
 925 communication is intercepted, disclosed, or used in violation of
 926 ss. 934.03-934.09 shall have a civil cause of action against any
 927 person or entity who intercepts, discloses, or uses, or procures
 928 any other person or entity to intercept, disclose, or use, such

Page 32 of 43

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24-00120-20 2020470

929 communications and shall be entitled to recover from any such
 930 person or entity which engaged in that violation such relief as
 931 may be appropriate, including:
 932 (a) Preliminary or equitable or declaratory relief as may
 933 be appropriate;
 934 (b) Actual damages, but not less than liquidated damages
 935 computed at the rate of \$100 a day for each day of violation or
 936 \$1,000, whichever is higher;
 937 (c) Punitive damages; and
 938 (d) A reasonable attorney's fee and other litigation costs
 939 reasonably incurred.
 940 (2) A good faith reliance on any of the following
 941 constitutes a complete defense to any civil, criminal, or
 942 administrative action arising out of such conduct under the laws
 943 of this state:
 944 (a) A search warrant court order, subpoena, or legislative
 945 authorization as provided for in ss. 934.03-934.09; or
 946 (b) A request of an investigative or law enforcement
 947 officer under s. 934.09(7); or
 948 (c) A good faith determination that Florida or federal law,
 949 other than 18 U.S.C. s. 2511(2)(d), authorized permitted the
 950 conduct complained of
 951 shall constitute a complete defense to any civil or criminal, or
 952 administrative action arising out of such conduct under the laws
 953 of this state.
 954 Section 10. Section 934.21, Florida Statutes, is amended to
 955 read:
 956 934.21 Unlawful access to stored communications;

Page 33 of 43

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24-00120-20 2020470

958 penalties.—
 959 (1) Except as provided in subsection (3), whoever:
 960 (a) Intentionally accesses without authorization a facility
 961 through which an electronic communication service is provided,
 962 or
 963 (b) Intentionally exceeds an authorization to access such
 964 facility,
 965 and thereby obtains, alters, or prevents authorized access to a
 966 wire or electronic communication while it is in electronic
 967 storage in such system shall be punished as provided in
 968 subsection (2).
 969 (2) The punishment for an offense under subsection (1) is
 970 as follows:
 971 (a) If the offense is committed for purposes of commercial
 972 advantage, malicious destruction or damage, or private
 973 commercial gain, the person ~~is~~:
 974 1. In the case of a first offense under this subsection,
 975 commits guilty of a misdemeanor of the first degree, punishable
 976 as provided in s. 775.082, s. 775.083, or s. 934.41.
 977 2. In the case of any subsequent offense under this
 978 subsection, commits guilty of a felony of the third degree,
 979 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 980 s. 934.41.
 981 (b) In any other case, the person commits is guilty of a
 982 misdemeanor of the second degree, punishable as provided in s.
 983 775.082 or s. 775.083.
 984 (3) Subsection (1) does not apply with respect to conduct
 985 authorized:
 986

Page 34 of 43

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24-00120-20 2020470

987 (a) By the person or entity providing a wire, oral, or
 988 electronic communications service, including through cellular
 989 phones, microphone-enabled household devices, or portable
 990 electronic communication devices;

991 (b) By a user of a wire, oral, or electronic communications
 992 service, including through cellular phones, microphone-enabled
 993 household devices, or portable electronic communication devices,
 994 with respect to a communication of or intended for that user; ~~or~~

995 (c) In s. 934.09, s. 934.23, or s. 934.24;

996 (d) In chapter 933; or

997 (e) For accessing for a legitimate business purpose
 998 information that is not personally identifiable or that has been
 999 collected in a way that prevents identification of the user of
 1000 the device.

1001 Section 11. Section 934.42, Florida Statutes, is amended to
 1002 read:

1003 934.42 Mobile tracking device and location tracking
 1004 authorization.—

1005 (1) As used in this section, the term:

1006 (a) "Mobile tracking device" means an electronic or
 1007 mechanical device that tracks the movement of a person or an
 1008 object.

1009 (b) "Real-time location tracking" means the:

1010 1. Installation and use of a mobile tracking device on the
 1011 object to be tracked;

1012 2. Acquisition of real-time cell-site location data; or

1013 3. Acquisition of real-time precise global positioning
 1014 system location data.

1015 (c) "Historical location data" means historical precise

Page 35 of 43

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24-00120-20 2020470

1016 1017 global positioning system location data in the possession of a
 provider.

1018 (2) ~~(1)~~ An investigative or law enforcement officer may make
 1019 application to a judge of competent jurisdiction for a search
 1020 warrant ~~an order~~ authorizing or approving real-time location
 1021 tracking or the acquisition of historical location data in the
 1022 possession of the provider ~~the installation and use of a mobile~~
 1023 ~~tracking device.~~

1024 (3) ~~(2)~~ An application under subsection (2) (1) of this
 1025 section must include:

1026 (a) A statement of the identity of the applicant and the
 1027 identity of the law enforcement agency conducting the
 1028 investigation.

1029 (b) A statement setting forth a reasonable period of time
 1030 the mobile tracking device may be used or the location data may
 1031 be obtained in real time, not to exceed 45 days from the date on
 1032 which the search warrant is issued. The court may, for good
 1033 cause, grant one or more extensions for a reasonable period of
 1034 time, not to exceed 45 days each. When seeking historical
 1035 location data, the applicant must specify a date range for the
 1036 data sought ~~eertification~~ by the applicant that the information
 1037 likely to be obtained is relevant to an ongoing criminal
 1038 investigation being conducted by the investigating agency.

1039 (c) A statement of the offense to which the information
 1040 likely to be obtained relates.

1041 (d) A statement as to whether it may be necessary to use
 1042 and monitor the mobile tracking device outside the jurisdiction
 1043 of the court from which authorization is being sought.

1044 (4) ~~(3)~~ Upon application made as provided under subsection

Page 36 of 43

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24-00120-20

2020470

1045 (3) ~~(2)~~, the court, if it finds probable cause that the
 1046 ~~certification~~ and finds that the statements required by
 1047 subsection (3) (2) have been made in the application, must grant
 1048 ~~a search warrant shall enter an ex parte order~~ authorizing real-
 1049 time location tracking or the acquisition of historical location
 1050 data the installation and use of a mobile tracking device. Such
 1051 search warrant order may authorize the location tracking use of
 1052 the device within the jurisdiction of the court and outside that
 1053 jurisdiction but within the State of Florida if the location
 1054 tracking device is initiated installed within the jurisdiction
 1055 of the court. The search warrant must command the investigative
 1056 or law enforcement officer to complete any initiation of the
 1057 location tracking or execution of the search warrant for
 1058 historical location data authorized by the search warrant within
 1059 a specified period of time not to exceed 10 calendar days.

1060 (5) ~~(4)~~ A court may not require greater specificity or
 1061 additional information beyond that which is required by law and
 1062 this section as a requisite for issuing a search warrant an
 1063 order.

1064 (6) Within 10 days after the time period specified in
 1065 paragraph (3) (b) has ended, the investigative or law enforcement
 1066 officer executing a search warrant must return the search
 1067 warrant to the issuing judge. When the search warrant is
 1068 authorizing the acquisition of historical location data, the
 1069 investigative or law enforcement officer executing the search
 1070 warrant must return the search warrant to the issuing judge
 1071 within 10 days after receipt of the records. The investigative
 1072 or law enforcement officer may do so by reliable electronic
 1073 means.

Page 37 of 43

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24-00120-20

2020470

1074 (7) Within 10 days after the time period specified in
 1075 paragraph (3) (b) has ended, the investigative or law enforcement
 1076 officer executing a search warrant must serve a copy of the
 1077 search warrant on the person who, or whose property, was
 1078 tracked. When the search warrant is authorizing the acquisition
 1079 of historical location data, the investigative or law
 1080 enforcement officer executing the search warrant must serve a
 1081 copy of the search warrant on the person whose data was obtained
 1082 within 10 days after receipt of the records. Service may be
 1083 accomplished by delivering a copy to the person who, or whose
 1084 property, was tracked or whose data was obtained or by leaving a
 1085 copy at the person's residence or usual place of abode with an
 1086 individual of suitable age and discretion who resides at that
 1087 location and by mailing a copy to the person's last known
 1088 address. Upon a showing of good cause to a court of competent
 1089 jurisdiction, the court may grant one or more postponements of
 1090 this notice for a period of 90 days each.

1091 (8) ~~(5)~~ The standards established by Florida courts and the
 1092 United States Supreme Court for the installation, use, or and
 1093 monitoring of mobile tracking devices and the acquisition of
 1094 location data shall apply to the installation, use, or
 1095 monitoring and use of any device and the acquisition of location
 1096 data as authorized by this section.

1097 (6) As used in this section, a "tracking device" means an
 1098 electronic or mechanical device which permits the tracking of
 1099 the movement of a person or object.

1100 (9) (a) Notwithstanding any other provision of this chapter,
 1101 any investigative or law enforcement officer specially
 1102 designated by the Governor, the Attorney General, the statewide

Page 38 of 43

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24-00120-20 2020470

1103 prosecutor, or a state attorney acting pursuant to this chapter
 1104 who reasonably determines that:

1105 1. An emergency exists which:

1106 a. Involves immediate danger of death or serious physical
 1107 injury to any person or the danger of escape of a prisoner; and

1108 b. Requires real-time location tracking before a search
 1109 warrant authorizing such tracking can, with due diligence, be
 1110 obtained; and

1111 2. There are grounds upon which a search warrant could be
 1112 issued under this chapter to authorize such tracking,

1113 may engage in real-time location tracking if, within 48 hours
 1114 after the tracking has occurred or begins to occur, a search
 1115 warrant approving the tracking is issued in accordance with this
 1116 section.

1117 (b) In the absence of an authorizing search warrant, such
 1118 tracking must immediately terminate when the information sought
 1119 is obtained, when the application for the search warrant is
 1120 denied, or when 48 hours have lapsed since the tracking began,
 1121 whichever is earlier.

1122 Section 12. For the purpose of incorporating the amendments
 1123 made by this act to sections 934.03 and 934.07, Florida
 1124 Statutes, in a reference thereto, paragraph (b) of subsection
 1125 (2) of section 934.22, Florida Statutes, is reenacted to read:
 1126 934.22 Voluntary disclosure of customer communications or
 1127 records.—
 1128 (2) A provider described in subsection (1) may divulge the
 1129 contents of a communication:
 1130 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,

Page 39 of 43

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24-00120-20 2020470

1132 or s. 934.23.

1133 Section 13. For the purpose of incorporating the amendments
 1134 made by this act to sections 934.09 and 934.21, Florida
 1135 Statutes, in references thereto, subsections (1) and (4) of
 1136 section 934.27, Florida Statutes, are reenacted to read:
 1137 934.27 Civil action: relief; damages; defenses.—
 1138 (1) Except as provided in s. 934.23(5), any provider of
 1139 electronic communication service, or subscriber or customer
 1140 thereof, aggrieved by any violation of ss. 934.21-934.28 in
 1141 which the conduct constituting the violation is engaged in with
 1142 a knowing or intentional state of mind may, in a civil action,
 1143 recover from the person or entity which engaged in that
 1144 violation such relief as is appropriate.
 1145 (4) A good faith reliance on any of the following is a
 1146 complete defense to any civil or criminal action brought under
 1147 ss. 934.21-934.28:
 1148 (a) A court warrant or order, a subpoena, or a statutory
 1149 authorization, including, but not limited to, a request of an
 1150 investigative or law enforcement officer to preserve records or
 1151 other evidence, as provided in s. 934.23(7).
 1152 (b) A request of an investigative or law enforcement
 1153 officer under s. 934.09(7).
 1154 (c) A good faith determination that s. 934.03(3) permitted
 1155 the conduct complained of.
 1156 Section 14. For the purpose of incorporating the amendment
 1157 made by this act to section 934.21, Florida Statutes, in a
 1158 reference thereto, subsection (6) of section 934.23, Florida
 1159 Statutes, is reenacted to read:
 1160 934.23 Required disclosure of customer communications or

Page 40 of 43

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24-00120-20 2020470

1161 records.-

1162 (6) No cause of action shall lie in any court against any

1163 provider of wire or electronic communication service, its

1164 officers, employees, agents, or other specified persons for

1165 providing information, facilities, or assistance in accordance

1166 with the terms of a court order, warrant, subpoena, or

1167 certification under ss. 934.21-934.28.

1168 Section 15. For the purpose of incorporating the amendment

1169 made by this act to section 934.21, Florida Statutes, in

1170 references thereto, subsections (6) and (7) of section 934.24,

1171 Florida Statutes, are reenacted to read:

1172 934.24 Backup preservation; customer notification;

1173 challenges by customer.-

1174 (6) Within 14 days after notice by the investigative or law

1175 enforcement officer to the subscriber or customer under

1176 subsection (2), the subscriber or customer may file a motion to

1177 quash the subpoena or vacate the court order seeking contents of

1178 electronic communications, with copies served upon the

1179 investigative or law enforcement officer and with written notice

1180 of such challenge to the service provider. A motion to vacate a

1181 court order must be filed in the court which issued the order. A

1182 motion to quash a subpoena must be filed in the circuit court in

1183 the circuit from which the subpoena issued. Such motion or

1184 application must contain an affidavit or sworn statement:

1185 (a) Stating that the applicant is a subscriber or customer

1186 of the service from which the contents of electronic

1187 communications maintained for her or him have been sought, and

1188 (b) Stating the applicant's reasons for believing that the

1189 records sought are not relevant to a legitimate law enforcement

Page 41 of 43

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24-00120-20 2020470

1190 inquiry or that there has not been substantial compliance with

1191 the provisions of ss. 934.21-934.28 in some other respect.

1192 (7) Except as otherwise obtained under paragraph (3)(a),

1193 service must be made under this section upon an investigative or

1194 law enforcement officer by delivering or mailing by registered

1195 or certified mail a copy of the papers to the person, office, or

1196 department specified in the notice which the subscriber or

1197 customer has received pursuant to ss. 934.21-934.28. For the

1198 purposes of this subsection, the term "delivering" shall be

1199 construed in accordance with the definition of "delivery" as

1200 provided in Rule 1.080, Florida Rules of Civil Procedure.

1201 Section 16. For the purpose of incorporating the amendment

1202 made by this act to section 934.21, Florida Statutes, in a

1203 reference thereto, subsection (5) of section 934.25, Florida

1204 Statutes, is reenacted to read:

1205 934.25 Delayed notice.-

1206 (5) Upon the expiration of the period of delay of

1207 notification under subsection (1) or subsection (4), the

1208 investigative or law enforcement officer must serve upon or

1209 deliver by registered or first-class mail to the subscriber or

1210 customer a copy of the process or request together with notice

1211 which:

1212 (a) States with reasonable specificity the nature of the

1213 law enforcement inquiry, and

1214 (b) Informs the subscriber or customer:

1215 1. That information maintained for such subscriber or

1216 customer by the service provider named in the process or request

1217 was supplied to or requested by the investigative or law

1218 enforcement officer and the date on which such information was

Page 42 of 43

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24-00120-20

2020470__

1219 so supplied or requested.

1220 2. That notification of such subscriber or customer was
1221 delayed.

1222 3. What investigative or law enforcement officer or what
1223 court made the certification or determination pursuant to which
1224 that delay was made.

1225 4. Which provision of ss. 934.21-934.28 allowed such delay.

1226 Section 17. For the purpose of incorporating the amendment
1227 made by this act to section 934.21, Florida Statutes, in a
1228 reference thereto, section 934.28, Florida Statutes, is
1229 reenacted to read:

1230 934.28 Exclusivity of remedies and sanctions.—The remedies
1231 and sanctions described in ss. 934.21-934.27 are the only
1232 judicial remedies and sanctions for violation of those sections.

1233 Section 18. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/12/19
Meeting Date

470

Bill Number (if applicable)

158654

Amendment Barcode (if applicable)

Topic Searches of Cellular Phones . . .

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 307 S. Monroe St. Ste 401

Street

Tallahassee

FL

32301

Zip

City

State

Phone (850) 606-1000

Email andy.thomas@flpdz.com

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

November 12, 2019

470

Meeting Date

Bill Number (if applicable)

Topic Searches of Cellular Phones

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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)

1/12/19

Meeting Date

470

Bill Number (if applicable)

Topic Searches of Cellular Phones and Other Electronic Devices

Amendment Barcode (if applicable)

Name Philly Suderman

Job Title Policy Director

Address _____ Phone _____
Street _____

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

11/12/2019

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

SB 470

Meeting Date

Bill Number (if applicable)

Topic Searches of Cellular Phones and other Electronic Devices

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/12/2019

Meeting Date

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

470

Bill Number (if applicable)

Topic Searches

Amendment Barcode (if applicable)

Name John Chamico

Job Title ATTORNEY

Address 108 South Monroe Street

Phone (850)681-0024

Street Tallahassee, FL 32301

Email john@plapartners.com

City Tallahassee State FL

Zip

Speaking: For Against Information

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

Representing FACDL

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
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 1, 2019

I respectfully request that **Senate Bill #470**, relating to **Searches of Cellular Phones and Other Electronic Devices**, 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".

Senator Jeff Brandes
Florida Senate, District 24



2020 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
BILL NUMBER:	SB 470
BILL TITLE:	Searches of Cellular Phones and Other Electronic Devices
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE	CURRENT COMMITTEE
1) Criminal Justice	Criminal Justice
2) Judiciary	
3) Rules	
4)	
5)	

PREVIOUS LEGISLATION	IDENTICAL BILLS
BILL NUMBER: SB210	BILL NUMBER:
SPONSOR: Brandes	SPONSOR:
YEAR: 2019	
LAST ACTION: Died in committee	

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	October 10, 2019
LEAD AGENCY ANALYST:	Lori Mizell
ADDITIONAL ANALYST(S):	Will Bullough, Becky Bezemek
LEGAL ANALYST:	Jeff Damblly, Jason Jones
FISCAL ANALYST:	Cynthia Barr

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; prohibiting the use of certain communication content in any trial, hearing or other proceeding which was obtained without a specified warrant, etc.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Currently by statute, law enforcement may apply for an order authorizing the interception of wire, oral, or electronic communication but a warrant is required by case law. Law enforcement may also apply for an order authorizing the installation of a mobile tracking device. Law enforcement is not required to provide notification to the subject of a criminal investigation when an order to install a mobile tracking device has been obtained.
2. **EFFECT OF THE BILL:** Requires law enforcement to obtain a warrant instead of an order to intercept wire, oral or electronic communication. The bill changes the substantive requirements to obtain the courts' authorization and raises the burden of proof to the level of probable cause. Adds several new requirements when law enforcement seeks authorization to install a mobile tracking device or obtain location information:
 - A mobile tracking device may not be used for more than 45 days without an extension by the court.
 - A mobile tracking device must be installed by law enforcement within a specified timeframe after issuance of a warrant, not to exceed 10 calendar days.
 - Within 10 days after the use of the tracking device has ended, law enforcement must return the warrant to the issuing judge and serve a copy of the warrant to the tracked subject. The court may delay this notice for 90 days.
 - There are also provisions which allow the installation of a mobile tracking device in emergencies for 48 hours prior to an authorizing warrant.
 - Lines 1003 – 1017 expand the definitions found in s. 934.42, FS. The definitions are more inclusive and now require a warrant for information such as historical data that is currently available by subpoena.

Provides criminal penalties if a person intentionally and unlawfully accesses stored communications date or location information without authorization.

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 <input type="checkbox"/> N <input type="checkbox"/>
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:	<ul style="list-style-type: none"> • The use of the word “search warrant” in the bill may be problematic without adding a specific definition for the term. In the absence of a “specialized” definition of the term “search warrant” for purposes of Chapter 934, FS, it would likely be argued that provisions of Chapter 933, FS, Florida’s primary law dealing with search warrants, also apply on top of the rigorous order process already provided by Chapter 934, FS. FDLE respectfully suggests returning the term “order” to section where no change has been made to the requirements to obtain an order. The order requirements in Chapter 934, FS, are already extensive to include probable cause and exhaustion of remedies. Changing the terminology to “search warrant” does not add any additional burden of proof to law enforcement, but instead adds additional procedural hurdles in cases where law enforcement has already met the appropriate burden of proof. • Lines 1074-1088 require law enforcement to serve a copy of the search warrant to the person whose property was tracked. In doing so, this also has the likelihood of compromising an ongoing investigation through early disclosure. While lines 1088-1090 provide for a potential postponement of notification through court order, these requirements still create the possibility of damaging notification where it does not otherwise currently exist. Additionally, depending on the length of the investigation, this may become a cumbersome process to seek continuous renewals. Providing notification to a subject of a criminal
--	--

	investigation when using technical surveillance against them can cause investigative limitations, specifically regarding long-term investigations. Additionally, criminals would be informed of law enforcement investigative techniques used to apprehend and convict them and may begin using alternative methods to perform crimes. This concern also exists with the return of the warrant to the issuing judge. There is no mechanism to delay return of the warrant so the warrant is on file in the clerk's office
--	---

ADDITIONAL COMMENTS

- The bill eliminates law enforcement's ability to obtain content older than 180 days via a subpoena or court order. By eliminating the ability to seek content older than 180 days via a subpoena or court order, the bill removes a tool currently available to law enforcement at the beginning of an investigation when the evidence may not yet reach the level of probable cause required to obtain a search warrant. Access to content older than 180 days may help law enforcement obtain enough information to establish probable cause and obtain a search warrant for newer content.

While FDLE does not support this change, the department requests if it were to stay in the bill in its current form, certain crimes would still allow for the use of a subpoena or court order for content older than 180 days. This section of the bill would need to be offense-specific, rather than for exigent circumstances due to the fact the exigent circumstance exceptions make the assumption that there is probable cause, but that there is not enough time to obtain the required warrant. In creating the list of offenses below, FDLE attempted to limit it to crimes that involve threats of future violence:

- 775.30. Terrorism; defined; penalties;
- 775.32. Use of military-type training provided by a designated foreign terrorist organization;
- 775.33. Providing material support or resources for terrorism or to terrorist organizations;
- 775.34: Membership in a designated foreign terrorist organization;
- 775.35. Agroterrorism; penalties;
- 784.048. Stalking; definitions; penalties (mostly concerned with Aggravated Stalking and Cyberstalking);
- 790.163. False report concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner; penalty;
- 836.05. Threats; extortion;
- 836.10. Written threats to kill or do bodily injury; punishment; and
- 836.12. Threats.

- All electronics and app providers, email services and essentially anything with an electronic presence falls under this bill. If it connects to the Internet or to a cell service, it tracks and collects data on users, including most vehicles beginning in 2008, newer Xbox devices, PlayStations, children's toys, Fitbits, etc. This will have a large impact on future legal process. Bill definitions are very expansive and may have some unintended consequences.

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 510**

INTRODUCER: Senator Wright

SUBJECT: Bail Pending Appellate Review

DATE: November 8, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Favorable
2.		JU	
3.		RC	

I. Summary:

SB 510 amends s. 903.133, F.S., to prohibit bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

Section 903.133, F.S., prohibits bail on appeal for any person adjudicated guilty of a first degree felony under ss. 782.04(2) or (3), 787.01, 794.011(4), 806.01, 893.13, and 893.135, F.S.

This bill is effective October 1, 2020.

II. Present Situation:

Bail includes any form of pretrial release, but frequently requires a monetary or cash component.¹ Bail on appeal may be set post-conviction if a defendant appeals the conviction. Bail is set by the court to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.²

Bail on Appeal

Bail on appeal is a separate undertaking than the original bail issued pre-trial. If a defendant is convicted and the case is appealed, the court may issue bail on appeal, because bail issued at first appearance may not be continued for appeal. A new bail is considered to reflect the increased risk and longer time considerations.³ A defendant may be granted bail on appeal at the discretion of the trial court.⁴ However, defendants who are convicted of capital felony offenses are not

¹ Section 903.11, F.S.

² Section 903.046(1), F.S.

³ Section 903.132(3), F.S.

⁴ *Greene v. State*, 238 So. 2d 296, 298 (Fla. 1970).

eligible for bail on appeal.⁵ If a defendant is denied bail on appeal, he or she has a right to appeal the denial.⁶

The Legislature has prohibited certain crimes from being eligible to receive bail on appeal. Section 903.132, F.S., provides that a defendant may be granted bail on appeal from a conviction of a felony only if the defendant establishes that the appeal is in good faith, is fairly debatable, and not frivolous.

A defendant may not receive bail on appeal if probable cause has been found for another pending felony, or if the defendant has a previous felony conviction, and:

- The commission of the previous conviction occurred before the crime that is being appealed; and
- The defendant's civil rights have not been restored.⁷

Section 903.133, F.S., prohibits bail on appeal for defendants convicted of specified crimes. Any defendant adjudicated guilty of a first degree felony of:

- Second degree murder or felony murder (s. 782.04(2) or (3), F.S.).
- Kidnapping (s. 787.01, F.S.).
- Sexual battery (s. 794.011(4), F.S.).
- Arson (s. 806.01, F.S.).
- Sale, manufacture, deliver or possess with intent to sell a controlled substance (s. 893.13, F.S.).
- Drug trafficking (s. 893.135, F.S.).

If a defendant commits and is convicted of a separate felony offense while free on bail on appeal, that bail must be revoked.⁸

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.⁹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,¹⁰ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

⁵ *Rowe v. State*, 417 So. 2d 981, 983 (Fla. 1982), (holding that Fla. R. Crim. Pro. 3.961 prohibits the granting of bail on appeal for a defendant convicted of a capital offense and sentenced to life in prison).

⁶ Section 903.132(2), F.S.

⁷ Section 903.132(1), F.S.

⁸ Section 903.131, F.S.

⁹ Sections 775.21 and 943.0435, F.S.

¹⁰ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;¹¹
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.¹²

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.¹³

Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);¹⁴
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the Internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the Internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);

¹¹ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

¹² Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

¹³ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

¹⁴ However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor.

- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.¹⁵ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

III. Effect of Proposed Changes:

The bill amends s. 903.133, F.S., to prohibit bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

This bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁵ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Nov. 5, 2019). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Nov. 5, 2019).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections may see a positive indeterminate prison bed impact due to defendants' ineligibility to receive bail on appeal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 903.133, F.S.

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 Wright

14-00828-20

2020510

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

Section 1. Section 903.133, Florida Statutes, is amended to read:

903.133 Bail on appeal; prohibited for certain felony convictions.—Notwithstanding the provisions of s. 903.132, no person shall be admitted to bail pending review either by posttrial motion or appeal if he or she was adjudged guilty of:

(1) A felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135; or adjudged guilty of

(2) A violation of s. 794.011(2) or (3); or

(3) Any other offense requiring sexual offender registration under s. 943.0435(1)(h) or sexual predator registration under s. 775.21(4) when, at the time of the offense, the offender was 18 years of age or older and the victim was a minor, shall be admitted to bail pending review either by posttrial motion or appeal.

Section 2. This act shall take effect October 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

November 12, 2019

510

Meeting Date

Bill Number (if applicable)

Topic Bail Pending Appellate Review

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road
Street

Phone 850.510.9922

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, Chair
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

November 1, 2019

The Honorable Keith Perry
316, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 510 – Bail Pending Appellate Review

Dear Chair Perry:

Senate Bill 510, relating to Bail Pending Appellate Review has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 510 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Lauren Jones, Staff Director of the Committee on Criminal Justice
Sue Arnold, Administrative Assistant of the Committee on Criminal Justice

REPLY TO:

- 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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 520

INTRODUCER: Senator Gruters

SUBJECT: Drones

DATE: November 8, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2. _____	_____	<u>IS</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 520 expands the possibilities for drone use by law enforcement agencies, fire departments, 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:

- Gain an aerial perspective of a crowd of 50 or more persons.
- Assist with traffic management, except that the agency may not issue a traffic infraction based on images or video captured by a drone.
- Facilitate evidence collection at a crime scene or traffic crash scene.

Under the provisions of the bill, state agencies and political subdivisions are authorized to use drones for damage assessment due to a flood, wildfire, or natural disaster, or for vegetation and wildlife management purposes on publicly owned land or water. The bill also allows certified fire department personnel to use drones to perform tasks within the scope of their certification.

The bill is effective July 1, 2020.

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 November 6, 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 November 6, 2019).

⁵ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne ladar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-ladar 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-ladar*, available at <https://www.ll.mit.edu/r-d/projects/micro-ladar> (last viewed November 6, 2019).

⁶ Popular Science, Clay Dillow, *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 November 6, 2019). See also PoliceOne.com, 2017 Guide to Emerging Technologies, Val Van Brocklin, *Facial recognition technology and a 'reasonable expectation of privacy'*, May 16, 2017, available at <https://www.policeone.com/emerging-tech-guide/articles/facial-recognition-technology-and-a-reasonable-expectation-of-privacy-cxdcrWsBRCu8Dieb/> (last viewed November 6, 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 November 6, 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 FAA 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 obtained waivers of the daylight-only operational restriction from the FAA, as has St. Johns County Fire Rescue.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

¹⁰ *Id.*

¹¹ It is a federal crime, punishable by up to 12 months in prison, to interfere with firefighting efforts on public lands. Congress has authorized the FAA to impose a civil penalty of up to \$20,000 against any drone pilot who interferes with wildfire suppression, law enforcement or emergency response operations. FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires (last viewed November 6, 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), 107W-2018-16274 (dated November 6, 2018); and 107W-2019-03646 (dated August 8, 2019), FAA, Unmanned Aircraft Systems, *Part 107 Waivers Issued*, available at https://www.faa.gov/uas/commercial_operators/part_107_waivers/waivers_issued/ (last viewed November 6, 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, 3732, February 13, 2019.

¹⁶ *Id.*

prohibit serious injury or property damage should the drone make contact with a person or 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, and is not yet complete.¹⁸

Law Enforcement Use of Drones in Florida – Section 934.50, F.S.

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.¹⁹

The Florida Sheriff's Association estimates that 12 sheriff's offices have drones.²⁰ 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 plan to obtain a drone.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 Section 934.50(2)(d), F.S.

²⁰ 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).

²¹ E-mail from Florida Police Chiefs Association Executive Director dated January 29, 2019 (on file with the Senate Committee on Criminal Justice).

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 in s. 934.50(4), F.S., 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 November 6, 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 November 6, 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 November 6, 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-journo/drones-add-a-new-dimensio_b_6033392.html (last viewed November 6, 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 November 6, 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 November 6, 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 November 6, 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

Fire Department Use of Drones

According to an October 2018 news article, fire departments use UAVs for reconnaissance of wildfires and motor vehicle accident scenes, hazmat incidents, and hot spot identification at structure fires. In addition to the reconnaissance function and hot spot identification, additional uses for UAVs include:

- Search and rescue, even in urban settings;
- Preplanning with aerial photos and video identifying water supply sources, utility shutoffs, and apparatus location planning;
- Winter and ice rescue; and
- Disaster assessment and post-disaster reconnaissance after weather events such as floods or tornados.⁴⁴

The Mesa Fire and Medical Department in Mesa, Arizona, has also used drones in a variety of capacities, including:

- Gaining a 360-degree perspective on damaged structures;
- Surveying buildings to provide hazard assessments for property owners;
- Water rescue operations and flood damage assessment;

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 November 6, 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 November 6, 2019).

⁴² See the section of the Bill Analysis on the FAA above; see also Vantage Robotics News, *Snap Gets FAA Waiver with Rutherford County, Tennessee*, November 19, 2018, available at <https://vantagedrones.com/news/snap-gets-faa-waiver-rutherford-county-tennessee> (last viewed November 6, 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 November 6, 2019).

⁴⁴ Fire Apparatus & Emergency Equipment, Alan M. Petrillo, *Fire Department Drones Serve a Variety of Needs on Incident Scenes*, October 1, 2018, available at <https://www.fireapparatusmagazine.com/articles/print/volume-23/issue-10/features/fire-department-drones-serve-a-variety-of-needs-on-incident-scenes.html> (last viewed November 6, 2019).

- Assisting with a search for a missing kindergarten teacher; and
- Demonstrating how drones outfitted with special meters and cameras to identify lethal chemicals in hazmat situations can help keep first responders safe.⁴⁵

In Brevard County, Fire Rescue personnel have been trained to test for the FAA drone pilot certification⁴⁶ 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.⁴⁷

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.⁴⁸

III. Effect of Proposed Changes:

The bill adds three exceptions in s. 934.50(4), F.S., which 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 the agency may not issue a traffic infraction based on images or video captured by a drone.
- Facilitate the collection of evidence at a crime scene or traffic crash scene.

Additionally, the bill provides that s. 934.50, F.S., authorizes 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.⁴⁹

⁴⁵ East Valley Tribune, Wayne Schutsky, *Ariz. Fire, EMS Leads the Way with Drone Use*, December 20, 2017, available at <https://www.ems1.com/ems-products/technology/articles/370989048-Ariz-fire-EMS-leads-the-way-with-drone-use/> (last viewed November 6, 2019).

⁴⁶ Federal Aviation Administration, *Become a Drone Pilot*, August 20, 2019, available at https://www.faa.gov/uas/commercial_operators/become_a_drone_pilot/ (last viewed November 6, 2019).

⁴⁷ 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 November 6, 2019).

⁴⁸ 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 November 6, 2019).

⁴⁹ 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.

- Certified fire department personnel to perform tasks within the scope and practice authorized under their certifications.⁵⁰

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, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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.⁵¹

⁵⁰ There does not seem to be a definition for the scope and practice authorized for fire department personnel under their certification in the Florida Statutes. However, s. 633.408, F.S., contains firefighter and volunteer firefighter training certification requirements, and R. 69A-37.055, F.A.C., contains curriculum requirements for training firefighter recruits or firefighters.

⁵¹ 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.

Preemption

The regulation of the national airspace and the aircraft that occupy it is a federal matter.⁵² 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.”⁵³ 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”⁵⁴ 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.

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, fire departments, 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.⁵⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵² 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.

⁵³ 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).

⁵⁴ *Id.*, citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

⁵⁵ Florida Department of Agriculture and Consumer Services, 2020 Agency Bill Analysis, October 23, 2019; Florida Department of Law Enforcement, 2020 Agency Bill Analysis, October 2019 (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends section 934.50 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.

By Senator Gruters

23-00189-20

2020520

A bill to be entitled

2 An act relating to drones; amending s. 934.50, F.S.;
3 expanding the authorized uses of drones by law
4 enforcement agencies and other specified entities for
5 specified purposes; providing an effective date.

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

9 Section 1. Present paragraphs (d) through (j) of subsection
10 (4) of section 934.50, Florida Statutes, are redesignated as
11 paragraphs (i) through (o), respectively, paragraph (a) of
12 subsection (3) of that section is amended, and new paragraphs
13 (d) through (h) are added to subsection (4) of that section, to
14 read:

15 934.50 Searches and seizure using a drone.-

16 (3) PROHIBITED USE OF DRONES.-

20 (4) EXCEPTIONS.—This section does not prohibit the use of a
21 drone;

22 (d) To provide a law enforcement agency with an aerial
23 perspective of a crowd of 50 people or more.

24 (e) To assist a law enforcement agency with traffic
25 management; however, a law enforcement agency acting under this
26 paragraph may not issue a traffic infraction citation based on
27 images or video captured by a drone.

23-00189-20

2020520

(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.

(h) By certified fire department personnel to perform tasks within the scope and practice authorized under their certifications.

Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

November 12, 2019

520

Meeting Date

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

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)

11/2/19
Meeting Date

520
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street
Street
Tallahassee FL

Phone 850-425-1344

City

State

Zip

Email

TcgLobby@aol.com

Speaking: For Against Information

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

Representing ACLU of FL

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

11/12/2019

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

520

Meeting Date

Bill Number (if applicable)

Topic Drones

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@fsheriffs.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

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)

11/12/2019

SB 520

Meeting Date

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11-12-19

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

Meeting Date

SB 520

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

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: For Against Information

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

Representing MIAMI-DADE COUNTY / MIAMI - DNOE 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)

11-12-19

Meeting Date

SB 520

Bill Number (if applicable)

Topic DRONES

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@ocfl.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)

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@f pca.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@f pca.com>

Sent: Friday, January 25, 2019 11:50 AM

To: Cellon, Connie <CELLON.CONNIE@f lsenate.gov>; Matt Dunagan <mdunagan@f lsheriffs.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.f pca.com

amercer@f pca.com

Faithfully serving Florida Police Chiefs

From: Cellon, Connie <CELLON.CONNIE@f lsenate.gov>

Sent: Friday, January 25, 2019 11:38 AM

To: Amy Mercer <amercer@f pca.com>; Matt Dunagan <mdunagan@f lsheriffs.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@f pca.com>
Sent: Tuesday, January 29, 2019 3:00 PM
To: Cellon, Connie <CELLON.CONNIE@f lsenate.gov>; Matt Dunagan <mdunagan@f lsheriffs.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.f pca.com
amercer@f pca.com
Faithfully serving Florida Police Chiefs

From: Kendra Oates <KBriscoe@f pca.com>
Sent: Tuesday, January 29, 2019 2:56 PM
To: Amy Mercer <amercer@f pca.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



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

October 23, 2019

Agency Affected: Dept. of Agriculture and Consumer Services **Telephone:** 850-617-7000

Agency Contact: Emily Buckley, Legislative Affairs Director **Telephone:** 850-617-7700

Senate Bill Number: SB 520 **Senate Bill Sponsor:** Sen. Joe Gruters

Bill Title: Drones

Effective Date: July 1, 2020

Similar Bill(s): Yes No

Similar Bill(s):

Identical Bill: Yes No

Identical Bill:

1. SUMMARY

Senate Bill 520 provides exceptions, allowing law enforcement agencies to use drones to gather evidence or other information under certain conditions:

- To obtain aerial perspective of a crowd of 50 people or more;
- To assist with traffic management, but not to issue traffic citations based on those images;
- And to assist in evidence collection at a crime scene or traffic crash.

This bill also provides exceptions for State agencies, political subdivisions and fire department personnel to use drones to perform certain tasks.

2. PRESENT SITUATION

Currently a law enforcement agency may not use drones to gather evidence or other information except when the law enforcement agency obtains a search warrant signed by a judge, or in certain circumstances where there is reasonable suspicion and immediate action is needed to prevent loss of life or serious damage to property.

In addition, state agencies are very limited regarding the use of drone equipment with imaging capability. Drones may not be used for the sole purpose of assessing property to determine property taxes.

Chapter 934.50, Florida Statutes, provides safeguards against unwarranted surveillance invasion of privacy.

3. EFFECT OF PROPOSED CHANGES

Expands the use of drones within the FDACS FFS for flood, wildfire, or natural disaster assessment as well as with vegetation or wildlife management on public land or water. Additionally, allows fire department personnel the use of drones to perform tasks within the scope and practice of their certifications.

4. FISCAL IMPACT

	(FY 20-21) Amount/ FTE	(FY 21-22) Amount/ FTE	(FY 22-23) Amount/ FTE
A. Revenues			
Recurring	0.00	0.00	0.00
Non-Recurring	0.00	0.00	0.00
TOTAL REVENUES	0.00	0.00	0.00
B. Expenditures			
Recurring	0.00	0.00	0.00
Non-Recurring	0.00	0.00	0.00
TOTAL EXPENDITURES	0.00	0.00	0.00
C. NET TOTAL			
COMMENTS:			

5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

Unknown.

6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?

Unknown.

7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL? (If yes, please explain the impact in A and/or B below)

No.

A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.

No.

B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.

No.

C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

a. Yes: No:

b. If yes please explain:

8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?

a. Yes: No:

b. If yes please explain:

9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?

a. Yes: No:

b. If yes please explain:

LEGAL ISSUES

10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations? No.

11. Does the proposed bill 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) that impacts the department? No.

12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties? No.



2020 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	SB 520
BILL TITLE:	Drones
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE

1)	
2)	
3)	
4)	
5)	

CURRENT COMMITTEE

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS

PREVIOUS LEGISLATION	
BILL NUMBER:	SB766/HB75
SPONSOR:	Gruters/Yarborough
YEAR:	2019/2019
LAST ACTION:	Died in Rules/Died in Criminal Justice

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	October 2019
LEAD AGENCY ANALYST:	Lori Mizell
ADDITIONAL ANALYST(S):	Grant Geyer, Becky Bezemek
LEGAL ANALYST:	Jeff Dambly, Jason Jones
FISCAL ANALYST:	Cynthia Barr

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Amending Section 934.50 F.S.; expanding the authorized uses of drones by law enforcement agencies and other specified entities for specified purposes

2. SUBSTANTIVE BILL ANALYSIS

- 1. PRESENT SITUATION:** 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; 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:** Amends Section 934.50(3), F.S., prohibiting a law enforcement agency's use of a drone to gather evidence or other information, except as provided in subsection (4). Amends Section 934.50(4), F.S.:
 - To provide a law enforcement agency with an aerial perspective of a crowd of 50 people or more.
 - To assist a law enforcement agency with traffic management; however, a law enforcement agency acting under this paragraph may not issue a traffic infraction citation based on images or video captured by a drone.
 - To facilitate a law enforcement agency's collection of evidence at a crime scene or traffic crash scene.
 - 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.
 - By certified fire department personnel to perform tasks within the scope and practice authorized under their certifications.

- 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 <input type="checkbox"/> N <input checked="" type="checkbox"/>
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.	
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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.	
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LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	No additional issues, concerns or comments
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ADDITIONAL COMMENTS

Of note, the number of people in a crowd does not determine the hostility of the crowd. Respectfully request amending lines 22-23: "To provide a law enforcement agency with an aerial perspective of a crowd of 50 people or more."

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 556

INTRODUCER: Criminal Justice Committee and Senator Brandes and others

SUBJECT: Inmate Conditional Medical Release

DATE: November 12, 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 556 repeals s. 947.149, F.S., which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates s. 945.0911, F.S., to establish a CMR program within the Department of Corrections (DOC) with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings.

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

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

terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

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

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

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

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

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

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

The bill establishes a specific process for the revocation of CMR which closely parallels the current process provided for in s. 947.141, F.S., and provides that revocation may be based on certain circumstances. The bill authorizes a medical releasee whose release is revoked to have the revocation decision reviewed and sets forth a specified process for such review.

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

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

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, in part, the bill expands CMR by creating a new CMR designation and modifying a current designation. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds) and a reduction in the associated inmate healthcare costs.

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

The bill is effective October 1, 2020.

II. Present Situation:

Conditional Medical Release

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,¹ is a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.² The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.³ In part, s. 947.13, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

Eligibility Criteria

Eligible inmates include inmates designated by the DOC as a:

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

Inmates sentenced to death are ineligible for CMR.⁵

¹ Chapter 92-310, L.O.F.

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

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

⁴ Section 947.149(1), F.S.

⁵ Section 947.149(2), F.S.

Referral Process for Eligible Inmates

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

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

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

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

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

Victim Input

If a victim or his or her personal representative requests to be notified, the FCOR must provide victim notification of any hearing where the release of the inmate on CMR is considered prior to the inmate’s release.¹² Additionally, Rule 23-24.025 of the Florida Administrative Code provides that a victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative or victim advocate must receive advance notification any time a CMR case is placed on the docket for determination by the FCOR. Notification must be made to the address found in the police report or other criminal report or at a more current address if such has been provided to the FCOR.¹³

⁶ Section 947.149(3), F.S.

⁷ Section 947.149(2), F.S.

⁸ Section 947.149(3), F.S.

⁹ Rule 23-24.020(1), F.A.C.

¹⁰ Rule 23-24.020(2), F.A.C.

¹¹ Rule 23-24.020(3), F.A.C.

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

¹³ Rule 23-24.025(1), F.A.C.

A victim of the crime committed by the inmate, or a victim's representative, must be permitted a reasonable time to make an oral statement or submit a written statement regarding whether the victim supports the granting, denying, or revoking of CMR.¹⁴ Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.¹⁵ A victim can also request that the FCOR provide notification of the action taken if he or she does not choose to appear at meetings or make a written statement.¹⁶

In 2018, the Florida voters approved Amendment 6 on the ballot, which provided certain rights to victims in the Florida Constitution. In part, Art. 1, s. 16, of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.¹⁷

Release Conditions

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

The DOC supervises medical releasee's who are granted CMR.¹⁹ Each medical releasee must be placed on CMR supervision and is subject to the standard conditions of CMR, which include:

- Promptly proceeding to the residence upon being released and immediately reporting by mail, telephone, or personal visit as instructed by the CMR officer or within 72 hours of release if no specific report date and time are given.
- Securing the permission of the CMR officer before:

¹⁴ Rule 23-24.025(2) and (3), F.A.C. *See* Rule 23-24.025(4), F.A.C., regarding specifics about what is allowed to be submitted or utilized during oral testimony. Rule 23-24.025(7), F.A.C., provides that victims who appear and speak must be advised that any information submitted at FCOR meetings becomes public record.

¹⁵ Rule 23-24.025(3), F.A.C.

¹⁶ Rule 23-24.025(5), F.A.C.

¹⁷ Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

¹⁸ Section 947.149(4), F.S.

¹⁹ The FCOR, *SB 556 Draft Agency Analysis*, at p. 2 (October 24, 2019) (on file with the Senate Criminal Justice Committee) (hereinafter cited as "FCOR SB 556 Draft Agency Analysis").

- Changing residences;
- Leaving the county or the state; and
- Posting bail or accepting pretrial release if arrested for a felony.
- Submitting a full and truthful report to the CMR officer each month in writing and as directed by the CMR supervisor.
- Refraining from:
 - Owning, carrying, possessing, or having in his or her constructive possession a firearm or ammunition;
 - Using or possessing alcohol or intoxicants of any kind;
 - Using or possessing narcotics, drugs, or marijuana unless prescribed by a physician;
 - Entering any business establishment whose primary purpose is the sale or consumption of alcoholic beverages; and
 - Knowingly associating with any person engaging in criminal activity, a criminal gang member, or person associated with criminal gang members.
- Securing the permission of the CMR officer before owning, carrying, or having in his or her constructive possession a knife or any other weapon.
- Obeying all laws, ordinances, and statutory conditions of CMR.
- Submitting to a reasonable search of the medical releasee's person, residence, or automobile by a CMR officer.
- Waiving extradition back to Florida if the medical releasee is alleged to have violated CMR.
- Permitting the CMR officer to visit the medical releasee's residence, employment, or elsewhere.
- Promptly and truthfully answering all questions and following all instructions asked or given by the CMR officer or the FCOR.
- Remaining on CMR for the remainder of the sentence without diminution of such sentence for good behavior.
- Agreeing to submit to random drug or alcohol testing, to be paid for and submitted by the medical releasee, as directed by the CMR officer or the professional staff of any treatment center where treatment is being received.
- Executing and providing authorizations to release records to the CMR supervisor and the FCOR for the purpose of monitoring and documenting the medical releasee's progress.
- Agreeing that, in the event there is an improvement in the medical releasee's medical condition to the extent that he or she is no longer "permanently incapacitated," or "terminally ill," that he or she will, if directed to do so, report for a CMR revocation hearing.²⁰

Additionally, the FCOR can impose special conditions of conditional medical release.²¹

Revocation and Recommitment

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

- That a violation of any condition of the release has occurred; or

²⁰ Rule 23-24.030(1), F.A.C.

²¹ Rule 23-24.030(2), F.A.C.

- His or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.²²

Revocation Due to Improved Medical or Physical Condition

If it is discovered during the CMR release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for such release, the FCOR may order that the medical releasee be returned to the custody of the DOC for a revocation hearing, in accordance with s. 947.141, F.S. A medical releasee who has his or her CMR revoked due to improvement in medical or physical condition must serve the balance of the sentence with credit for the time served on CMR, but does not forfeit any gain-time accrued prior to release on CMR.²³

Revocation Due to Violation of CMR Conditions

When there are reasonable grounds to believe that a medical releasee who is on CMR has violated the conditions of the release in a material respect the FCOR is authorized to have a warrant issued for the arrest of the medical releasee. A warrant must be issued if the medical releasee was found to be a sexual predator.²⁴ Further, if a law enforcement officer has probable cause to believe that a medical releasee who is on CMR supervision has violated the terms and conditions of his or her release by committing a felony offense then the officer must arrest the medical releasee without a warrant and a warrant need not be issued in the case.²⁵

A medical releasee who is arrested for a felony must be detained without bond until the initial appearance of the medical releasee at which a judicial determination of probable cause is made. The medical releasee may be released if the trial court judge does not find probable cause existed for the arrest. However, if the court makes a finding of probable cause, such determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release and the chief county correctional officer must notify the FCOR and the DOC of the finding within 24 hours.²⁶ The medical releasee must continue to be detained without bond for a period not more than 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the FCOR whether to issue a warrant charging the medical releasee with violation of the conditions of CMR. If the FCOR issues such warrant, the medical releasee must continue to be held in custody pending a revocation hearing.²⁷

Revocation Hearing

The medical releasee must be afforded a hearing which is conducted by a commissioner or a duly authorized representative within 45 days after notice to the FCOR of the arrest of a medical

²² Section 947.149(5), F.S.

²³ Section 947.149(5)(a), F.S. Additionally, if the person whose CMR is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

²⁴ Section 947.141(1), F.S.

²⁵ Section 947.141(7), F.S.

²⁶ Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR and the DOC a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based.

²⁷ *Id.*

releasee charged with a violation of the terms and conditions of CMR. If the medical releasee elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the medical releasee's:

- Alleged violation; and
- Right to:
 - Be represented by counsel.
 - Be heard in person.
 - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
 - Produce documents on his or her own behalf.
 - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
 - Waive the hearing.²⁸

The commissioner who conducts the hearing is required to make findings of fact in regard to the alleged violation within a reasonable time following the hearing and at least two commissioners must enter an order determining whether the charge of violation of CMR has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. The panel may revoke CMR, thereby returning the medical releasee to prison to serve the sentence imposed; reinstate the original order granting the release; or enter such other order as it considers proper.²⁹

If CMR is revoked and the medical releasee is ordered to be returned to prison, the medical releasee is deemed to have forfeited all gain-time or commutation of time for good conduct earned up to the date of release. However, if CMR is revoked due to the improved medical or physical condition of the medical releasee, the medical releasee does not forfeit gain-time accrued before the date of CMR.³⁰ Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

Statistics

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

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.³¹

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

- 76 in FY 2018-19;
- 39 in FY 2017-2018; and

²⁸ Section 947.141(3), F.S.

²⁹ Section 947.141(4), F.S.

³⁰ Section 947.141(6), F.S.

³¹ Emails from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Senate Committee on Criminal Justice) (December 15, 2017 and November 1, 2019, respectively). *See also* FCOR Annual Report FY 2017-18, p. 8, available at <https://www.fcior.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited November 6, 2019).

- 34 in FY 2016-2017.³²

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

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.³³ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.³⁴

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, 1994.³⁵ The only forms of gain-time that can currently be earned are:

- Incentive gain-time;³⁶
- Meritorious gain-time;³⁷ and
- Educational achievement gain-time.³⁸

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.³⁹ 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.⁴⁰

³² *Id.*

³³ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

³⁴ Section 944.275(4)(f), F.S.

³⁵ Chapter 93-406, L.O.F.

³⁶ Section 944.275(4)(b), F.S., provides that incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

³⁷ Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

³⁸ Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

³⁹ Section 944.275(3)(c), F.S.

⁴⁰ Section 944.275(2)(a), F.S.

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.⁴¹ 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.⁴²

The DOC is authorized in certain circumstances, including when a medical releasee has his or her CMR release revoked, to declare all gain-time earned by an inmate forfeited.⁴³

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).⁴⁴ The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, modifying provisions related to compassionate release to:

- Require inmates be informed of reduction in sentence availability and process;
- Modify the definition of "terminally ill,"
- Require notice and assistance for terminally ill offenders;
- Require requests from terminally ill offenders to be processed within 14 days.⁴⁵

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

- Notify the defendant's attorney, partner, and family members, not later than 72 hours after the diagnosis, of the defendant's diagnosis of a terminal condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction;
- Provide the defendant's partner and family members, including extended family, with an opportunity to visit the defendant in person not later than 7 days after the date of the diagnosis;
- Upon request from the defendant or his attorney, partner, or a family member, ensure that BOP employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction; and
- Process a request for sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member not later than 14 days from receipt of a request.⁴⁶

The statutory time frames mentioned above begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the

⁴¹ Section 944.275(3)(a), F.S.

⁴² *Id.* See also s. 944.275(4)(b), F.S.

⁴³ Section 944.28(1), F.S.

⁴⁴ The First Step Act of 2018, Pub. L. No. 115-391 (2018).

⁴⁵ Section 603(b) of the First Step Act, codified at 18 USC § 3582. See also U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last visited November 12, 2019).

⁴⁶ *Id.*

Warden and the appropriate Unit Manager as soon as possible so as to ensure requirements are met.⁴⁷

III. Effect of Proposed Changes:

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

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

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

Eligibility Criteria

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. The bill provides definitions for such terms, including:

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

Referral Process

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

⁴⁷ *Id.*

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

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

The bill requires the DOC to provide notice to a victim of the inmate's referral to the panel immediately upon identification of the inmate as potentially eligible for release on CMR if the case that resulted in the inmate's commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Art. 1, s. 16, of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

Determination of Release

The bill requires the three-member panel established in s. 945.0911(1), F.S., to conduct a hearing within 45 days after receiving the referral to determine whether CMR is appropriate for the inmate. Before the hearing, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate on CMR. A majority of the panel members must agree that release on CMR is appropriate for the inmate. If CMR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

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

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

Additionally, an inmate who is denied CMR may be subsequently reconsidered for such release in a manner prescribed by department rule.

Release Conditions

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

- Periodic medical evaluations at intervals determined by the DOC at the time of release.
- Supervision by an officer trained to handle special offender caseloads.

- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.⁴⁸
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee.

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

Revocation of CMR Release and Recommitment to the DOC

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

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

Revocation Based on Medical or Physical Improvement

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

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

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

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

⁴⁸ Some examples on community control conditions required under s. 948.101, F.S., include to maintain specified contact with the parole and probation officer; confinement to an agreed-upon residence during hours away from employment and public service activities; mandatory public service; and supervision by the DOC by means of an electronic monitoring device or system.

Revocation Based on Violation of Conditions

The bill provides that CMR may also be revoked for violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. In contrast to when a revocation is based on improved medical or physical condition, if the basis of the violation of release conditions is related to a new violation of law, the medical releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made.

If the judge determines that there was no probable cause for the arrest, the medical releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's probable cause determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release.

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

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

Revocation Hearing Process

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

- Alleged basis for the pending revocation proceeding against the releasee.
- Right to:
 - Be represented by counsel.⁴⁹
 - Be heard in person.
 - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
 - Produce documents on his or her own behalf.
 - Access all evidence used to support the revocation proceeding against the releasee and confront and cross-examine adverse witnesses.
 - Waive the hearing.

Review Process of Revocation Determination

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

⁴⁹ However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

CMR. In addition to the review by the general counsel, the chief medical officer must also review the revocation decision and make a recommendation to the secretary when the basis is due to an improved medical or physical condition.

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

Special Requirements of the DOC Related to Terminal Inmate's

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

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

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

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

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., conforming these provisions to changes made by the act.

The bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, the CJIC heard SB 1334 (2019), which expanded the definitions of CMR eligibility in a manner similar to the bill and the CJIC found that this expansion would result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).⁵⁰ Additionally, the bill will likely result in a reduction in the associated inmate healthcare costs.

The bill removes any role of determining the appropriateness of an inmate's release on CMR from the FCOR and places such comparable duties within the DOC. As a result, the bill will likely result in a workload and cost shift from the FCOR to the DOC.

Additionally, to the extent that the establishment of such program with the DOC results in a workload and fiscal impact greater than currently expended within the FCOR, then the bill could result in a negative indeterminate fiscal impact. However, the DOC currently performs the initial determination of eligibility and therefore will likely not experience an increased workload related to that portion of the newly-established CMR program within the DOC.

Additionally, the DOC is the primary health care provider for any inmates in its custody and as a result, the DOC has many necessary medical records in its possession for making determinations of the appropriateness of release on CMR. Additionally, the DOC has staff whose primary function is to monitor persons who have been convicted of criminal acts in violation of Florida law. To the extent that requiring the DOC to conduct the entire process of determining the appropriateness of an inmate's release on CMR and subsequent supervision of the medical releasee results in a costs savings and efficiencies, the bill will likely result in a reduced workload and cost savings to the state.

⁵⁰ The CJIC, *Impact Conference Results for CS/SB 1334 (2019)*, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1334.pdf> (last visited November 6, 2019).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 945.0911 of the Florida Statutes.

The bill repeals section 947.149 of the Florida Statutes.

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

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 November 12, 2019:

The committee substitute:

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

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
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	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 134 - 265

4 and insert:

5 pursuant to this section is appropriate for the inmate. If
6 conditional medical release is approved, the inmate must be
7 released by the department to the community within a reasonable
8 amount of time with necessary release conditions imposed
9 pursuant to subsection (6). An inmate who is granted conditional
10 medical release is considered a medical releasee upon release to



11 the community.

12 (c) An inmate who is denied conditional medical release by
13 the panel may have the decision reviewed by the department's
14 general counsel and chief medical officer, who must make a
15 recommendation to the secretary. The secretary must review all
16 relevant information and make a final decision about the
17 appropriateness of conditional medical release pursuant to this
18 section. The decision of the secretary is a final administrative
19 decision not subject to appeal. An inmate who is denied
20 conditional medical release may be subsequently reconsidered for
21 such release in a manner prescribed by department rule.

22 (6) RELEASE CONDITIONS.—

23 (a) An inmate granted release pursuant to this section is
24 released for a period equal to the length of time remaining on
25 his or her term of imprisonment on the date the release is
26 granted. Such inmate is considered a medical releasee upon
27 release from the department into the community. The medical
28 releasee must comply with all reasonable conditions of release
29 the department imposes, which must include, at a minimum:

30 1. Periodic medical evaluations at intervals determined by
31 the department at the time of release.

32 2. Supervision by an officer trained to handle special
33 offender caseloads.

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

37 4. Any conditions of community control provided for in s.
38 948.101.

39 5. Any other conditions the department deems appropriate to



40 ensure the safety of the community and compliance by the medical
41 releasee.

42 (b) A medical releasee is considered to be in the care,
43 custody, supervision, and control of the department and remains
44 eligible to earn or lose gain-time in accordance with s. 944.275
45 and department rule. The medical releasee may not be counted in
46 the prison system population, and the medical releasee's
47 approved community-based housing location may not be counted in
48 the capacity figures for the prison system.

49 (7) REVOCATION HEARING AND RECOMMITMENT.—

50 (a) 1. If the medical releasee's supervision officer
51 discovers that the medical or physical condition of the medical
52 releasee has improved to the extent that she or he would no
53 longer be eligible for release under this section, then the
54 conditional medical release may be revoked. The department may
55 order, as prescribed by department rule, that the medical
56 releasee be returned to the custody of the department for a
57 conditional medical release revocation hearing or may allow the
58 medical releasee to remain in the community pending the
59 revocation hearing.

60 2. The revocation hearing must be conducted by the panel
61 established in subsection (1). Before a revocation hearing
62 pursuant to this paragraph, the director of inmate health
63 services or his or her designee must review any medical evidence
64 pertaining to the medical releasee and provide the panel with a
65 recommendation regarding the medical releasee's improvement and
66 current medical or physical condition.

67 3. A majority of the panel members must agree that
68 revocation is appropriate for the medical releasee's conditional



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69 medical release to be revoked. If conditional medical release is
70 revoked due to improvement in his or her medical or physical
71 condition, the medical releasee must be recommitted to the
72 department to serve the balance of his or her sentence with
73 credit for the time served on conditional medical release and
74 without forfeiture of any gain-time accrued before recommitment.
75 If the medical releasee whose conditional medical release is
76 revoked due to an improvement in her or his medical or physical
77 condition would otherwise be eligible for parole or any other
78 release program, he or she may be considered for such release
79 program pursuant to law.

80 4. A medical releasee whose conditional medical release is
81 revoked pursuant to this paragraph may have the decision
82 reviewed by the department's general counsel and chief medical
83 officer, who must make a recommendation to the secretary. The
84 secretary must review all relevant information and make a final
85 decision about the appropriateness of the revocation of
86 conditional medical release pursuant to this paragraph. The
87 decision of the secretary is a final administrative decision not
88 subject to appeal.

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

93 2. If the basis of the violation of release conditions is
94 related to a new violation of law, the medical releasee must be
95 detained without bond until his or her initial appearance at
96 which a judicial determination of probable cause is made. If the
97 judge determines that there was no probable cause for the



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98 arrest, the medical releasee may be released. If the judge
99 determines that there was probable cause for the arrest, the
100 judge's determination also constitutes reasonable grounds to
101 believe that the medical releasee violated the conditions of the
102 conditional medical release.

103 3. The department must order that the medical releasee
104 subject to revocation under this paragraph be returned to
105 department custody for a conditional medical release revocation
106 hearing.

107 4. A majority of the panel members must agree that
108 revocation is appropriate for the medical releasee's conditional
109 medical release to be revoked. If conditional medical release is
110 revoked pursuant to this paragraph, the medical releasee must
111 serve the balance of his or her sentence with credit for the
112 actual time served on conditional medical release. The
113 releasee's gain-time accrued before recommitment may be
114 forfeited pursuant to s. 944.28(1). If the medical releasee
115 whose conditional medical release is revoked subject to this
116 paragraph would otherwise be eligible for parole or any other
117 release program, he or she may be considered for such release
118 program pursuant to law.

119 5. A medical releasee whose conditional medical release has
120 been revoked pursuant to this paragraph may have the revocation
121 reviewed by the department's general counsel, who must make a
122 recommendation to the secretary. The secretary must review all
123 relevant information and make a final decision about the
124 appropriateness of the revocation of conditional medical release
125 pursuant to this paragraph. The decision of the secretary is a
126 final administrative decision not subject to appeal.



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127 (c) If the medical releasee subject to revocation under
128 paragraph (a) or paragraph (b) elects to proceed with a hearing,
129 the medical releasee must be informed orally and in writing of
130 the following:

131 1. The alleged basis for the pending revocation proceeding
132 against the releasee.

133 2. The releasee's right to be represented by counsel.

134 However, this subparagraph does not create a right to publicly
135 funded legal counsel.

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

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

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

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

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

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

147 (a) If an inmate is diagnosed with a terminal medical
148 condition that makes him or her eligible for consideration for
149 release under paragraph (2) (c) while in the custody of the
150 department, subject to confidentiality requirements, the
151 department must:

152 1. Notify the inmate's family or next of kin, and attorney,
153 if applicable, of such diagnosis within 72 hours of the
154 diagnosis.

155 2. Provide the inmate's family, including extended family,



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156 with an opportunity to visit the inmate in person within 7 days
157 upon such diagnosis.

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

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

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

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

167 And the title is amended as follows:

168 Delete lines 19 - 45

169 and insert:

170 conditions for release; providing that an inmate who
171 is approved for conditional medical release must be
172 released from the department in a reasonable amount of
173 time; providing that an inmate is considered a medical
174 releasee upon release from the department into the
175 community; providing that a medical releasee remains
176 in the care, custody, supervision, and control of the
177 department and is eligible to earn or lose gain-time;
178 prohibiting a medical releasee or his or her
179 community-based housing from being counted in the
180 prison system population and the prison capacity
181 figures, respectively; providing for the revocation of
182 a medical releasee's conditional medical release;
183 authorizing the medical releasee to be returned to the
184 department's custody if his or her medical or physical



575744

185 condition improves; requiring a majority of the panel
186 members to agree on the appropriateness of revocation;
187 providing that gain-time is not forfeited for
188 revocation based on improvement in the medical
189 releasee's condition; providing a review process for a
190 medical releasee who has his or her release revoked;
191 authorizing the medical releasee to be recommitted if
192 he or she violates any conditions of the release;
193 requiring that the medical releasee be detained if a
194 violation is based on certain circumstances; requiring
195 that a majority of the panel members agree on the
196 appropriateness of revocation; requiring specified
197 medical releasees to be recommitted to the department
198 upon the revocation of the conditional medical
199 release; authorizing the forfeiture of gain-time if
200 the revocation is based on certain violations;
201 providing a review process for a medical releasee who
202 has his or her release revoked; requiring that the
203 medical releasee be given specified information in
204 certain instances; requiring the department to notify
205 certain persons within a specified time frame of an
206 inmate's diagnosis of a terminal medical condition;
207 requiring the department to allow a visit between an
208 inmate and certain persons within 7 days of a
209 diagnosis of a terminal medical condition; requiring
210 the department to initiate the conditional medical
211 release review process immediately upon an inmate's
212 diagnosis of a terminal medical condition; requiring
213 the inmate to consent to release of information in



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certain circumstances; providing rulemaking

By Senator Brandes

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a majority of the panel

Page 1 of 30

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

24-00765-20

members to agree on the appropriateness of revocation; providing that gain-time is not forfeited for revocation based on improvement in the inmate's condition; providing a review process for an inmate who has his or her release revoked; authorizing the medical releasee to be recommitted if he or she violates any conditions of the release; requiring that the medical releasee be detained if a violation is based on certain circumstances; requiring that a majority of the panel members agree on the appropriateness of revocation; authorizing the forfeiture of gain-time if the revocation is based on certain violations; providing a review process for an inmate who has his or her release revoked; requiring that the medical releasee be given specified information in certain instances; providing rulemaking authority; repealing s. 947.149, F.S., relating to conditional medical release; amending ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

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

Page 2 of 30

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24-00765-20

2020556

59 release program within the department for the purpose of
 60 determining whether release is appropriate for eligible inmates,
 61 supervising the released inmates, and conducting revocation
 62 hearings as provided for in this section. The establishment of
 63 the conditional medical release program must include a panel of
 64 at least three people appointed by the secretary or his or her
 65 designee for the purpose of determining the appropriateness of
 66 conditional medical release and conducting revocation hearings
 67 on the inmate releases.

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

69 (a) "Inmate with a debilitating illness" means an inmate
 70 who is determined to be suffering from a significant terminal or
 71 nonterminal condition, disease, or syndrome that has rendered
 72 the inmate so physically or cognitively impaired, debilitated,
 73 or incapacitated as to create a reasonable probability that the
 74 inmate does not constitute a danger to herself or himself or to
 75 others.

76 (b) "Permanently incapacitated inmate" means an inmate who
 77 has a condition caused by injury, disease, or illness which, to
 78 a reasonable degree of medical certainty, renders the inmate
 79 permanently and irreversibly physically incapacitated to the
 80 extent that the inmate does not constitute a danger to herself
 81 or himself or to others.

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

Page 3 of 30

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24-00765-20

2020556

88 (3) ELIGIBILITY.—An inmate is eligible for consideration
 89 for release under the conditional medical release program when
 90 the inmate, because of an existing medical or physical
 91 condition, is determined by the department to be an inmate with
 92 a debilitating illness, a permanently incapacitated inmate, or a
 93 terminally ill inmate.

94 (4) REFERRAL FOR CONSIDERATION.—

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

99 2. The authority to grant conditional medical release rests
 100 solely with the department. An inmate does not have a right to
 101 release or to a medical evaluation to determine eligibility for
 102 release pursuant to this section.

103 (b) The department must identify inmates who may be
 104 eligible for conditional medical release based upon available
 105 medical information. In considering an inmate for conditional
 106 medical release, the department may require additional medical
 107 evidence, including examinations of the inmate, or any other
 108 additional investigations the department deems necessary for
 109 determining the appropriateness of the eligible inmate's
 110 release.

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

115 (d) If the case that resulted in the inmate's commitment to
 116 the department involved a victim, and the victim specifically

Page 4 of 30

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24-00765-20

2020556

117 requested notification pursuant to s. 16, Art. I of the State
 118 Constitution, the department must notify the victim of the
 119 inmate's referral to the panel immediately upon identification
 120 of the inmate as potentially eligible for release under this
 121 section. Additionally, the victim must be afforded the right to
 122 be heard regarding the release of the inmate.

123 (5) DETERMINATION OF RELEASE.—

124 (a) Within 45 days after receiving the referral, the panel
 125 established in subsection (1) must conduct a hearing to
 126 determine whether conditional medical release is appropriate for
 127 the inmate. Before the hearing, the director of inmate health
 128 services or his or her designee must review any relevant
 129 information, including, but not limited to, medical evidence,
 130 and provide the panel with a recommendation regarding the
 131 appropriateness of releasing the inmate pursuant to this
 132 section.

133 (b) A majority of the panel members must agree that release
 134 pursuant to this section is appropriate for the inmate.

135 (c) An inmate who is denied conditional medical release by
 136 the panel may have the decision reviewed by the department's
 137 general counsel and chief medical officer, who must make a
 138 recommendation to the secretary. The secretary must review all
 139 relevant information and make a final decision about the
 140 appropriateness of conditional medical release pursuant to this
 141 section. The decision of the secretary is a final administrative
 142 decision not subject to appeal. An inmate who is denied
 143 conditional medical release may be subsequently reconsidered for
 144 such release in a manner prescribed by department rule.

145 (6) RELEASE CONDITIONS.—

Page 5 of 30

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24-00765-20

2020556

146 (a) An inmate granted release pursuant to this section is
 147 released for a period equal to the length of time remaining on
 148 his or her term of imprisonment on the date the release is
 149 granted. The medical releasee must comply with all reasonable
 150 conditions of release the department imposes, which must
 151 include, at a minimum:

152 1. Periodic medical evaluations at intervals determined by
 153 the department at the time of release.

154 2. Supervision by an officer trained to handle special
 155 offender caseloads.

156 3. Active electronic monitoring, if such monitoring is
 157 determined to be necessary to ensure the safety of the public
 158 and the releasee's compliance with release conditions.

159 4. Any conditions of community control provided for in s.
 160 948.101.

161 5. Any other conditions the department deems appropriate to
 162 ensure the safety of the community and compliance by the medical
 163 releasee.

164 (b) A medical releasee is considered to be in the care,
 165 custody, supervision, and control of the department and remains
 166 eligible to earn or lose gain-time in accordance with s. 944.275
 167 and department rule. The medical releasee may not be counted in
 168 the prison system population, and the medical releasee's
 169 approved community-based housing location may not be counted in
 170 the capacity figures for the prison system.

171 (7) REVOCATION HEARING AND RECOMMITMENT.—

172 (a) If the medical releasee's supervision officer
 173 discovers that the medical or physical condition of the medical
 174 releasee has improved to the extent that she or he would no

Page 6 of 30

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24-00765-20

2020556

175 longer be eligible for release under this section, then the
 176 conditional medical release may be revoked. The department may
 177 order, as prescribed by department rule, that the medical
 178 releasee be returned to the custody of the department for a
 179 conditional medical release revocation hearing or may allow the
 180 medical releasee to remain in the community pending the
 181 revocation hearing.

182 2. The revocation hearing must be conducted by the panel
 183 established in subsection (1). Before a revocation hearing
 184 pursuant to this paragraph, the director of inmate health
 185 services or his or her designee must review any medical evidence
 186 pertaining to the releasee and provide the panel with a
 187 recommendation regarding the medical releasee's improvement and
 188 current medical or physical condition.

189 3. A majority of the panel members must agree that
 190 revocation is appropriate for the medical releasee's conditional
 191 medical release. If conditional medical release is revoked due
 192 to improvement in his or her medical or physical condition, the
 193 medical releasee must serve the balance of his or her sentence
 194 with credit for the time served on conditional medical release
 195 and without forfeiture of any gain-time accrued before
 196 recommitment. If the inmate whose conditional medical release is
 197 revoked due to an improvement in her or his medical or physical
 198 condition would otherwise be eligible for parole or any other
 199 release program, the inmate may be considered for such release
 200 program pursuant to law.

201 4. A medical releasee whose release is revoked pursuant to
 202 this paragraph may have the decision reviewed by the
 203 department's general counsel and chief medical officer, who must

Page 7 of 30

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24-00765-20

2020556

204 make a recommendation to the secretary. The secretary must
 205 review all relevant information and make a final decision about
 206 the appropriateness of the revocation of conditional medical
 207 release pursuant to this paragraph. The decision of the
 208 secretary is a final administrative decision not subject to
 209 appeal.

210 (b) 1. Conditional medical release may also be revoked for
 211 violation of any release conditions the department establishes,
 212 including, but not limited to, a new violation of law.

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

223 3. The department must order that the medical releasee
 224 subject to revocation under this paragraph be returned to
 225 department custody for a conditional medical release revocation
 226 hearing as prescribed by department rule.

227 4. A majority of the panel members must agree that
 228 revocation is appropriate for the medical releasee's conditional
 229 medical release. If conditional medical release is revoked
 230 pursuant to this paragraph, the medical releasee must serve the
 231 balance of his or her sentence with credit for the actual time
 232 served on conditional medical release. The releasee's gain-time

Page 8 of 30

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24-00765-20 2020556
 233 accrued before recommitment may be forfeited pursuant to s.
 234 944.28(1). If the inmate whose conditional medical release is
 235 revoked subject to this paragraph would otherwise be eligible
 236 for parole or any other release program, he or she may be
 237 considered for such release program pursuant to law.
 238 5. A medical releasee whose release has been revoked
 239 pursuant to this paragraph may have the revocation reviewed by
 240 the department's general counsel, who must make a recommendation
 241 to the secretary. The secretary must review all relevant
 242 information and make a final decision about the appropriateness
 243 of the revocation of conditional medical release pursuant to
 244 this paragraph. The decision of the secretary is a final
 245 administrative decision not subject to appeal.
 246 (c) If the medical releasee subject to revocation under
 247 paragraph (a) or paragraph (b) elects to proceed with a hearing,
 248 the releasee must be informed orally and in writing of the
 249 following:
 250 1. The alleged violation with which the releasee is
 251 charged.
 252 2. The releasee's right to be represented by counsel.
 253 However, this subparagraph does not create a right to publicly
 254 funded legal counsel.
 255 3. The releasee's right to be heard in person.
 256 4. The releasee's right to secure, present, and compel the
 257 attendance of witnesses relevant to the proceeding.
 258 5. The releasee's right to produce documents on his or her
 259 own behalf.
 260 6. The releasee's right of access to all evidence used
 261 against the releasee and to confront and cross-examine adverse

Page 9 of 30

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24-00765-20 2020556
 262 witnesses.
 263 7. The releasee's right to waive the hearing.
 264 (8) RULEMAKING AUTHORITY.—The department may adopt rules as
 265 necessary to implement this section.
 266 Section 2. Section 947.149, Florida Statutes, is repealed.
 267 Section 3. Subsection (6) of section 316.1935, Florida
 268 Statutes, is amended to read:
 269 316.1935 Fleeing or attempting to elude a law enforcement
 270 officer; aggravated fleeing or eluding.—
 271 (6) Notwithstanding s. 948.01, no court may suspend, defer,
 272 or withhold adjudication of guilt or imposition of sentence for
 273 any violation of this section. A person convicted and sentenced
 274 to a mandatory minimum term of incarceration under paragraph
 275 (3) (b) or paragraph (4) (b) is not eligible for statutory gain-
 276 time under s. 944.275 or any form of discretionary early
 277 release, other than pardon or executive clemency or conditional
 278 medical release under s. 945.0911 s. 947.149, prior to serving
 279 the mandatory minimum sentence.
 280 Section 4. Paragraph (k) of subsection (4) of section
 281 775.084, Florida Statutes, is amended to read:
 282 775.084 Violent career criminals; habitual felony offenders
 283 and habitual violent felony offenders; three-time violent felony
 284 offenders; definitions; procedure; enhanced penalties or
 285 mandatory minimum prison terms.—
 286 (4)
 287 (k)1. A defendant sentenced under this section as a
 288 habitual felony offender, a habitual violent felony offender, or
 289 a violent career criminal is eligible for gain-time granted by
 290 the Department of Corrections as provided in s. 944.275(4) (b).

Page 10 of 30

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24-00765-20

2020556

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

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

301 Section 5. Paragraph (b) of subsection (2) and paragraph
 302 (b) of subsection (3) of section 775.087, Florida Statutes, are
 303 amended to read:

304 775.087 Possession or use of weapon; aggravated battery;
 305 felony reclassification; minimum sentence.—

306 (2)

307 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
 308 (a)3. does not prevent a court from imposing a longer sentence
 309 of incarceration as authorized by law in addition to the minimum
 310 mandatory sentence, or from imposing a sentence of death
 311 pursuant to other applicable law. Subparagraph (a)1.,
 312 subparagraph (a)2., or subparagraph (a)3. does not authorize a
 313 court to impose a lesser sentence than otherwise required by
 314 law.

315
 316 Notwithstanding s. 948.01, adjudication of guilt or imposition
 317 of sentence shall not be suspended, deferred, or withheld, and
 318 the defendant is not eligible for statutory gain-time under s.
 319 944.275 or any form of discretionary early release, other than

Page 11 of 30

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24-00765-20

2020556

320 pardon or executive clemency, or conditional medical release
 321 under s. 945.0911 s. 947.149, prior to serving the minimum
 322 sentence.

323 (3)
 324 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
 325 (a)3. does not prevent a court from imposing a longer sentence
 326 of incarceration as authorized by law in addition to the minimum
 327 mandatory sentence, or from imposing a sentence of death
 328 pursuant to other applicable law. Subparagraph (a)1.,
 329 subparagraph (a)2., or subparagraph (a)3. does not authorize a
 330 court to impose a lesser sentence than otherwise required by
 331 law.

332

333 Notwithstanding s. 948.01, adjudication of guilt or imposition
 334 of sentence shall not be suspended, deferred, or withheld, and
 335 the defendant is not eligible for statutory gain-time under s.
 336 944.275 or any form of discretionary early release, other than
 337 pardon or executive clemency, or conditional medical release
 338 under s. 945.0911 s. 947.149, prior to serving the minimum
 339 sentence.

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

342 784.07 Assault or battery of law enforcement officers,
 343 firefighters, emergency medical care providers, public transit
 344 employees or agents, or other specified officers;
 345 reclassification of offenses; minimum sentences.—

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

Page 12 of 30

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24-00765-20 2020556

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

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

356

357 Notwithstanding s. 948.01, adjudication of guilt or imposition
 358 of sentence shall not be suspended, deferred, or withheld, and
 359 the defendant is not eligible for statutory gain-time under s.
 360 944.275 or any form of discretionary early release, other than
 361 pardon or executive clemency, or conditional medical release
 362 under s. 945.0911 s. 947.149, prior to serving the minimum
 363 sentence.

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

366 790.235 Possession of firearm or ammunition by violent
 367 career criminal unlawful; penalty.—

368 (1) Any person who meets the violent career criminal
 369 criteria under s. 775.084(1)(d), regardless of whether such
 370 person is or has previously been sentenced as a violent career
 371 criminal, who owns or has in his or her care, custody,
 372 possession, or control any firearm, ammunition, or electric
 373 weapon or device, or carries a concealed weapon, including a
 374 tear gas gun or chemical weapon or device, commits a felony of
 375 the first degree, punishable as provided in s. 775.082, s.
 376 775.083, or s. 775.084. A person convicted of a violation of
 377 this section shall be sentenced to a mandatory minimum of 15

Page 13 of 30

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24-00765-20 2020556

378 years' imprisonment; however, if the person would be sentenced
 379 to a longer term of imprisonment under s. 775.084(4)(d), the
 380 person must be sentenced under that provision. A person
 381 convicted of a violation of this section is not eligible for any
 382 form of discretionary early release, other than pardon,
 383 executive clemency, or conditional medical release under s.
 384 945.0911 s. 947.149.

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

387 794.0115 Dangerous sexual felony offender; mandatory
 388 sentencing.—

389 (7) A defendant sentenced to a mandatory minimum term of
 390 imprisonment under this section is not eligible for statutory
 391 gain-time under s. 944.275 or any form of discretionary early
 392 release, other than pardon or executive clemency, or conditional
 393 medical release under s. 945.0911 s. 947.149, before serving the
 394 minimum sentence.

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

398 893.135 Trafficking; mandatory sentences; suspension or
 399 reduction of sentences; conspiracy to engage in trafficking.—

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

402 (b)1. Any person who knowingly sells, purchases,
 403 manufactures, delivers, or brings into this state, or who is
 404 knowingly in actual or constructive possession of, 28 grams or
 405 more of cocaine, as described in s. 893.03(2)(a)4., or of any
 406 mixture containing cocaine, but less than 150 kilograms of

Page 14 of 30

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24-00765-20 2020556

407 cocaine or any such mixture, commits a felony of the first
 408 degree, which felony shall be known as "trafficking in cocaine,"
 409 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 410 If the quantity involved:
 411 a. Is 28 grams or more, but less than 200 grams, such
 412 person shall be sentenced to a mandatory minimum term of
 413 imprisonment of 3 years, and the defendant shall be ordered to
 414 pay a fine of \$50,000.
 415 b. Is 200 grams or more, but less than 400 grams, such
 416 person shall be sentenced to a mandatory minimum term of
 417 imprisonment of 7 years, and the defendant shall be ordered to
 418 pay a fine of \$100,000.
 419 c. Is 400 grams or more, but less than 150 kilograms, such
 420 person shall be sentenced to a mandatory minimum term of
 421 imprisonment of 15 calendar years and pay a fine of \$250,000.
 422 2. Any person who knowingly sells, purchases, manufactures,
 423 delivers, or brings into this state, or who is knowingly in
 424 actual or constructive possession of, 150 kilograms or more of
 425 cocaine, as described in s. 893.03(2)(a)4., commits the first
 426 degree felony of trafficking in cocaine. A person who has been
 427 convicted of the first degree felony of trafficking in cocaine
 428 under this subparagraph shall be punished by life imprisonment
 429 and is ineligible for any form of discretionary early release
 430 except pardon or executive clemency or conditional medical
 431 release under s. 945.0911 ~~s. 947.149~~. However, if the court
 432 determines that, in addition to committing any act specified in
 433 this paragraph:
 434 a. The person intentionally killed an individual or
 435 counseled, commanded, induced, procured, or caused the

Page 15 of 30

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24-00765-20 2020556

436 intentional killing of an individual and such killing was the
 437 result; or
 438 b. The person's conduct in committing that act led to a
 439 natural, though not inevitable, lethal result,
 440 such person commits the capital felony of trafficking in
 441 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
 442 person sentenced for a capital felony under this paragraph shall
 443 also be sentenced to pay the maximum fine provided under
 444 subparagraph 1.
 445 3. Any person who knowingly brings into this state 300
 446 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
 447 and who knows that the probable result of such importation would
 448 be the death of any person, commits capital importation of
 449 cocaine, a capital felony punishable as provided in ss. 775.082
 450 and 921.142. Any person sentenced for a capital felony under
 451 this paragraph shall also be sentenced to pay the maximum fine
 452 provided under subparagraph 1.
 453 (c)1. A person who knowingly sells, purchases,
 454 manufactures, delivers, or brings into this state, or who is
 455 knowingly in actual or constructive possession of, 4 grams or
 456 more of any morphine, opium, hydromorphone, or any salt,
 457 derivative, isomer, or salt of an isomer thereof, including
 458 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
 459 (3)(c)4., or 4 grams or more of any mixture containing any such
 460 substance, but less than 30 kilograms of such substance or
 461 mixture, commits a felony of the first degree, which felony
 462 shall be known as "trafficking in illegal drugs," punishable as
 463 provided in s. 775.082, s. 775.083, or s. 775.084. If the

Page 16 of 30

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24-00765-20 2020556

465 quantity involved:

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

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

472 c. Is 28 grams or more, but less than 30 kilograms, such person
473 shall be sentenced to a mandatory minimum term of
474 imprisonment of 25 years and shall be ordered to pay a fine of
475 \$500,000.

476 2. A person who knowingly sells, purchases, manufactures,
477 delivers, or brings into this state, or who is knowingly in
478 actual or constructive possession of, 28 grams or more of
479 hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as
480 described in s. 893.03(2)(a)1.g., or any salt thereof, or 28
481 grams or more of any mixture containing any such substance,
482 commits a felony of the first degree, which felony shall be
483 known as "trafficking in hydrocodone," punishable as provided in
484 s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:
485 a. Is 28 grams or more, but less than 50 grams, such person
486 shall be sentenced to a mandatory minimum term of imprisonment
487 of 3 years and shall be ordered to pay a fine of \$50,000.

488 b. Is 50 grams or more, but less than 100 grams, such person
489 shall be sentenced to a mandatory minimum term of
490 imprisonment of 7 years and shall be ordered to pay a fine of
491 \$100,000.

492 c. Is 100 grams or more, but less than 300 grams, such person
493 shall be sentenced to a mandatory minimum term of

Page 17 of 30

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24-00765-20 2020556

494 imprisonment of 15 years and shall be ordered to pay a fine of
495 \$500,000.

496 d. Is 300 grams or more, but less than 30 kilograms, such
497 person shall be sentenced to a mandatory minimum term of
498 imprisonment of 25 years and shall be ordered to pay a fine of
499 \$750,000.

500 3. A person who knowingly sells, purchases, manufactures,
501 delivers, or brings into this state, or who is knowingly in
502 actual or constructive possession of, 7 grams or more of
503 oxycodone, as described in s. 893.03(2)(a)1.q., or any salt
504 thereof, or 7 grams or more of any mixture containing any such
505 substance, commits a felony of the first degree, which felony
506 shall be known as "trafficking in oxycodone," punishable as
507 provided in s. 775.082, s. 775.083, or s. 775.084. If the
508 quantity involved:
509 a. Is 7 grams or more, but less than 14 grams, such person
510 shall be sentenced to a mandatory minimum term of imprisonment
511 of 3 years and shall be ordered to pay a fine of \$50,000.

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

515 c. Is 25 grams or more, but less than 100 grams, such person
516 shall be sentenced to a mandatory minimum term of
517 imprisonment of 15 years and shall be ordered to pay a fine of
518 \$500,000.

519 d. Is 100 grams or more, but less than 30 kilograms, such person
520 shall be sentenced to a mandatory minimum term of
521 imprisonment of 25 years and shall be ordered to pay a fine of
522 \$750,000.

Page 18 of 30

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24-00765-20

2020556

523 4.a. A person who knowingly sells, purchases, manufactures,
 524 delivers, or brings into this state, or who is knowingly in
 525 actual or constructive possession of, 4 grams or more of:
 526 (I) Alfentanil, as described in s. 893.03(2)(b)1.;
 527 (II) Carfentanil, as described in s. 893.03(2)(b)6.;
 528 (III) Fentanyl, as described in s. 893.03(2)(b)9.;
 529 (IV) Sufentanil, as described in s. 893.03(2)(b)30.;
 530 (V) A fentanyl derivative, as described in s.
 531 893.03(1)(a)62.;
 532 (VI) A controlled substance analog, as described in s.
 533 893.0356, of any substance described in sub-sub-subparagraphs
 534 (I)-(V); or
 535 (VII) A mixture containing any substance described in sub-
 536 sub-subparagraphs (I)-(VI),
 537
 538 commits a felony of the first degree, which felony shall be
 539 known as "trafficking in fentanyl," punishable as provided in s.
 540 775.082, s. 775.083, or s. 775.084.
 541 b. If the quantity involved under sub-subparagraph a.:
 542 (I) Is 4 grams or more, but less than 14 grams, such person
 543 shall be sentenced to a mandatory minimum term of imprisonment
 544 of 3 years, and shall be ordered to pay a fine of \$50,000.
 545 (II) Is 14 grams or more, but less than 28 grams, such
 546 person shall be sentenced to a mandatory minimum term of
 547 imprisonment of 15 years, and shall be ordered to pay a fine of
 548 \$100,000.
 549 (III) Is 28 grams or more, such person shall be sentenced
 550 to a mandatory minimum term of imprisonment of 25 years, and
 551 shall be ordered to pay a fine of \$500,000.

Page 19 of 30

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24-00765-20

2020556

552 5. A person who knowingly sells, purchases, manufactures,
 553 delivers, or brings into this state, or who is knowingly in
 554 actual or constructive possession of, 30 kilograms or more of
 555 any morphine, opium, oxycodone, hydrocodone, codeine,
 556 hydromorphone, or any salt, derivative, isomer, or salt of an
 557 isomer thereof, including heroin, as described in s.
 558 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 559 more of any mixture containing any such substance, commits the
 560 first degree felony of trafficking in illegal drugs. A person
 561 who has been convicted of the first degree felony of trafficking
 562 in illegal drugs under this subparagraph shall be punished by
 563 life imprisonment and is ineligible for any form of
 564 discretionary early release except pardon or executive clemency
 565 or conditional medical release under s. 945.0911 ~~s. 947.149~~.
 566 However, if the court determines that, in addition to committing
 567 any act specified in this paragraph:
 568 a. The person intentionally killed an individual or
 569 counseled, commanded, induced, procured, or caused the
 570 intentional killing of an individual and such killing was the
 571 result; or
 572 b. The person's conduct in committing that act led to a
 573 natural, though not inevitable, lethal result,
 574
 575 such person commits the capital felony of trafficking in illegal
 576 drugs, punishable as provided in ss. 775.082 and 921.142. A
 577 person sentenced for a capital felony under this paragraph shall
 578 also be sentenced to pay the maximum fine provided under
 579 subparagraph 1.
 580 6. A person who knowingly brings into this state 60

Page 20 of 30

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24-00765-20

2020556

581 kilograms or more of any morphine, opium, oxycodone,
 582 hydrocodone, codeine, hydromorphone, or any salt, derivative,
 583 isomer, or salt of an isomer thereof, including heroin, as
 584 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
 585 60 kilograms or more of any mixture containing any such
 586 substance, and who knows that the probable result of such
 587 importation would be the death of a person, commits capital
 588 importation of illegal drugs, a capital felony punishable as
 589 provided in ss. 775.082 and 921.142. A person sentenced for a
 590 capital felony under this paragraph shall also be sentenced to
 591 pay the maximum fine provided under subparagraph 1.

592 (g)1. Any person who knowingly sells, purchases,
 593 manufactures, delivers, or brings into this state, or who is
 594 knowingly in actual or constructive possession of, 4 grams or
 595 more of flunitrazepam or any mixture containing flunitrazepam as
 596 described in s. 893.03(1)(a) commits a felony of the first
 597 degree, which felony shall be known as "trafficking in
 598 flunitrazepam," punishable as provided in s. 775.082, s.
 599 775.083, or s. 775.084. If the quantity involved:

600 a. Is 4 grams or more but less than 14 grams, such person
 601 shall be sentenced to a mandatory minimum term of imprisonment
 602 of 3 years, and the defendant shall be ordered to pay a fine of
 603 \$50,000.

604 b. Is 14 grams or more but less than 28 grams, such person
 605 shall be sentenced to a mandatory minimum term of imprisonment
 606 of 7 years, and the defendant shall be ordered to pay a fine of
 607 \$100,000.

608 c. Is 28 grams or more but less than 30 kilograms, such
 609 person shall be sentenced to a mandatory minimum term of

Page 21 of 30

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24-00765-20

2020556

610 imprisonment of 25 calendar years and pay a fine of \$500,000.
 611 2. Any person who knowingly sells, purchases, manufactures,
 612 delivers, or brings into this state or who is knowingly in
 613 actual or constructive possession of 30 kilograms or more of
 614 flunitrazepam or any mixture containing flunitrazepam as
 615 described in s. 893.03(1)(a) commits the first degree felony of
 616 trafficking in flunitrazepam. A person who has been convicted of
 617 the first degree felony of trafficking in flunitrazepam under
 618 this subparagraph shall be punished by life imprisonment and is
 619 ineligible for any form of discretionary early release except
 620 pardon or executive clemency or conditional medical release
 621 under s. 945.0911 ~~s. 947.149~~. However, if the court determines
 622 that, in addition to committing any act specified in this
 623 paragraph:

624 a. The person intentionally killed an individual or
 625 counseled, commanded, induced, procured, or caused the
 626 intentional killing of an individual and such killing was the
 627 result; or

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

630 such person commits the capital felony of trafficking in
 631 flunitrazepam, punishable as provided in ss. 775.082 and
 632 921.142. Any person sentenced for a capital felony under this
 633 paragraph shall also be sentenced to pay the maximum fine
 634 provided under subparagraph 1.

635 (3) Notwithstanding the provisions of s. 948.01, with
 636 respect to any person who is found to have violated this
 637 section, adjudication of guilt or imposition of sentence shall

Page 22 of 30

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24-00765-20

2020556

639 not be suspended, deferred, or withheld, nor shall such person
 640 be eligible for parole prior to serving the mandatory minimum
 641 term of imprisonment prescribed by this section. A person
 642 sentenced to a mandatory minimum term of imprisonment under this
 643 section is not eligible for any form of discretionary early
 644 release, except pardon or executive clemency or conditional
 645 medical release under s. 945.0911 s.- 947.149, prior to serving
 646 the mandatory minimum term of imprisonment.

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

649 921.0024 Criminal Punishment Code; worksheet computations;
 650 scoresheets.—

651 (2) The lowest permissible sentence is the minimum sentence
 652 that may be imposed by the trial court, absent a valid reason
 653 for departure. The lowest permissible sentence is any nonstate
 654 prison sanction in which the total sentence points equals or is
 655 less than 44 points, unless the court determines within its
 656 discretion that a prison sentence, which may be up to the
 657 statutory maximums for the offenses committed, is appropriate.
 658 When the total sentence points exceeds 44 points, the lowest
 659 permissible sentence in prison months shall be calculated by
 660 subtracting 28 points from the total sentence points and
 661 decreasing the remaining total by 25 percent. The total sentence
 662 points shall be calculated only as a means of determining the
 663 lowest permissible sentence. The permissible range for
 664 sentencing shall be the lowest permissible sentence up to and
 665 including the statutory maximum, as defined in s. 775.082, for
 666 the primary offense and any additional offenses before the court
 667 for sentencing. The sentencing court may impose such sentences

Page 23 of 30

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24-00765-20

2020556

668 concurrently or consecutively. However, any sentence to state
 669 prison must exceed 1 year. If the lowest permissible sentence
 670 under the code exceeds the statutory maximum sentence as
 671 provided in s. 775.082, the sentence required by the code must
 672 be imposed. If the total sentence points are greater than or
 673 equal to 363, the court may sentence the offender to life
 674 imprisonment. An offender sentenced to life imprisonment under
 675 this section is not eligible for any form of discretionary early
 676 release, except executive clemency or conditional medical
 677 release under s. 945.0911 s.- 947.149.

678 Section 11. Paragraph (b) of subsection (7) of section
 679 944.605, Florida Statutes, is amended to read:

680 944.605 Inmate release; notification; identification card.—
 681 (7)

682 (b) Paragraph (a) does not apply to inmates who:
 683 1. The department determines have a valid driver license or
 684 state identification card, except that the department shall
 685 provide these inmates with a replacement state identification
 686 card or replacement driver license, if necessary.

687 2. Have an active detainer, unless the department
 688 determines that cancellation of the detainer is likely or that
 689 the incarceration for which the detainer was issued will be less
 690 than 12 months in duration.

691 3. Are released due to an emergency release or a
 692 conditional medical release under s. 945.0911 s.- 947.149.

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

695 5. Are subject to sex offender residency restrictions, and
 696 who, upon release under such restrictions, do not have a

Page 24 of 30

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24-00765-20 2020556_

697 qualifying address.

698 Section 12. Subsection (1) of section 944.70, Florida

699 Statutes, is amended to read:

700 944.70 Conditions for release from incarceration.—

701 (1)(a) A person who is convicted of a crime committed on or

702 after October 1, 1983, but before January 1, 1994, may be

703 released from incarceration only:

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

705 2. Upon expiration of the person's sentence as reduced by

706 accumulated gain-time;

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

708 4. Upon attaining the provisional release date;

709 5. Upon placement in a conditional release program pursuant

710 to s. 947.1405; or

711 6. Upon the granting of control release pursuant to s.

712 947.146.

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

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

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

716 2. Upon expiration of the person's sentence as reduced by

717 accumulated meritorious or incentive gain-time;

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

719 4. Upon placement in a conditional release program pursuant

720 to s. 947.1405 or a conditional medical release program pursuant

721 to s. 945.0911 ~~s. 947.149~~; or

722 5. Upon the granting of control release, including

723 emergency control release, pursuant to s. 947.146.

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

725 947.13, Florida Statutes, is amended to read:

Page 25 of 30

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24-00765-20 2020556_

726 947.13 Powers and duties of commission.—

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

728 duties of:

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

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

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

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

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

734 ~~violation.~~

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

736 to read:

737 947.141 Violations of conditional release, control release,

738 or conditional medical release or addiction-recovery

739 supervision.—

740 (1) If a member of the commission or a duly authorized

741 representative of the commission has reasonable grounds to

742 believe that an offender who is on release supervision under s.

743 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731 has violated

744 the terms and conditions of the release in a material respect,

745 such member or representative may cause a warrant to be issued

746 for the arrest of the releasee; if the offender was found to be

747 a sexual predator, the warrant must be issued.

748 (2) Upon the arrest on a felony charge of an offender who

749 is on release supervision under s. 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731, the offender must be detained without

750 bond until the initial appearance of the offender at which a

751 judicial determination of probable cause is made. If the trial

752 court judge determines that there was no probable cause for the

753 arrest, the offender may be released. If the trial court judge

Page 26 of 30

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24-00765-20

2020556

755 determines that there was probable cause for the arrest, such
 756 determination also constitutes reasonable grounds to believe
 757 that the offender violated the conditions of the release. Within
 758 24 hours after the trial court judge's finding of probable
 759 cause, the detention facility administrator or designee shall
 760 notify the commission and the department of the finding and
 761 transmit to each a facsimile copy of the probable cause
 762 affidavit or the sworn offense report upon which the trial court
 763 judge's probable cause determination is based. The offender must
 764 continue to be detained without bond for a period not exceeding
 765 72 hours excluding weekends and holidays after the date of the
 766 probable cause determination, pending a decision by the
 767 commission whether to issue a warrant charging the offender with
 768 violation of the conditions of release. Upon the issuance of the
 769 commission's warrant, the offender must continue to be held in
 770 custody pending a revocation hearing held in accordance with
 771 this section.

772 (3) Within 45 days after notice to the Florida Commission
 773 on Offender Review of the arrest of a releasee charged with a
 774 violation of the terms and conditions of conditional release,
 775 control release, conditional medical release, or addiction-
 776 recovery supervision, the releasee must be afforded a hearing
 777 conducted by a commissioner or a duly authorized representative
 778 thereof. If the releasee elects to proceed with a hearing, the
 779 releasee must be informed orally and in writing of the
 780 following:

781 (a) The alleged violation with which the releasee is
 782 charged.
 783 (b) The releasee's right to be represented by counsel.

Page 27 of 30

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24-00765-20

2020556

784 (c) The releasee's right to be heard in person.
 785 (d) The releasee's right to secure, present, and compel the
 786 attendance of witnesses relevant to the proceeding.
 787 (e) The releasee's right to produce documents on the
 788 releasee's own behalf.
 789 (f) The releasee's right of access to all evidence used
 790 against the releasee and to confront and cross-examine adverse
 791 witnesses.
 792 (g) The releasee's right to waive the hearing.
 793 (4) Within a reasonable time following the hearing, the
 794 commissioner or the commissioner's duly authorized
 795 representative who conducted the hearing shall make findings of
 796 fact in regard to the alleged violation. A panel of no fewer
 797 than two commissioners shall enter an order determining whether
 798 the charge of violation of conditional release, control release,
 799 conditional medical release, or addiction-recovery supervision
 800 has been sustained based upon the findings of fact presented by
 801 the hearing commissioner or authorized representative. By such
 802 order, the panel may revoke conditional release, control
 803 release, conditional medical release, or addiction-recovery
 804 supervision and thereby return the releasee to prison to serve
 805 the sentence imposed, reinstate the original order granting the
 806 release, or enter such other order as it considers proper.
 807 Effective for inmates whose offenses were committed on or after
 808 July 1, 1995, the panel may order the placement of a releasee,
 809 upon a finding of violation pursuant to this subsection, into a
 810 local detention facility as a condition of supervision.
 811 (5) Effective for inmates whose offenses were committed on
 812 or after July 1, 1995, notwithstanding the provisions of ss.

Page 28 of 30

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24-00765-20

2020556

813 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and
 814 951.23, or any other law to the contrary, by such order as
 815 provided in subsection (4), the panel, upon a finding of guilt,
 816 may, as a condition of continued supervision, place the releasee
 817 in a local detention facility for a period of incarceration not
 818 to exceed 22 months. Prior to the expiration of the term of
 819 incarceration, or upon recommendation of the chief correctional
 820 officer of that county, the commission shall cause inquiry into
 821 the inmate's release plan and custody status in the detention
 822 facility and consider whether to restore the inmate to
 823 supervision, modify the conditions of supervision, or enter an
 824 order of revocation, thereby causing the return of the inmate to
 825 prison to serve the sentence imposed. The provisions of this
 826 section do not prohibit the panel from entering such other order
 827 or conducting any investigation that it deems proper. The
 828 commission may only place a person in a local detention facility
 829 pursuant to this section if there is a contractual agreement
 830 between the chief correctional officer of that county and the
 831 Department of Corrections. The agreement must provide for a per
 832 diem reimbursement for each person placed under this section,
 833 which is payable by the Department of Corrections for the
 834 duration of the offender's placement in the facility. This
 835 section does not limit the commission's ability to place a
 836 person in a local detention facility for less than 1 year.

837 (6) Whenever a conditional release, control release,
 838 conditional medical release, or addiction-recovery supervision
 839 is revoked by a panel of no fewer than two commissioners and the
 840 releasee is ordered to be returned to prison, the releasee, by
 841 reason of the misconduct, shall be deemed to have forfeited all

Page 29 of 30

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24-00765-20

2020556

842 gain-time or commutation of time for good conduct, as provided
 843 for by law, earned up to the date of release. However, if a
 844 conditional medical release is revoked due to the improved
 845 medical or physical condition of the releasee, the releasee
 846 shall not forfeit gain-time accrued before the date of
 847 conditional medical release. This subsection does not deprive
 848 the prisoner of the right to gain-time or commutation of time
 849 for good conduct, as provided by law, from the date of return to
 850 prison.

851 (7) If a law enforcement officer has probable cause to
 852 believe that an offender who is on release supervision under s.
 853 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731 has violated
 854 the terms and conditions of his or her release by committing a
 855 felony offense, the officer shall arrest the offender without a
 856 warrant, and a warrant need not be issued in the case.

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

Page 30 of 30

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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)

11/12/19

Meeting Date

556

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Olivia Babis

Job Title Public Policy Analyst

Address 2473 Care Dr. Ste 200 Phone 850 - 617-9718

Street

Tallahassee FL 32308

City

State

Zip

Speaking: For Against Information

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

Representing Disability Rights 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)

November 12, 2019

556

Meeting Date

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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)

11/12/19

Meeting Date

556

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee FL 32301

City

State

Zip

Email

Tcglobby@aol.com

Speaking: For Against Information

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

Representing ACLU of FL

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)

11/12/19

Meeting Date

556

Bill Number (if applicable)

Topic Inmate Conditional Medical Release Amendment Barcode (if applicable)

Name Phillip Sudermann

Job Title Policy Director

Address _____ Phone _____
Street _____

Email _____

City _____

State _____

Zip _____

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

11/12/2019

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

SB 556

Meeting Date

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@splcenter.org

Speaking: For Against Information

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

Representing Southern Poverty Law Center 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

11-12-19

Meeting Date

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

556

Bill Number (if applicable)

Topic Med. Release

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Phone 352.682.2542

Street
Gainesville

FL

32614

City Gainesville State FL

Zip

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

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)

11/12/2019

SB 556

Meeting Date

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

City

State

Zip

Email garywhester@gmail.com

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11-12-19

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

0556
SB 0056
Bill Number (if applicable)

Meeting Date

Topic Inmate Conditional Release

Amendment Barcode (if applicable)

Name Ken Kriemann

Job Title Associate

Address 201 W Park

Phone _____

Street

Tallahassee

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Conference Catholic Bishops

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

11/12/2019

Meeting Date

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

556

Bill Number (if applicable)

Topic Conditional Release

Amendment Barcode (if applicable)

Name Jorge Chamorro

Job Title ATTORNEY

Address 108 SOUTH MONROE

Street

TALLAHASSEE FL 32301

State

Zip

City

Phone (850)681-0024

Email jorge@flapartne.com

Speaking: For Against Information

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

Representing FACDL

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
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 1, 2019

I respectfully request that **Senate Bill #556**, relating to **Inmate Conditional Medical 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".

Senator Jeff Brandes
Florida Senate, District 24



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Commission on Offender Review

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>SB 556</u>
BILL TITLE:	Inmate Conditional Release
BILL SPONSOR:	Brandes
EFFECTIVE DATE:	10/01/2020

<u>COMMITTEES OF REFERENCE</u>	<u>CURRENT COMMITTEE</u>
1) Criminal Justice	Click or tap here to enter text.
2) Appropriations Subcommittee on Criminal and Civil Justice	
3) Appropriations	
4) Click or tap here to enter text.	
5) Click or tap here to enter text.	

<u>PREVIOUS LEGISLATION</u>	<u>IDENTICAL BILLS</u>
BILL NUMBER: Click or tap here to enter text.	BILL NUMBER: Click or tap here to enter text.
SPONSOR: 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.	

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	10/24/19
LEAD AGENCY ANALYST:	Alec Yarger, Legislative Affairs Director
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Click or tap here to enter text.
FISCAL ANALYST:	Gina Giacomo, Director of Administration

POLICY ANALYSIS

EXECUTIVE SUMMARY

SB 556 removes the Conditional Medical Release Program from FCOR by repealing s. 947.149, F.S., and reestablishes it within the Department of Corrections in a newly created s. 945.0911, F.S.

The bill also creates a new designation for CMR called “inmate with a debilitating illness”, defined as “an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.”

The bill amends the definition for “terminally ill” to specify “death is expected within 12” months as the standard.

SUBSTANTIVE BILL ANALYSIS

PRESENT SITUATION:

Conditional Medical Release is a discretionary early release program authorized by s. 947.149, F.S., for inmates with an existing medical or physical condition rendering them permanently incapacitated or terminally ill. The Florida Commission on Offender Review (FCOR) is authorized to release inmates on supervision who are “terminally ill” or “permanently incapacitated,” and who are not a danger to themselves or others. The Department of Corrections is responsible for referring potential conditional medical release cases to FCOR for consideration.

Currently, the two designations which make an inmate eligible for consideration are defined as:

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

The Department of Corrections supervises inmates who are granted conditional medical release. The supervision term of an inmate released on conditional medical release is for the remainder of the inmate’s sentence.

FCOR monitors the offender’s progress through periodic medical reviews and conducts revocation hearings when alleged violations are reported. The supervision can be revoked, and the offender returned to prison, if FCOR determines that a willful and substantial violation has occurred. FCOR may also return the offender to custody if his or her medical or physical condition improves.

The Department of Corrections has recommended 149 inmates for release in the last three fiscal years. FCOR granted release to 75 (just over 50%) of those recommended by the Department of Corrections. In FY 2018-19, FCOR granted release to 38 of the 76 inmates recommended for conditional medical release, or 50%.

EFFECT OF THE BILL:

Section 1:

The bill creates s. 945.0911, F.S., to establish the Conditional Medical Release Program within the Department of Corrections.

The bill directs the Secretary of Corrections to appoint three people to a panel to determine the appropriateness of conditional medical release and conduct revocation hearings for conditional medical releasees.

The bill defines three designations that would make an inmate eligible for conditional medical release:

- “Inmate with a debilitating illness” is a new designation that does not currently make an inmate eligible for conditional medical release. It is defined as “an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.”
- “Permanently incapacitated inmate” is identical to the designation of the same name currently in statute. It is defined as “an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of

- medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.”
- “Terminally ill inmate” is very similar to the definition that is currently in statute. The definition provided by the bill specifies that “death is expected within 12 months” is the standard for “terminally ill.” It is defined as “an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.”

The bill places the authority to grant conditional medical release solely with the Department of Corrections. It also provides that an inmate does not have a right to conditional medical release nor an evaluation to determine eligibility for such release.

The bill requires the Department of Corrections to refer potentially eligible inmates to the panel of three appointees for review and determination of conditional medical release.

In the event that the crime that resulted in the inmate’s incarceration involved a victim, the bill requires the Department of Corrections to notify the victim and provide them the right to be heard regarding the release of the inmate.

The bill requires the panel of appointees to conduct a hearing within 45 days of receiving the referral of a potentially eligible inmate. The Director of Inmate Health is required to review any relevant information before the hearing and provide a recommendation to the panel. A majority of the panel members must agree that conditional medical release is appropriate for the inmate in order to grant release.

The bill provides that an inmate who is denied conditional medical release may have the decision reviewed by the Department of Corrections General Counsel and Chief Medical Officer, who then make a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to grant conditional medical release and this decision is not subject to appeal.

The bill also establishes that inmates granted conditional medical release will be released for an amount of time equal to the time remaining on their sentence when released. During this time, the releasee must comply with all conditions of release set by the Department of Corrections. Those conditions must include:

- Periodic medical evaluations;
- Supervision by a trained officer;
- Active electronic monitoring; and
- Any conditions required by community control (948.101, F.S.).

The bill also allows the Department of Corrections to include any other conditions deemed appropriate on a case by case basis.

The bill provides that a conditional medical releasee remains eligible to earn or lose gain-time.

The bill provides for a revocation process if the medical or physical condition of the releasee improves to the extent that they are no longer eligible for conditional medical release. Upon discovering that the releasee’s condition has improved, the Department of Corrections may order that they be returned to custody for a revocation hearing conducted by the panel of three appointees.

The bill provides that if a conditional medical releasee elects to proceed with the revocation hearing, they must be informed orally and in writing of the following:

- The alleged violation with which the releasee is charged;
- The right to be represented by counsel (although not a right to publicly funded counsel);
- The right to be heard in person;
- The right to secure, present, and compel the attendance of witnesses relevant to the hearing;
- The right to produce documents on his or her own behalf;
- The right to access of all evidence used against the releasee and to confront and cross-examine witnesses; and
- The right to waive the hearing.

The Director of Inmate Health must review evidence and make a recommendation regarding the releasee’s improved medical condition to the panel. A majority of the panel members must agree to revoke the releasee’s conditional medical release.

The bill provides that an inmate who has their conditional medical release revoked due to an improvement in medical or physical condition may have the decision reviewed by the Department of Corrections General Counsel and Chief Medical Officer, who then make a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to revoke conditional medical release and this decision is not subject to appeal.

The bill also provides for a revocation process for any violation of the conditional medical release conditions established by the Department of Corrections or new violation of law. Upon discovering a violation, the Department of Corrections must order that the releasee be returned to custody for a revocation hearing conducted by the panel of three appointees. A majority of the panel members must agree to revoke the releasee's conditional medical release.

The bill provides that an inmate who has their conditional medical release revoked due to a violation of the established conditions or new violation of law may have the decision reviewed by the Department of Corrections General Counsel, who then makes a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to revoke conditional medical release and this decision is not subject to appeal.

The bill provides rulemaking authority to the Department of Corrections to adopt rules to implement this section (Section 1) of the bill.

Section 2:

The bill repeals section s. 947.149, F.S., deleting the existing Conditional Release Program within the Florida Commission on Offender Review.

Sections 3-14:

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., to conform cross-references to changes made by the bill.

Section 15:

The bill provides that the act will be effective on October 1, 2020.

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 bill removes 947.149(6), F.S., a statute that requires FCOR to adopt rules to implement the conditional medical release program.
Is the change consistent with the agency's core mission?	<input type="checkbox"/> Y <input type="checkbox"/> N
Rule(s) impacted (provide references to F.A.C., etc.):	Chapter 23-24 Conditional Medical Release Program

WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y N

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Y N

Board:	N/A
Board Purpose:	N/A

Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

N

Revenues:	N/A
Expenditures:	N/A
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?	Click or tap here to enter text.

DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

N

Revenues:	N/A
Expenditures:	<p>This bill would have a minimal, but negative fiscal impact to the Commission on Offender Review (FCOR) by reducing the number of discretionary release determinations.</p> <p>In FY1819, FCOR calculated that the per unit cost for a discretionary release determination was \$696.98.</p> <p>In FY1819, FCOR made 84 Conditional Medical Release (CMR) determinations. During this time, 804 hours were spent on the investigation/determination, 64 hours were spent on victim assistance, and 433 hours were spent on revocations for CMR. This adds up to a total of 1301 hours (less than 1 FTE).</p> <p>There is no position at FCOR that deals exclusively with Conditional Medical Release. The process for CMR is similar enough to other releases that the individuals who process parole cases process CMR cases as well.</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

N

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

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.

DRAFT

TECHNOLOGY IMPACT

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.

FEDERAL IMPACT

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.

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

Click or tap here to enter text.

Cox, Ryan

From: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Sent: Friday, December 15, 2017 10:25 AM
To: Cox, Ryan
Subject: RE: Conditional Medical Release
Attachments: CMR info.pdf; Analysis-of-US-Compassionate-and-Geriatric-Release-Laws.pdf

Good morning,

Here is the information you requested. I have also attached a packet with some data on CMR.

FY14/15: 14 inmates released
FY15/16: 27 inmates released
FY16/17: 14 inmates released

Thanks,

Alec Yarger
Director of Legislative Affairs
Florida Commission on Offender Review
Office: (850) 921-2804
Cell: (850) 728-3548

From: Cox, Ryan [mailto:Cox.Ryan@fisenate.gov]
Sent: Friday, December 15, 2017 9:37 AM
To: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Subject: Conditional Medical Release

Good morning, Alex:

Can you send me data for the last three fiscal years on the number of inmates that have been released on CMR and the number of inmates, if any, that were recommitted to the department due to a change in medical status? Thank you.

Sincerely,

Ryan C. Cox
Senior Attorney
Committee on Criminal Justice
(850) 487-5192

Cox, Ryan

From: Yarger, Alexander <alecyarger@fcor.state.fl.us>
Sent: Friday, November 1, 2019 2:08 PM
To: Cox, Ryan
Subject: Re: Updated Conditional Medical Release numbers

Good afternoon

In FY1819, the Department of Corrections referred 76 inmates for CMR and FCOR granted release to 38.

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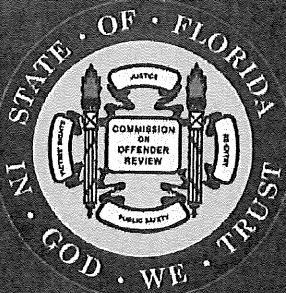
From: Cox, Ryan
Sent: Friday, November 1, 1:55 PM
Subject: Updated Conditional Medical Release numbers
To: Yarger, Alexander

Good afternoon, Alex:

Can you please send me the numbers for FY 2018-19 of how many people were recommended for CMR and how many were granted release by the FCOR? Thank you!

Sincerely,

Ryan C. Cox
Senior Attorney
Senate Committee on Criminal Justice
(850) 487-5192



FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

CONDITIONAL MEDICAL RELEASE: EXECUTIVE SUMMARY

What is CMR? Conditional Medical Release is a form of release granted to inmates who are recommended to the Florida Commission on Offender Review (FCOR) for release by the Florida Department of Corrections (FDC) due to the inmate being permanently incapacitated or terminally ill. (Florida Statute 947.149 and Administrative Rule 23-24.040)

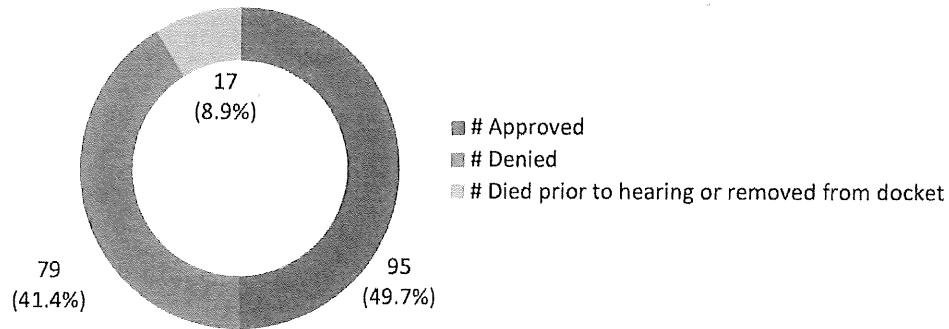
Characteristics of those granted CMR over the last seven years: Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date. Of the inmates who were granted CMR, most are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas counties, which is again reflective of the prison population in general. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases had an average of slightly more than five years left on their sentences to serve upon release. Most of the inmates recommended for CMR were diagnosed with some form of cancer.

Average number of approved and denied cases: During the seven-year period, an average of 13.6 of the 95 CMR cases were approved each year, an average of 11.3 of 79 cases were denied each year and an average of 2.4 of 17 cases involved inmates who died prior to docket each year. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

Average timeframes over the seven-year period from docket to death: Using the averages from the seven-year period, the Department would submit a request for CMR consideration for an inmate and it would be placed on the docket within 14 days. He would be released from prison within five days and would be deceased within five or six months (154 days). The average number of days from when FCOR receives the initial request for CMR to getting it put on the docket is 14, or two weeks. The average number of days from request received to death is 154 or slightly more than five months during the seven-year period. The average number of days from CMR request granted to the inmate being released to home or a facility is five; and the average number of days from release to home (or facility) to death is 133 or slightly more than four months. This number continues to decline, to the point that in FY1314, the average number of days from release from prison to death is 30.8 days.

Outcomes of those released to CMR: Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated the conditions of their CMR, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

Total CMR Cases FY 07/08-13/14



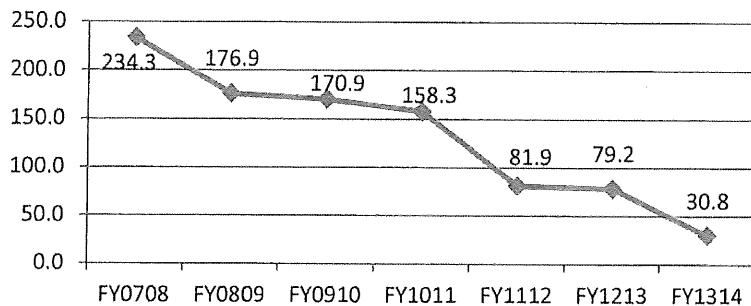
Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date.

CMR Case Outcomes FY 07/08-13/14

FY	# Approved	Percent of FY Total Approved	# Denied	Percent of FY Total Denied	# Died prior to hearing or removed from docket	Percent of FY Total Removed from Docket	FY cases	Total Percent for FY
FY0708	13	50.0%	9	34.6%	4	15.4%	26	100.0%
FY0809	20	55.6%	14	38.9%	2	5.6%	36	100.0%
FY0910	9	42.9%	9	42.9%	3	14.3%	21	100.0%
FY1011	17	56.7%	12	40.0%	1	3.3%	30	100.0%
FY1112	16	45.7%	17	48.6%	2	5.7%	35	100.0%
FY1213	12	52.2%	8	34.8%	3	13.0%	23	100.0%
FY1314	8	40.0%	10	50.0%	2	10.0%	20	100.0%
Total over 7 years	95	49.7%	79	41.4%	17	8.9%	191	100.0%
Averages	13.6		11.3		2.4		27.3	

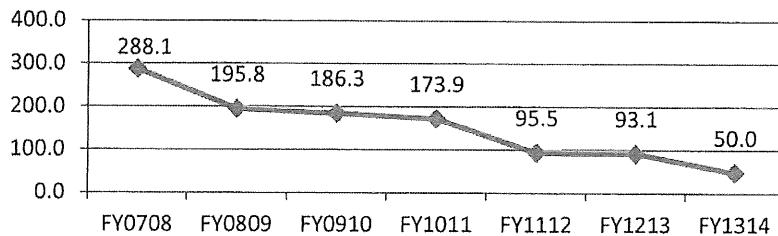
During the seven years covered, the “average” conditional medical release (CMR) gets put on the docket within two weeks (14.1 days) of requesting CMR, and is approved (49.7%). After approval, they wait an average of 5.1 days before they are released. After release, they live an average of 133.2 days, though during the last three years that average has dropped to 64 days. Only one of the 95 approved was serving time for a sex offense. The majority of diagnoses were for some form of terminal cancer, and the life expectancy was generally estimated at six months or fewer. During the seven-year period, the average number of CMR cases approved each year was 13.6, the average number denied was 11.3 and the average number who died prior to docket was 2.4. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%).

Average # of Days from Release Date to Death



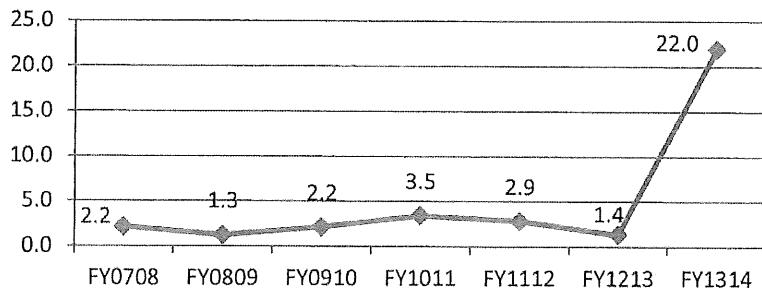
There has been a steady decline in the number of days inmates are living after release from prison on CMR, from a high of 234.3 days in FY0708, to a low of 30.8 days in FY1314. The overall average during the seven year period is 133.2 days from release from prison to death. With the change in eligibility standards from within six months of death to within 12 months, the number of days from release to death is expected to increase.

Average # of Days from Release Request to Death



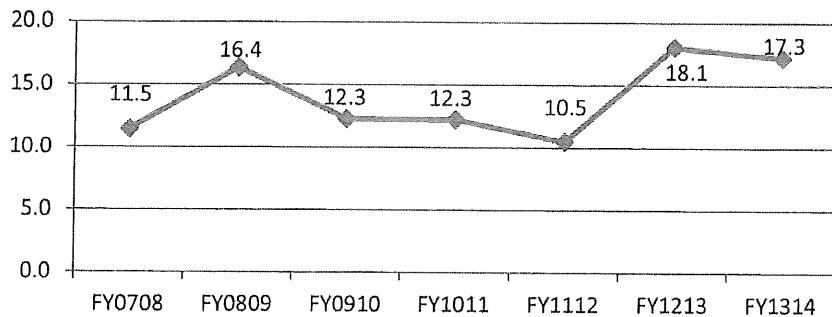
As would be expected based on the previous chart, the average number of days from when the request for CMR is received to when the inmate dies also continues to decline, from a high of 288.1 in FY0708 to a low of 50 days in FY1314. The overall average number of days from CMR request received to death is 154.6.

Average # of Days from Granted Date to Release Date



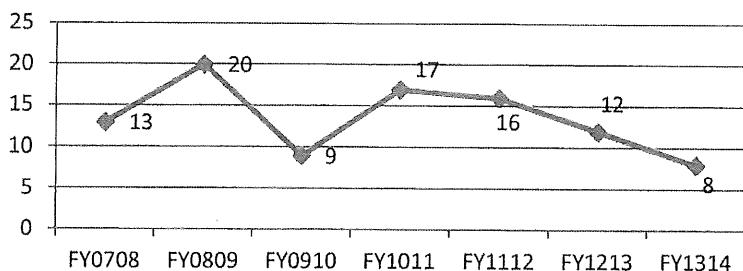
While the average is five days from grant to release, that number is skewed due to one unusual case in FY1314 that took 132 days. This case required that the inmate be accepted into a secure nursing home before release, delaying his release until a bed was available. Excluding that case, the average number of days from granted to release over the other six years is 2.3.

Average # of Days from Request Received to Docket



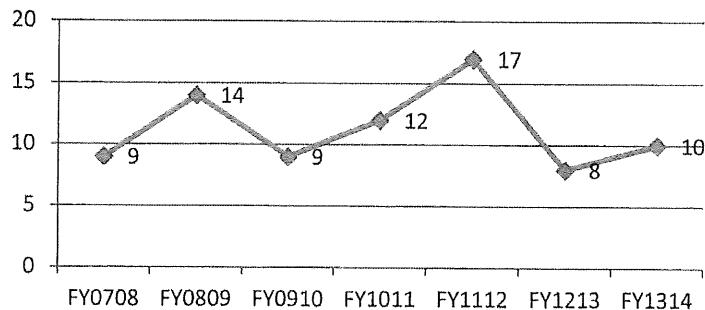
By the same token, FCOR does an excellent job of moving the request along once it's received to get it on the docket quickly, particularly considering there might not be a docket every week. The average has risen slightly over the past seven years, from 11 days to 17, with an average for the seven years of 14.1 days, or two weeks. While it is FCOR's practice to put these cases on the docket immediately, if the Commission is not voting that week it results in a delay to the following week's docket.

Total CMR Cases Approved



The number of FCOR CMR cases that have been approved over the last seven years has dropped, along with the number submitted. About half (49.7%) of all submitted cases are approved, on average.

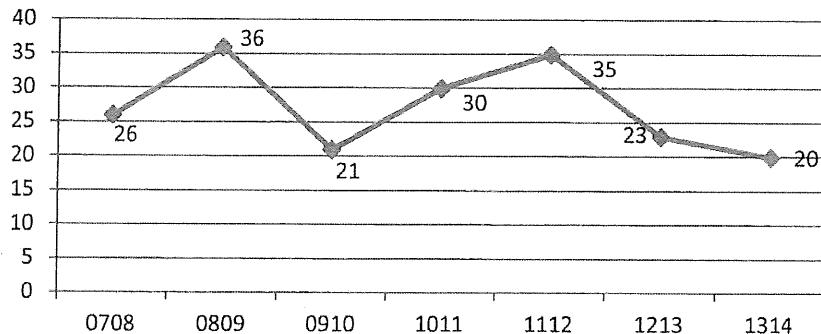
CMR Cases Denied



**Note these include both docketed and non-docketed cases.*

An average of 41.4% of CMR cases are denied each year, and another 8.9% expire prior to their case being heard and are removed from the docket.

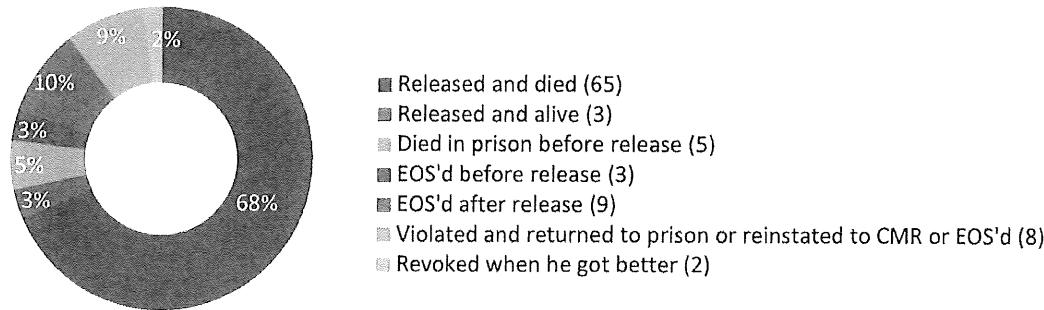
CMR Cases Referred to FCOR by FDC



The number of CMR requests submitted to FCOR from FDC each year has declined over the seven-year period, from 26 in FY0708 to 20 in FY1314 (including cases removed from docket during each of those years), even as the prison population has increased from 98,192 on June 30, 2008 to 100,942 on June 30, 2014*.

*FDC attributes the drop off to the transition of FDC's health services from a public to private enterprise.

Outcomes for Approved CMR Cases FY 07/08-13/14 (as of April 2015)



Approval Outcomes	FY1314	FY1213	FY1112	FY1011	FY0910	FY0809	FY0708	Total	Percent
Released and died	4	6	13	14	5	15	8	65	68.4%
Released and alive	2	1	0	0	0	0	0	3	3.2%
Died in prison before release	0	2	0	0	1	0	2	5	5.3%
EOS'd before release	0	1	0	0	0	1	1	3	3.2%
EOS'd after release*	1	1	2	2	1	1	1	9	9.5%
Violated and returned to prison or reinstated to CMR or EOS'd	0	1	1	1	2	2	1	8	8.4%
Revoked when he got better	1	0	0	0	0	1	0	2	2.1%
Total	8	12	16	17	9	20	13	95	100.0%

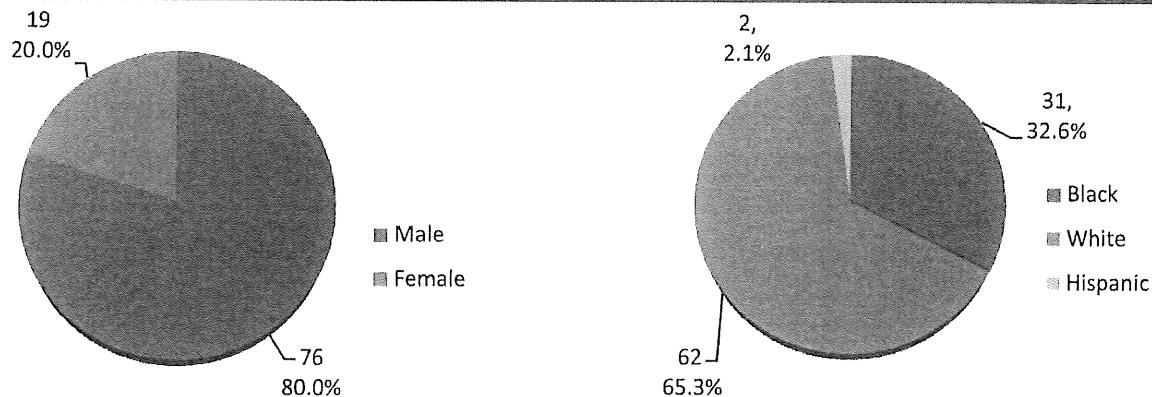
*FY1112 recidivated

Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

CONDITIONAL MEDICAL RELEASE: DEMOGRAPHICS

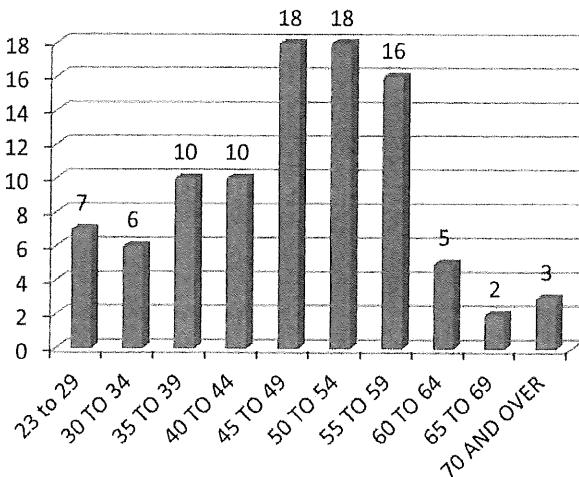
Who are the offenders being released to CMR? They are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. Some of the black and white offenders may also be Hispanic, but did not identify themselves as such when asked their race. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas (the most with 11 offenders or 11.6%) counties. The most common offense committed by those who were granted CMR was drug-related. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases were serving an average of slightly more than five years.

Gender, Race and Age of Inmates Granted CMR



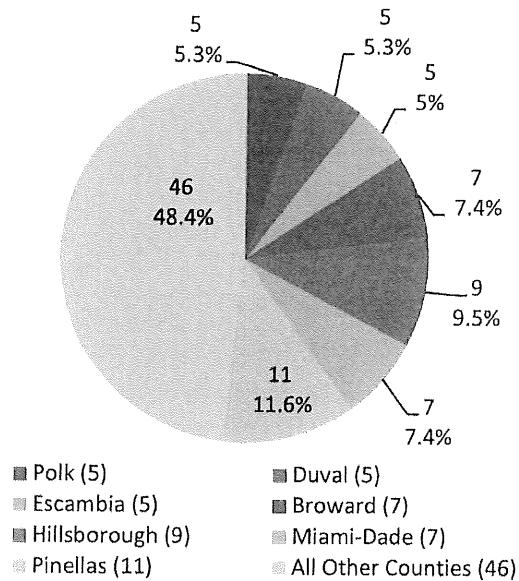
CMR inmates are consistently older than the general population. More than half (54.7%) of all CMR cases granted over the last seven years were ages 45-59, while only a quarter (25.4%) of the inmate population on June 30, 2014 fell into that category. More than a third (35.7%) of the CMR granted cases were age 50-59, compared to the general population on June 30, 2014 at 14.9%.

Age Ranges of Granted Cases	Number	Percent
23 to 29	7	7.4%
30 TO 34	6	6.3%
35 TO 39	10	10.5%
40 TO 44	10	10.5%
45 TO 49	18	18.9%
50 TO 54	18	18.9%
55 TO 59	16	16.8%
60 TO 64	5	5.3%
65 TO 69	2	2.1%
70 AND OVER	3	3.2%
TOTAL	95	100.0%



County of Offense of Inmates Granted CMR

The four counties with the highest number of CMR cases (Pinellas, Hillsborough, Miami-Dade and Broward) are also in the top five counties for the number of inmates sentenced from those counties as of June 30, 2014. The number of CMR cases from these top four counties comprise more than a third of all the cases over seven years (35.8%). Adding the next three highest counties with approved CMR cases, Polk, Duval and Escambia, brings the total in just those seven counties to 51.6% of all the cases approved over seven years.

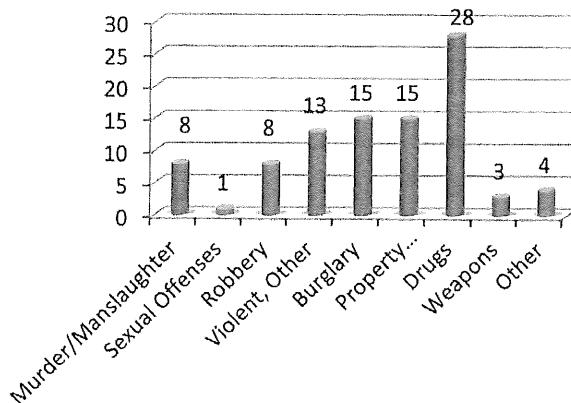


County of Offense	Number	Percent
ALACHUA	1	1.1%
BAKER	1	1.1%
BAY	1	1.1%
BREVARD	4	4.2%
BROWARD	7	7.4%
CALHOUN	1	1.1%
CHARLOTTE	1	1.1%
CITRUS	2	2.1%
CLAY	1	1.1%
COLLIER	2	2.1%
COLUMBIA	2	2.1%
DIXIE	1	1.1%
DUVAL	5	5.3%
ESCAMBIA	5	5.3%
GADSDEN	1	1.1%
HERNANDO	1	1.1%
HILLSBOROUGH	9	9.5%
INDIAN RIVER	1	1.1%
LEE	4	4.2%
LEON	1	1.1%
MADISON	1	1.1%
MANATEE	1	1.1%
MARION	1	1.1%
MIAMI-DADE	7	7.4%
NASSAU	1	1.1%
OKALOOSA	1	1.1%
ORANGE	3	3.2%
PALM BEACH	2	2.1%
PASCO	1	1.1%
PINELLAS	11	11.6%
POLK	5	5.3%
PUTNAM	1	1.1%
SARASOTA	1	1.1%
SEMINOLE	2	2.1%
SUWANNEE	2	2.1%
UNION	1	1.1%
VOLUSIA	1	1.1%
WALTON	2	2.1%
Total	95	100.0%

Type of Offense by Inmates Granted CMR

Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender has been granted CMR in the last seven years.

Granted CMR Cases by Type of Offense	Number	Percent
Murder/Manslaughter	8	8.4%
Sexual Offenses	1	1.1%
Robbery	8	8.4%
Violent, Other	13	13.7%
Burglary	15	15.8%
Property theft/damage/fraud	15	15.8%
Drugs	28	29.5%
Weapons	3	3.2%
Other	4	4.2%
TOTAL	95	100.0%



CONDITIONAL MEDICAL RELEASE: STATUTES AND RULES

Florida Statute 947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

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

(b) "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) Notwithstanding any provision to the contrary, any person determined eligible under this section and sentenced to the custody of the department may, upon referral by the department, be considered for conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death. No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(3) The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan to include necessary medical care and attention. The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and shall refer them to the commission for consideration. In considering an inmate for conditional medical release, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(4) The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include periodic medical evaluations at intervals determined by the commission at the time of release.

(5)(a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

Administrative Rule: 23-24.040 Conditional Medical Release Postponement and Rescission

(1) Should any person who has been voted a conditional medical release become the subject of inmate disciplinary or classification proceedings, or become the subject of criminal arrest, information or indictment, or should the release plan prove unsatisfactory prior to actual physical release from the institution of confinement then, any Commissioner can postpone the release date.

(2) The inmate's release date can be postponed for sixty (60) days. On or before the sixty-first (61) day, the Commission shall either release the inmate on conditional medical release or order a Commission investigator to conduct a rescission hearing on the matter of the infraction(s), new information, acts or unsatisfactory release plan as charged.

(3) At a rescission hearing, the inmate shall be afforded all due process safeguards required by law and shall be properly notified not less than seven (7) days prior to the hearing.

(4) The rescission hearing shall be scheduled within fourteen (14) days of the date the Order for a Rescission Hearing is signed by the Commission.

(5) The hearing may be continued or postponed due to the inability of any party or witness to attend or for other good cause (for example, new disciplinary reports, state of emergency, prison lock-down, etc.).

(6) New disciplinary reports received after the Order of Postponement, but prior to the date of the hearing shall be considered at the rescission hearing, after re-noticing the inmate. (7) The investigator is not required to find the inmate guilty or not guilty at the rescission hearing, but to determine if any circumstances exist beyond the documentation which provided the basis of the Commission's decision to postpone the release.

(8) If the release has been postponed due to an unsatisfactory release plan, the investigator should receive testimony from the inmate and any witnesses as to if an alternate plan exists which may be presented to the Commission for consideration. (9) Following the rescission hearing, the Commission shall determine whether good cause has been established to rescind conditional medical release. The Commission shall then either order the release of the inmate on the same conditions or rescind the release. (10) If the Commission receives information from the Department of Corrections that the inmate no longer qualifies for conditional medical release based on an improvement in the medical condition, a rescission hearing is not required. However, the Commission shall provide written notice to the inmate that release has been rescinded due to a failure to qualify pursuant to Florida Statute, Section 947.149.

Rulemaking Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History—New 1-5-94, Amended 2-12-13, 7-30-14.

Conditional Medical Releases

CONDITIONAL MEDICAL RELEASE FOR THE LAST 10 FISCAL YEARS					
Fiscal Year	CMR Docket Cases (Code 48)*	Individuals Referred by FDC (docket dupes removed)	Commission Action Granted (Code 49)	Total Released	Release Comments
FY0708	28	24	14	10	Total 14, two died before release, one EOS, 1TBD
FY0809	42	36	20	19	Total 20, one EOS
FY0910	20	19	9	8	Total 9, one died before
FY1011	38	30	16	16	Total 16
FY1112	39	34	16	16	Total 16
FY1213	28	21	12	7	Total 12, two died before release, two EOS, one TBD
FY1314	22	21	8	6	Total 8, two still in prison as of end of FY1314
FY1415	38	35	15	14	Total 14 released during FY; one died before
FY1516	55	51	29	27	Total 27 released - One to EOS; two others not
FY1617	37	34	16**	14	Total 14 released - one died before release; one

*Every docketed case (code 48) is counted, even if it's the same inmate more than once.

** One inmate was granted CMR twice.

16 Conditional Medical Releases Granted in FY1617

A total of 37 inmates were docketed for CMR this FY (three were docketed twice), and 16 or about 43% were granted conditional release. Of those 16, 14 were released during FY1617, and one died before

Analysis of US Compassionate and Geriatric Release Laws: Applying a Human Rights Framework to Global Prison Health

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Abstract The purpose of this paper was to analyze the compassionate and geriatric release laws in the USA and the role of advanced age and/or illness. In order to identify existing state and federal laws, a search of the LexisNexis legal database was conducted. Keyword search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. A content analysis of 47 identified federal and state laws was conducted using inductive and deductive analysis strategies. Of the possible 52 federal and state corrections systems (50 states, Washington D.C., and Federal Corrections), 47 laws for incarcerated people, or their families, to petition for early release based on advanced age or health were found. Six major categories of these laws were identified: (1) physical/mental health, (2) age, (3) pathway to release decision, (4) post-release support, (5) nature of the crime (personal and criminal justice history), and (6) stage of review. Recommendations are offered, for increasing social work policy and practice expertise, and advancing the rights and needs of this population in the context of promoting human rights, aging, health, and criminal justice reform.

Keywords Older adults · Criminal justice · Compassionate and geriatric release laws · Content analysis · Human rights · Social work · Forensic social work

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Introduction

Correctional systems across the globe are struggling with managing the rapidly growing aging and seriously ill population. In the USA, approximately 200,000 adults aged 55 and above are behind bars, many of which have a complex array of health, social service, and legal needs that all too often go unaddressed prior to and after their release from prison (Human Rights Watch [HRW] 2012). The large number of older people in prison is partially attributed to the passage of stricter sentencing laws, such as “Three Strikes You’re Out” and the subsequent mandatory longer prison terms (American Civil Liberties Union [ACLU] 2012). These restrictive policies have created a human-made disaster in which many sentenced to long-term prison sentences will reach old age while in prison or shortly after their release. Social work, interdisciplinary scholars, and human rights advocates view the current crisis as a human rights issue that impact the rights and needs of the aging and seriously ill population (Byock 2002; HRW 2012).

Compassionate and Geriatric Release Laws

Beginning in the 1970s, there has been a growing awareness among lawmakers and other professionals, especially in the USA, of the need for compassionate and geriatric policies to address the growing aging and health crisis in prisons. Currently, medical parole and compassionate release laws, and programs for mostly nonviolent, terminally ill incarcerated people have been implemented in an effort to transition aging and/or serious or terminally ill incarcerated people to community-based care (Chiu 2010; Williams et al. 2011). Most of the social work and interdisciplinary scholarly literature in law and medicine in the USA has focused on compassionate release laws (Ferri 2013; Jefferson-Bullock 2015; Green 2014; Williams et al. 2011). The authors of these

journal articles describe the legal/ethical practice and financial dilemmas posed when incarcerating older and seriously ill people. These authors acknowledge that, in theory, the release of persons with serious and/or terminal illness from prison to the community is cost-effective. However, there are difficulties noted in their implementation including bureaucratic red tape and negative public attitudes toward more compassionate approaches to criminal justice (Coleman 2003; Ferri 2013; Jefferson-Bullock 2015; Kinsella 2004; Green 2014; Williams et al. 2011).

To date, there has not been comprehensive human rights-based analysis of both the compassionate and geriatric release laws in the USA. The USA is a compelling case study because it has the largest population of adults aged 50 and older ($N = 200,000$; ACLU 2012) behind bars. Additionally, the USA has 50 states in which laws vary by provisions based on a variety of eligibility factors including age, physical and mental health, and legal status. Therefore, the purpose of this content analysis of the US compassionate and geriatric release laws was to compare the provisions of current laws and to evaluate the extent to which these were consistent with human rights guidelines. This review was guided by the following research questions: (1) What are the characteristics of compassionate and geriatric release laws in the USA? And (2) to what extent are existing compassionate and geriatric release laws consistent with core principles of a human rights framework? As detailed in the discussion section, the results of this review have implications for social work and human rights for improving social work and interdisciplinary and intersectoral responses to the treatment of criminal justice involved aging and serious and terminally ill people (Anno et al. 2004).

Applying a Human Rights Framework

Applying a human rights framework to the laws, policies, and practices with aging and seriously ill people in prison can be used to assess the extent to which these laws meet basic human rights principles. In particular, the principles of a human rights framework can provide assessment guidelines for developing or evaluating existing public health and criminal justice laws or policies, such as USA compassionate and geriatric release laws. The underlying values/principles of a human rights framework include dignity and respect for all persons, and the indivisible and interlocking holistic relationship of all human rights in civil, political, economic, social, and cultural domains (UN 1948). Additional principles include participation (especially with key stakeholder input on legal decision-making), nondiscrimination (i.e., laws and practices in which individuals are not discriminated against based on differences, such as age, race, gender, and legal history), transparency, and accountability (especially for government transparency and accountability with their citizens; Maschi 2016).

The Universal Declaration of Human Rights (UDHR) also is an instrument that provides assistance with determining the most salient human rights issues affected. Ratified in 1948 as a response to the atrocities of World War II, the UDHR was voted in favor of by 48 countries, including the USA (UN 1948). It provides the philosophical underpinnings and relevant articles to guide policy and practice responses to the aging and serious and terminally ill in prison. The UDHR preamble underscores the norm of “respect for the inherent dignity and equal and inalienable rights” of all human beings. This is of fundamental importance to crafting the treatment and release of aging and seriously ill persons in prison.

There are several UDHR articles that are important to consider when providing a rationale and response to the aging and seriously ill population in prison. For example, Article 3 states, “Everyone has the right to life, liberty, and the security of person.” Article 5 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 states, “Everyone has the right to recognition everywhere as a person before the law.” Article 8 states “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,” and Article 25 states, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food and clothing” (UN 1948, p. 3–7).

The United Nations Office on Drugs and Crime (UNODC 2009) Special Needs Handbook also offers additional guidelines to assess policy and practice responses to the aging and/or seriously and terminally ill in prison. According to the UNODC (2009), older prisoners, including those with mental and physical disabilities, and terminal illnesses are a special needs population and as such are to be given special health, social, and economic practice and policy considerations (UNODC 2009). The handbook also addresses the issue of age in corrections. It is of note that the age at which individuals are defined as “older” or “elderly” in the community often differs from the definition of elderly applied in corrections. Globally, many social welfare systems, including the USA’s, commonly view adults as older when they reach the age of 65 because that is when most individuals are eligible to receive full pension or social security benefits. However, although it varies among states, incarcerated persons in the USA may be classified as “older adult” or “elderly” as young as age 50 (HRW 2012; UNODC 2009).

Study Significance

The results of this review also have important implications for global social service, health and correctional systems, and policymaking bodies. While these findings may not generalize globally, conducting a comparative analysis of the regional laws of one country, such as the USA, may be useful for

developing or refining existing laws internationally. This information also can be used by social workers to collaborate with correctional and community service providers. In particular, forensic social workers, especially those who are trained in case management, can play an important role in facilitating the release process and smooth care transitions of aging and seriously ill people released from prison (Office of the Inspector General, 2016). Local and global policy makers, including social workers, also can use these findings to craft more human rights responsive laws and policies that affect this vulnerable population.

Methods

In order to identify all of the compassionate and geriatric release laws in the USA, the research team conducted a comprehensive search of the LexisNexis legal database. The following key word search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. Identified laws were included in the sample if they met the following criteria: (1) identified aging or seriously ill people in prison and (2) were a law or policy regarding early release from prison based on age or health status. Two trained research assistants reviewed the laws and coded the data. The team met weekly for a 6-month period with the lead researcher until 100 % consensus was reached for all categories of data extracted. The search located 52 federal and state corrections systems (50 states, Washington DC, and Federal Corrections). Of the 52, 47 were found to have a law for incarcerated people or a family member (or surrogate) to petition for early release based on advanced age or health. There was no evidence of any applicable law or provision found in five states (i.e., Illinois, Massachusetts, South Carolina, South Dakota, and Utah).

Data Analysis Methods

Interpretive content analysis strategies as outlined by Drisko and Maschi (2016) were used to analyze the compassionate and geriatric release laws from the USA. Interpretive content analysis is a systematic procedure that codes and analyzes qualitative data, such as the content of published articles or legal laws. A combination of deductive and inductive approaches can be used, and this strategy was used in the current review. Deductive analysis strategies were used to extract the data by constructing preexisting categories for the criteria commonly found in compassionate and geriatric release laws (e.g., age, physical and mental health status, nature of crime). For each category, counts of state and federal laws were then calculated for frequencies and percentages of each category (e.g., 13 states had laws with age provisions).

Inductive analysis strategies were used to analyze any emerging or new categories that could not be classified in existing categories. Tutty and colleagues' (1996) four-step qualitative data analysis strategies were utilized to analyze this data. Step 1 involved identifying "meaning units" (or in-vivo codes) from the data. For example, the assignment of meaning units included the assigning codes. In step 2, second-level coding and first-level meaning units were sorted and placed in their emergent categories. Meaning unit codes were arranged by clustering similar codes into a category and separating dissimilar codes into separate categories. The data were then analyzed for relationships, themes, and patterns. In step 3, the categories were examined for meaning and interpretation. In step 4, conceptually clustered matrices, or tables, were constructed to illustrate the patterns and themes found in the data, including characteristics of the principles of a human rights framework (Miles and Huberman 1994).

Summary of Findings

Out of 50 states plus Washington, DC, and a Federal Law (totaling 52 jurisdictions), 47 jurisdictions including Washington, DC, and the Federal Government were found to have compassionate or geriatric release laws. Five states did not have any publicly available records of compassionate or geriatric release laws (i.e., IL, MA, SC, SD, and UT). After review of the laws from these 47 legal systems in the USA (45 separate US States and D.C., as well as one federal law), basic structural consistencies were found that impacted the determination for early release or furlough from prisons based on physical or mental incapacity or advanced age. Six categories of compassionate and geriatric release laws identified were (1) physical/mental health status, (2) age, (3) nature of crime (i.e., personal and criminal justice history or risk level), (4) pathway to release decision, (5) post-release support, and (6) stage of review (i.e., initial ground-level investigation for a release petition).

Physical and Mental Health Status and Life Limits

Conditions for release in some US laws were based on physical and mental health status, including life limits. These early release or parole and furlough laws have some definition or measurement in which they can determine if an incarcerated person may be eligible for release. This included level of medical infirmity, age, and/or psychological or mental facility (see Tables 1 and 2). Some US states or federal laws used vague language about what conditions were viable for parole or furlough. In comparison, other laws were very specific about conditions for release. For example, some laws considered the potential threat to society or level of public safety risk of

Table 1 Characteristics of laws that specify the conditions that warrant release

	Illness is terminal or incapacitating		Mental health consideration	Age±disability
	With a lifespan time limit	Without a lifespan time limit		
Number of states	17	19	17	14
Abbreviations	AK, AR, DC, HI, KS, KY, MO, MT, NC, NJ, NM, NV, PA, RI, TN, US FED, WY	AL, CT, FL, GA, ID, IN, KS, LA, MD, MN, NE, NH, NY, OH, OK, OR, TX, VT, WI	AK, AL, AR, DE, KS, MD, MI, MS, NH, NJ, RI, TN, TX, US FED, WI, WV, WY	AL, CT, DC, LA, MO, NC, NM, OR, TX, US FED, VA, WA, WI, WY

the incarcerated person. Other laws focused on the high cost of treatment or considered a combination of age, health, and risk factors that influenced release. There was little consistency, or even clarity, among these 47 laws about the well-being of the incarcerated people and their families, and/or victims and their families included across these US laws.

When determining if the incarcerated person's medical health warrants potential early parole or furlough, 36 laws used terminal illness as the consideration. Of those, 17 included a maximum anticipated survival period or time limit for life expectancy. For example, the US federal law includes a time limit of 18 months for the patient to survive in order to be considered for parole. In contrast, the state laws most often included a limit for life expectancy of 6 or 12 months to live. However, in one state, Kansas, the period is only 30-day life expectancy. In the 19 cases where states do not specify the time period for life expectancy, terminal illness is included as a potential factor for early release, as are terms such as "imminent peril of death" or "illness from which the inmate will not recover," or simply, "terminal illness."

The US laws also had provisions for mental or psychological health as a consideration for early release. Seventeen states included mental health capacity as a factor to consider for early parole or furlough. These 17 laws refer to any mental or psychological infirmity that results in incapacity to care for oneself or renders the person bedridden and/or incapable of caring for his or her activities of daily living (ADL). All of

these laws required evaluation by both medical and mental health care professionals to make the determination of functional capacity. Only one state, Texas, mentioned "mental retardation" as a potential consideration for parole. Only the US federal prison system is quite specific in defining cognitive impairment associated with either brain injury or disease, such as Alzheimer's.

When reviewing general health conditions that may be factors for early release or furlough, many laws (27) used language that indicated that the incarcerated person was incapacitated in such a way that he/she was incapable of performing activities of daily living, or was incapacitated in general. Fifteen of the laws stated that precondition for early release was that the incarcerated person must be incapacitated either due to age, mental health, or illness, and be a low level risk to society. In some laws, assessing level of public safety risk was the only factor that the medical staff must evaluate before making an application to the parole board or judiciary. In some state laws, the healthcare costs to the prison system are a consideration for early release of an individual.

Several laws that identified criteria for early release simply used terms such as "serious medical syndrome" or "needing medical attention." Many of the states that included vague language around what constellation of factors amount to the likelihood of early release seemed to have fewer transparent processes, leaving the decision to the parole board's discretion on a case-by-case basis.

Table 2 Legal considerations for release

	Considerations for early release for incapacitated or terminally ill patients included in legal language			
	No threat to society	Incapacitated so cannot care for self	Cost to treat is too high	General healthcare to be qualitatively assessed
Number of States	15	27	4	16
Abbreviations	CT, DC, LA, MD, MN, MT, NM, NC, NV, OK, TN, TX, US FED, VT, WY	AK, AL, AR, CA, CT, DC, GA, ID, KS, KY, MI, MN, MO, NC, NE, NJ, NM, NV, NY, OR, TN, TX, US FED, VT, WA, WI, WY	AK, GA, RI, WA	AL, AR, CO, DE, FL, HI, IN, MI, MN, MS, ND, NH, NJ, OH, PA, WV

Age as a Consideration

Some states used age as a factor for considering early release. As illustrated in Table 3, of the 47 laws, only 13 had laws with provisions that considered age (ranging from 45 to 65 or older) as a determining factor for potential early parole (12) or furlough (1). In each law, age itself was not the sole determinant for release, but age in association with some degree of being unable to care for oneself, or an indication of some lack of capability in terms of performing activities of daily living. Most states did not define elderly. If age was defined, it mostly was delineated as 65 and older. Three states and the Federal Government limited how long an incarcerated elder must have served prior to considering advanced age as a factor for early release.

Interestingly, Oregon was the only state whose law recited language on the humane treatment of the aging population and stated that without the release of the prisoner at the advanced age/infirmity, their incarceration may be considered cruel or inhumane. All other states required that an incarcerated person of advanced age, as defined by each, had some incapacity that either was permanent and costly or rendered the incarcerated person unable to physically harm society in any way.

In several US laws, the age of the applicant was almost always considered a determining factor only in conjunction with a medical or cognitive condition. That is, age as a sole factor did not only justify release but also included the presence of a chronic and/or serious health issue. The few exceptions in state laws included Alabama and Louisiana, which considered age only as a reason to release an incarcerated person without incapacity. However, the incarcerated person's level of risk based on offense history and crimes was weighted heavily when determining release based on age without the presence of a notable serious or chronic health condition.

Pathway to Release Decision

As shown in Table 4, similar to mental and physical health considerations, the pathways to release decisions varied from state to state. Only 18 of the states had very specific and strictly defined pathways to follow for compassionate release and early parole eligibility. The more specific rules included the mechanism, such as the individual or committee that made the final determination for release or furlough. Eleven states had very clearly written rules governing physician documentation, how many or which physicians would be considered for review, and what factors must be included in their medical letter.

In these US laws, early release applications were subject to official parole board review. The series of steps in order to reach the parole board and the supporting documentation varied across laws. Of the 17 states noted above that had clearly written review procedures, most required the deputy warden,

Table 3 States including language around age as a factor for early release

States including language around age as a factor for early release	
State:	Age specification:
Alabama	55+
Connecticut	65 or "advanced"
Louisiana	45+ and serving at least 20 years of a 30+ sentence
Missouri	"Advanced"
North Carolina	65+
New Mexico	65+
Oregon	No specification
Texas	No Specification
Virginia	60+
Washington	No specification
Wisconsin	No specification
Wyoming	65+
US Federal Law	65+ and dependent on % of time served

in conjunction with the prison medical director, review all documentation prior to making a submission to the parole board. Often, the laws specified that the incarcerated person or his/her family or legal advocate petitions the parole board directly. The medical director could also petition for early release if the incarcerated person could not do so themselves. The 29 states that had less clearly defined provisions often specified that parole review boards consider all information prior to rendering a final decision. At least three states had requirements that the parole board must review the request for early parole within a certain number of days (e.g., 30 days). Other laws seemed to assume that the case would be heard in a

Table 4 The pathway and process for determination of release

Number of States	Process for determination of release		
	More malleable decision-process for release	Clearly defined process and rules for release	Clearly written rules around physician documentation
28*	28*	17	11
Abbreviations	AK, AZ, CO, CT, DE, FL, GA, HI, IN, KY, LA, MD, MI, MN, ND, NE, NH, NM, OH, OK, OR, PA, US, FED, VA, VT, WA, WV, WY	AL, AR, CA, DC, ID, KS, MO, MS, MT, NC, NJ, NJ, NV, NY, RI, NJ, NV, NY, RI, TN, TX, WI	AK, AL, AZ, CA, MO, NC, NJ, NY, TX, WI, WY

*IA and ME have precedent for early parole but no law in place

timely manner or be reviewed by the next meeting of the parole board.

Some laws specified that a request for early release would be in the form of an application or petition to the parole board. Additionally, a submission of a post-release plan was also customary. Some laws addressed where the incarcerated person would receive post-release medical care or hospice services (Table 5). In some laws, these placements were to be vetted by the medical staff of the prison. Social workers or case managers were designated to provide other services, such as family supports, discharge planning, and care coordination.

Eighteen of the laws noted that the medical hospital or hospice, or family home with healthcare professionals, must be vetted prior to release to ensure both safety and proper healthcare. In addition, 11 of the laws mentioned that the incarcerated person must have financial resources to cover healthcare, such as Medicaid, in place prior to early release. Five of the laws mentioned a holistic style of care, including emotional support for the incarcerated person and family, as well as reintegration support. Of the states that allowed for the patient to live in the home with medical care, nine states cited “family conditions” or “support for the family as caregivers” as factors. Some laws mentioned that victim notification and participation as a condition must be met as part of the release petition.

Interestingly, many states, including the federal system, also required that the released person be closely monitored by a parole or medical officer to ensure that the released person’s physical health did not improve. If the incarcerated person’s condition should improve to the point they could function to perform activities of daily living or are no longer terminally ill, the incarcerated person must be returned to prison to complete their full sentence.

Assessing Level of Risk: Nature of Crime (Criminal Offense History)

As shown in Table 6, most US states/Federal prisons excluded some incarcerated people—regardless of their overall health—from potential early release. Most laws stipulated that eligibility for early parole or furlough, the incarcerated person must be convicted of an offense with potential for parole ($n = 25$). Some jurisdictions also specified that the incarcerated person may not have been convicted of murder, either first or second degree ($n = 7$). However, most exclusions were focused upon the incarcerated person who has committed a Class A (e.g., murder or treason), B (e.g., homicide, drug trafficking, or violent assault), or C felony (e.g., some types of assault, fraud, theft, robbery, larceny, drug distribution).

In addition, 11 of the states/Federal laws and regulations excluded incarcerated persons convicted of offenses of a sexual nature. For those incarcerated persons with serious offense histories, a psychologist or psychiatrist must also investigate

Table 5 Post-release support in place for release

	Post-release support in place			
	Medical facilities vetted	Financial coverage	Holistic support system	Family or support conditions
Number of States	18	11	5	9
Abbreviations	AK, DC, ID, IN, KS, MD, MN, MO, NC, NE, NJ, NM, NY, TN, TX, US FED, VT, WY	AK, AL, CO, ID, KS, MO, MT, NY, TN, US FED, WY	AK, AL, CO, ID, MN, NC, NJ, NY	AK, AL, MD, MN, MT, NC, NJ, NY, US FED

and determine their level of risk for potential harm to society and recidivism. Nine state laws (KS, KY, MD, MT, NC, NV, NY, TN, and WI) included provisions that victims or their families must be notified of an upcoming case for parole or furlough, and may participate in the hearing (if there is one) or submit a letter or an opinion concerning the potential release of the prisoner.

Style of Review

Forty-seven US laws differed in their style of review which ranged from strictly regulated to very discretionary release determinants. In addition to factors, such as age, physical and mental health status, and level of risk, other determinants included a state’s ability to grant medical release. For example, if the governor or Deputy Warden “deemed it beneficial,” either for reasons of cost or overcrowding, early release could be granted.

Table 6 Type of crime considered for early release

	Type of crime considered for early release			
	Ability for parole and/or without sentence of death	Excluding murder	Consider % of time served	Excluding sexually oriented crimes
Number of States	25	7	8	11
Abbreviations	AK, CA, CT, DC, FL, ID, KY, LA, MD, MO, MS, MT, NC, NE, NH, NJ, OR, RI, TN, TX, US FED, VA, WA, WI, WY	AL, DC, LA, NJ, NM, NY, OR	CT, DE, IN, MO, MS, NC, NY, OH	AK, AL, AR, CO, ID, KY, MS, NC, NJ, TX, WI

Discussion

Implications for a Human Rights Approach to Social Work

The purpose of this content analysis was to describe and analyze the compassionate and geriatric release laws in the USA. As noted in the findings section, we found that these laws had one or more provisions that fell within one of these six major categories. These categories were (1) physical/mental health status, (2) age, (3) nature of the crime (e.g., offense history), (4) pathway to release decision, (5) post-release support, and (6) stage of review. These findings have important implications for social workers and other key stakeholders who want to advance the human rights of justice involved vulnerable populations of older persons and persons with physical or mental disabilities or terminal illnesses, especially those in prison. The 2015 release of the Council on Social Work Education's Educational Policy (CSWE 2015) states the "purpose of the social work profession is to promote human and community well-being" (CSWE 2015, p. 1). This purpose is inclusive of all individuals regardless of their backgrounds, including criminal justice histories. Two particularly relevant skills for social workers, who want to respond to the crisis of the aging and dying in prison, are to engage in human rights and social and economic justice and to understand laws and regulations that may impact practice at the micro, mezzo, and macro levels (CSWE 2015).

The US laws governing compassionate and geriatric release are an example of an intersectional human rights issue that bridges aging, health, and criminal justice practice and policy arenas. An often unrecognized human rights area of the social work profession is the specialization of forensic social work ((Maschi and Leibowitz 2017)). Forensic social workers, who are often referred to as practicing at intersection of social work and the law, are trained in micro (e.g., clinical) and/or macro (e.g., intersectoral collaboration and policy level) interventions. In particular, geriatric forensic social workers are well positioned to prevent or intervene with the aging and dying in prison issue because of combined generalist and specialized practice knowledge and skills. Given this current crisis, a two-pronged approach to clinical and policy practice in diverse settings, such as prisons, and with diverse populations, such as incarcerated older people is necessary (Maschi et al. 2013). For example, in many of the research, practice, and policy recommendations noted in the Office of the Inspector General's report (2015), social workers can play a role in addressing all of them. These recommendations are:

1. Consider the feasibility of placing additional social workers in more institutions, particularly those with larger populations of aging inmates.

2. Provide all staff training to identify signs of aging and assist in communicating with aging inmates.
3. Reexamine the accessibility and the physical infrastructure of all of its institutions to accommodate the large number of aging inmates with mobility needs.
4. Study the feasibility of creating units, institutions, or other structures specifically for aging inmates in those institutions with high concentrations of aging inmates.
5. Systematically identify programming needs of aging inmates and develop programs and activities to meet those needs.
6. Develop sections in release preparation courses that address the post-incarceration medical care and retirement needs of aging inmates.
7. Consider revising its compassionate release policy to facilitate the release of appropriate aging inmates, including by lowering the age requirement and eliminating the minimum 10 years served requirement (Office of Inspector General, United States Department of Justice. 2015, p. 3–4).

Applying a Human Rights Approach to Justice Policy Reform

Most relevant to this paper, a human rights approach can be applied to assess the laws, policies, and practices to the extent to provisions of existing compassionate and geriatric release laws meet basic human rights principles. As described in the introduction, the principles of the human rights framework are dignity and worth of the person, the five domains of human rights (i.e., political, civil, social, economic, and cultural), participation, nondiscrimination, and transparency and accountability (UN 1948). Developed by the first author, the Compassionate and Geriatric Release Checklist (CGR-C, Maschi 2016) was created for social workers, policymakers, advocates, and other key stakeholders to use as an assessment tool to develop or amend existing compassionate or geriatric release laws (please contact the authors for a copy of the checklist). This tool also can be used by social workers to prepare expert testimony for local, state, or federal hearings or as an educational or professional training exercise. Applying a human rights framework, the checklist consists of six assessment categories for compassionate and geriatric release laws: dignity and respect of the person, promotes political, civil, economic, social, and cultural rights, nondiscrimination, participation, transparency, accountability, and special populations served.

A human rights-based analysis using the framework as highlighted in the checklist suggests that most of the provisions of each US compassionate and geriatric release often fall short of meeting the basic human rights principles that speak

to the dignity and worth of the incarcerated person, family and victim rights and supports, and accountability and transparency on the part of the judicial and correctional systems to grant release. Additionally, the majority of the US compassionate and geriatric release laws fell short of inconclusive nondiscrimination provisions. This is especially true when assessing level of risk of incarcerated people with histories of sex or violent offenses. Based on available research, this type of provision is overly restrictive. For example, research shows that older adults with diverse offense histories have low recidivism rates (1–5 %) compared to their younger counterparts and person (ACLU 2012; Jhi and Joo 2009). For example, in a study investigating whether risk factors for recidivism remained stable across age groups ($N=1303$), the findings showed that rates decreased in older age groups (ages 55 and older) (Fazel et al. 2006). These findings are consistent with recidivism rates in studies with international samples of older sexual offenders, including research conducted in the UK, the USA, and Canada. Given these findings about older age and the reduced risk for recidivism, it is important to underscore that incarcerated individuals with violent offense histories (despite their failing health status) or elderly in US federal and state prisons are often nevertheless excluded from compassionate or geriatric release provisions (HRW 2012).

Applying a Multitiered Practice Model for All Levels of Prevention and Intervention

The 2012 Report of the United Nations High Commissioner for Human Rights (UN 2012) urges that specialized treatment be given to older adults and seriously ill people in prison and post-release. The need for specialized treatment is because many incarcerated elders experienced histories of accumulated disadvantages and currently are experiencing grave human rights conditions in prison. Therefore, when crafting a human rights-based social work, a multitiered prevention and intervention response to the current crisis and the process that led to it is needed. One helpful human rights-based practice model is Wronka's (2007) Advanced Generalist/Public Health (AGPH) Model. The AGPH model conceptualizes four interventions levels designed to prevent or alleviate social problems, such as the crisis and the process leading to the aging and seriously ill people in prison. These coincide with macro, mezzo, micro, meta-micro, and meta-macro, and research levels of intervention. Although research has its own level, it also informs all intervention levels (Wronka 2007). These levels of intervention are described and then applied to how social workers can address the aging and dying crisis below.

Macro and meta-macro levels In the AGPH model, the macro level is a target of primary intervention strategies. The macro level targets a whole national population, such as the USA, to prevent a problem, such as the crisis of aging and dying

people in prison. The purpose of primary intervention strategies is to prevent individuals, families, and community from experiencing health and justice disparities (Maschi and Youdin 2012; Wronka 2007). An example of a primary intervention strategy is the development and implementation of a national campaign for criminal justice reform, especially with regard to peeling back the punitive and strict long-term sentencing policies that emerged in the 1980s. These policy advocacy strategies are an area where social worker are involved and/or could be more actively involved in crafting a more compassionate response to the aging and seriously ill in prison.

In an even larger meta-macro level, the focus is international. An example of a global prevention initiative is a social media campaign that promotes the importance of universal health and justice and fairness for all persons. Given that the criminal justice system disproportionately consists of historically underrepresented and underserved groups, such as older people, racial/ethnic minorities, and persons with physical or mental disabilities, a campaign that would promote prevention would reduce the societal oppression to prison pipeline, such as ending mass incarceration, is a potential strategy. Social workers, especially forensic social workers, can and do assume a pivotal role in these prevention efforts that advance human rights that reduce health and justice disparities for individuals of all ages and families and communities most affected by the USA's current state of hyper-incarceration (Wronka 2007).

Mezzo levels The mezzo level targets secondary intervention strategies among groups at risk, such as individuals that come to the attention of the law (Wronka 2007). These strategies may be interventions in high-risk environments, such as police stations and/or the courts. For example, a social worker can develop an alternative to incarceration/diversion program and monitor effectiveness on outcomes, such as reduced rates of imprisonment. Another example for an at-risk group is in prison settings. A social worker can develop or administer and evidence-based practice on health literacy or the management of chronic health problems that reduces the risk of rapid health decline while residing in the often unhealthy conditions of prison.

Micro and meta-micro levels The micro level is the target of tertiary intervention strategies and symptomatic populations, such as the older or serious or terminally ill population in prison. Tertiary level interventions commonly entail clinical intervention on an individual or family level, such as medical or palliative care social work interventions. For example, a social worker employed at a prison hospice may design and implement a grief therapy group for inmate peer supports or family members and monitor its effectiveness on the coping and well-being of the participants (Wronka 2007).

The meta-micro level consisting of informal supports also is the target of tertiary intervention strategies. Although clinical interventions help with problems, everyday life social connections, such as family, friends, and others, can have therapeutic benefits. For example, a social worker in a prison can be instrumental in arranging family, volunteers, or community service provider visits to a prison or connect with families, peers, or professionals to prepare them for the release of an ill person in prison (Wronka 2007).

Research and evaluation level In the AGPH model, research and evaluation are the method of quaternary (fourth level) intervention strategies. Findings from research and evaluation studies provide informed knowledge for prevention and intervention strategies across the other intervention levels. In turn, the primary, secondary, and tertiary levels influence the research questions to be asked and the types of research methods used (Wronka 2007). For example, research is needed to provide data-driven development of policies impacting this aging and dying in population or to monitor the implementation of existing compassionate and geriatric release laws. Quantitative and qualitative methods can be used to gather data from key stakeholders.

An example of an important area of research is the reliability and validity of risk assessment (Andrews et al. 2006; Lansing 2012), especially for those with violent sex offense histories. Based on age factors, risk assessment should be attentive to the level of risk based on age (younger versus older offenders). As indicated above, recidivism rates are lower in older age groups. In a study of older sex offenders, they were found to score lower on the Static-99, a widely used actuarial measure (Hansen, 2006), and research on repeat offending (sexual and violent offenses) among an older prison population showed that recidivism decreased in the older age group (55+ years; Fazel et al. 2006). Therefore, more research is needed to accurately assess risk that accounts for age (Andrews and Dowden 2012).

Limitations of the Current Review

These findings have methodological limitations that warrant discussion. First, although a comprehensive search of the Lexis Nexus database was conducted, the extent to which all of the subject laws and possible amendments were available is unknown. Second, although multiple coders were used to select a sample of laws, classify them, and analyze their findings, it is entirely possible that other research teams may obtain different results. Third, the content analyses of categories and themes were developed deductively and inductively by the research team, and it goes without saying that a content analysis with a different set of categories and frequency counts would yield a different outcome. Yet, despite these limitations, this comprehensive analysis of the compassionate and

geriatric release laws in the USA offers insight into the next steps for research and evaluation to improve conditions for the elderly and seriously and terminally ill persons in prison and for their families and communities.

Conclusion

From a human rights perspective, human beings—even individuals who have committed crimes—should receive adequate physical and psychological care in the prison system and have access to supports post-release. If incarcerated individuals are unable to receive adequate care inside prisons, it is incumbent upon social workers, advocates, and researchers to compel further investigation into the barriers to care. Potential barriers may include the potential cost of care for aging and terminally ill patients, public perception of release, expediency of the process of consideration, and level of access of timely evidence-based treatment. Supports for family members, surrogates and/or guardians, and survivors of crimes should be part of compassionate or geriatric release legislation. Social workers also should promote a compassionate care as opposed to the use of tactics that are punitive and forms of cruel and unusual punishment within the prison system and community post-release. If the standard of care available in-prison remains suboptimal to a basic standard of community care, it is social work's role to advocate for more humane prison conditions or prison release policies that result in improved care quality. It is our view that social workers grounded in human rights are the missing piece of compassion and care in our current punitive criminal justice system. Perhaps it is time to embrace our criminal justice roots for the “just” cause of promoting human rights for the aging and dying in prison.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: **SB 560**

INTRODUCER: Senators Brandes and Perry

SUBJECT: Sentencing

DATE: November 8, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Favorable
2.		ACJ	
3.		AP	

I. Summary:

SB 560 revises the name and primary purpose of the Criminal Punishment Code, Florida's primary sentencing policy for noncapital felonies. Under current law, the primary purpose of the Criminal Punishment Code is to punish the offender. The bill renames the Criminal Punishment Code as the Public Safety Code and provides that the primary purpose of the Public Safety Code is public safety.

The bill should not have any prison bed impact because it does not change how sentences are currently calculated under the Criminal Punishment Code, modify existing penalties, or create new penalties.

The effective date of the bill is July 1, 2020.

II. Present Situation:

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² The primary purpose of the Code is to "punish the offender."³ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁴ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁵ 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 drug trafficking offenses. The lowest permissible sentence is any nonstate prison sanction

¹ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

² See chs. 97-194 and 98-204, L.O.F.

³ Section 921.002(1)(b), F.S.

⁴ 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.

⁵ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

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.

Absent mitigation,⁶ the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.⁷ However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.⁸ Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.⁹

III. Effect of Proposed Changes:

The bill amends s. 921.002, F.S., to revise the name and primary purpose of the Criminal Punishment Code, Florida's primary sentencing policy for noncapital felonies. Under current law, the primary purpose of the Criminal Punishment Code is to punish the offender. The bill renames the Criminal Punishment Code as the Public Safety Code and provides that the primary purpose of the Public Safety Code is public safety.

Conforming changes are made to numerous other statutes consistent with these described changes.

The effective date of the bill is July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁶ The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

⁷ Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed one year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

⁸ Fla. R. Crim. P. 3.704(d)(26).

⁹ See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

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 should not have any prison bed impact because it does not change how sentences are currently calculated under the Criminal Punishment Code, modify existing penalties, or create new penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 775.087, 782.051, 817.568, 893.13, 893.20, 910.035, 921.002, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 944.17, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, and 985.465.

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

24-00766-20

2020560

A bill to be entitled

An act relating to sentencing; amending s. 921.002, F.S.; renaming the Criminal Punishment Code as the Public Safety Code; revising the primary purpose of sentencing under the Public Safety Code from punishing an offender to public safety; conforming provisions to changes made by the act; amending ss. 775.082, 775.087, 782.051, 817.568, 893.13, 893.20, 910.035, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 944.17, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, and 985.465, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 921.002, Florida Statutes, is amended to read:

921.002 The Public Safety Criminal Punishment Code.—The Public Safety Code applies Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent

Page 1 of 130

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24-00766-20

2020560

criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Public Safety Criminal Punishment Code embodies the principles that:

(a) Sentencing is neutral with respect to race, gender, and social and economic status.

(b) The primary purpose of sentencing is public safety to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of public safety punishment.

(c) The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

(d) The severity of the sentence increases with the length and nature of the offender's prior record.

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4). The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Public Safety Criminal Punishment Code.

(f) Departures below the lowest permissible sentence established by the code must be articulated in writing by the trial court judge and made only when circumstances or factors reasonably justify the mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the lowest permissible sentence is a preponderance of the

Page 2 of 130

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24-00766-20

2020560

59 evidence.

60 (g) The trial court judge may impose a sentence up to and
 61 including the statutory maximum for any offense, including an
 62 offense that is before the court due to a violation of probation
 63 or community control.

64 (h) A sentence may be appealed on the basis that it departs
 65 from the Public Safety Criminal Punishment Code only if the
 66 sentence is below the lowest permissible sentence or as
 67 enumerated in s. 924.06(1).

68 (i) Use of incarcerative sanctions is prioritized toward
 69 offenders convicted of serious offenses and certain offenders
 70 who have long prior records, in order to maximize the finite
 71 capacities of state and local correctional facilities.

72 (2) When a defendant is before the court for sentencing for
 73 more than one felony and the felonies were committed under more
 74 than one version or revision of the former sentencing guidelines
 75 or the code, each felony shall be sentenced under the guidelines
 76 or the code in effect at the time the particular felony was
 77 committed. This subsection does not apply to sentencing for any
 78 capital felony.

79 (3) A court may impose a departure below the lowest
 80 permissible sentence based upon circumstances or factors that
 81 reasonably justify the mitigation of the sentence in accordance
 82 with s. 921.0026. The level of proof necessary to establish
 83 facts supporting the mitigation of a sentence is a preponderance
 84 of the evidence. When multiple reasons exist to support the
 85 mitigation, the mitigation shall be upheld when at least one
 86 circumstance or factor justifies the mitigation regardless of
 87 the presence of other circumstances or factors found not to

Page 3 of 130

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24-00766-20

2020560

88 justify mitigation. Any sentence imposed below the lowest
 89 permissible sentence must be explained in writing by the trial
 90 court judge.

91 (4) (a) The Department of Corrections shall report on trends
 92 in sentencing practices and sentencing score thresholds and
 93 provide an analysis on the sentencing factors considered by the
 94 courts and shall submit this information to the Legislature by
 95 October 1 of each year.

96 (b) The Criminal Justice Estimating Conference, with the
 97 assistance of the Department of Corrections, shall estimate the
 98 impact of any proposed change to the Public Safety Criminal
 99 Punishment Code on future rates of incarceration and on the
 100 prison population. The Criminal Justice Estimating Conference
 101 shall base its projections on historical data concerning
 102 sentencing practices which have been accumulated by the
 103 Department of Corrections and other relevant data from other
 104 state agencies and records of the Department of Corrections
 105 which disclose the average time served for offenses covered by
 106 any proposed changes to the Public Safety Criminal Punishment
 107 Code.

108 (c) In order to produce projects that are either required
 109 by law or requested by the Legislature to assist the Legislature
 110 in making modifications to the Public Safety Criminal Punishment
 111 Code, the Department of Corrections is authorized to collect and
 112 evaluate Public Safety Criminal Punishment Code scoresheets from
 113 each of the judicial circuits after sentencing. Beginning in
 114 1999, by October 1 of each year, the Department of Corrections
 115 shall provide an annual report to the Legislature that shows the
 116 rate of compliance of each judicial circuit in providing

Page 4 of 130

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24-00766-20 2020560

117 scoresheets to the department.

118 Section 2. Paragraphs (d) and (e) of subsection (8) of
119 section 775.082, Florida Statutes, are amended to read:
120 775.082 Penalties; applicability of sentencing structures;
121 mandatory minimum sentences for certain reoffenders previously
122 released from prison.-
123 (8)
124 (d) The Public Safety Criminal Punishment Code applies to
125 all felonies, except capital felonies, committed on or after
126 October 1, 1998. Any revision to the Public Safety Criminal
127 Punishment Code applies to sentencing for all felonies, except
128 capital felonies, committed on or after the effective date of
129 the revision.
130 (e) Felonies, except capital felonies, with continuing
131 dates of enterprise shall be sentenced under the sentencing
132 guidelines or the Public Safety Criminal Punishment Code in
133 effect on the beginning date of the criminal activity.
134 Section 3. Paragraph (c) of subsection (2) and paragraph
135 (c) of subsection (3) of section 775.087, Florida Statutes, are
136 amended to read:
137 775.087 Possession or use of weapon; aggravated battery;
138 felony reclassification; minimum sentence.-
139 (2)
140 (c) If the minimum mandatory terms of imprisonment imposed
141 pursuant to this section exceed the maximum sentences authorized
142 by s. 775.082, s. 775.084, or the Public Safety Criminal
143 Punishment Code under chapter 921, then the mandatory minimum
144 sentence must be imposed. If the mandatory minimum terms of
145 imprisonment pursuant to this section are less than the

Page 5 of 130

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24-00766-20 2020560

146 sentences that could be imposed as authorized by s. 775.082, s.
147 775.084, or the Public Safety Criminal Punishment Code under
148 chapter 921, then the sentence imposed by the court must include
149 the mandatory minimum term of imprisonment as required in this
150 section.
151 (3)
152 (c) If the minimum mandatory terms of imprisonment imposed
153 pursuant to this section exceed the maximum sentences authorized
154 by s. 775.082, s. 775.084, or the Public Safety Criminal
155 Punishment Code under chapter 921, then the mandatory minimum
156 sentence must be imposed. If the mandatory minimum terms of
157 imprisonment pursuant to this section are less than the
158 sentences that could be imposed as authorized by s. 775.082, s.
159 775.084, or the Public Safety Criminal Punishment Code under
160 chapter 921, then the sentence imposed by the court must include
161 the mandatory minimum term of imprisonment as required in this
162 section.
163 Section 4. Section 782.051, Florida Statutes, is amended to
164 read:
165 782.051 Attempted felony murder.-
166 (1) Any person who perpetrates or attempts to perpetrate
167 any felony enumerated in s. 782.04(3) and who commits, aids, or
168 abets an intentional act that is not an essential element of the
169 felony and that could, but does not, cause the death of another
170 commits a felony of the first degree, punishable by imprisonment
171 for a term of years not exceeding life, or as provided in s.
172 775.082, s. 775.083, or s. 775.084, which is an offense ranked
173 in level 9 of the Public Safety Criminal Punishment Code. Victim
174 injury points shall be scored under this subsection.

Page 6 of 130

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24-00766-20

2020560

175 (2) Any person who perpetrates or attempts to perpetrate
 176 any felony other than a felony enumerated in s. 782.04(3) and
 177 who commits, aids, or abets an intentional act that is not an
 178 essential element of the felony and that could, but does not,
 179 cause the death of another commits a felony of the first degree,
 180 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 181 which is an offense ranked in level 8 of the Public Safety
 182 Criminal Punishment Code. Victim injury points shall be scored
 183 under this subsection.

184 (3) When a person is injured during the perpetration of or
 185 the attempt to perpetrate any felony enumerated in s. 782.04(3)
 186 by a person other than the person engaged in the perpetration of
 187 or the attempt to perpetrate such felony, the person
 188 perpetrating or attempting to perpetrate such felony commits a
 189 felony of the second degree, punishable as provided in s.
 190 775.082, s. 775.083, or s. 775.084, which is an offense ranked
 191 in level 7 of the Public Safety Criminal Punishment Code. Victim
 192 injury points shall be scored under this subsection.

193 Section 5. Subsection (3) of section 817.568, Florida
 194 Statutes, is amended to read:

195 817.568 Criminal use of personal identification
 196 information.—

197 (3) Neither paragraph (2)(b) nor paragraph (2)(c) prevents
 198 a court from imposing a greater sentence of incarceration as
 199 authorized by law. If the minimum mandatory terms of
 200 imprisonment imposed under paragraph (2)(b) or paragraph (2)(c)
 201 exceed the maximum sentences authorized under s. 775.082, s.
 202 775.084, or the Public Safety Criminal Punishment Code under
 203 chapter 921, the mandatory minimum sentence must be imposed. If

Page 7 of 130

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24-00766-20

2020560

204 the mandatory minimum terms of imprisonment under paragraph
 205 (2)(b) or paragraph (2)(c) are less than the sentence that could
 206 be imposed under s. 775.082, s. 775.084, or the Public Safety
 207 Criminal Punishment Code under chapter 921, the sentence imposed
 208 by the court must include the mandatory minimum term of
 209 imprisonment as required by paragraph (2)(b) or paragraph
 210 (2)(c).

211 Section 6. Paragraph (d) of subsection (8) of section
 212 893.13, Florida Statutes, is amended to read:

213 893.13 Prohibited acts; penalties.—

214 (8)

215 (d) Notwithstanding paragraph (c), if a prescribing
 216 practitioner has violated paragraph (a) and received \$1,000 or
 217 more in payment for writing one or more prescriptions or, in the
 218 case of a prescription written for a controlled substance
 219 described in s. 893.135, has written one or more prescriptions
 220 for a quantity of a controlled substance which, individually or
 221 in the aggregate, meets the threshold for the offense of
 222 trafficking in a controlled substance under s. 893.135, the
 223 violation is reclassified as a felony of the second degree and
 224 ranked in level 4 of the Public Safety Criminal Punishment Code.

225 Section 7. Subsection (2) of section 893.20, Florida
 226 Statutes, is amended to read:

227 893.20 Continuing criminal enterprise.—

228 (2) A person who commits the offense of engaging in a
 229 continuing criminal enterprise ~~commits is guilty of~~ a life
 230 felony, punishable pursuant to the Public Safety Criminal
 231 Punishment Code and by a fine of \$500,000.

232 Section 8. Paragraph (f) of subsection (5) of section

Page 8 of 130

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24-00766-20 2020560

233 910.035, Florida Statutes, is amended to read:

234 910.035 Transfer from county for plea, sentence, or

235 participation in a problem-solving court.—

236 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

237 (f) Upon successful completion of the problem-solving court

238 program, the jurisdiction to which the case has been transferred

239 shall dispose of the case. If the defendant does not complete

240 the problem-solving court program successfully, the jurisdiction

241 to which the case has been transferred shall dispose of the case

242 within the guidelines of the Public Safety Criminal Punishment

243 Code.

244 Section 9. Section 921.0022, Florida Statutes, is amended

245 to read:

246 921.0022 Public Safety Criminal Punishment Code; offense

247 severity ranking chart.—

248 (1) The offense severity ranking chart must be used with

249 the Public Safety Criminal Punishment Code worksheet to compute

250 a sentence score for each felony offender whose offense was

251 committed on or after October 1, 1998.

252 (2) The offense severity ranking chart has 10 offense

253 levels, ranked from least severe, which are level 1 offenses, to

254 most severe, which are level 10 offenses, and each felony

255 offense is assigned to a level according to the severity of the

256 offense. For purposes of determining which felony offenses are

257 specifically listed in the offense severity ranking chart and

258 which severity level has been assigned to each of these

259 offenses, the numerical statutory references in the left column

260 of the chart and the felony degree designations in the middle

261 column of the chart are controlling; the language in the right

Page 9 of 130

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24-00766-20 2020560

262 column of the chart is provided solely for descriptive purposes.

263 Reclassification of the degree of the felony through the

264 application of s. 775.0845, s. 775.085, s. 775.0861, s.

265 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or

266 any other law that provides an enhanced penalty for a felony

267 offense, to any offense listed in the offense severity ranking

268 chart in this section shall not cause the offense to become

269 unlisted and is not subject to the provisions of s. 921.0023.

270 (3) OFFENSE SEVERITY RANKING CHART

271 (a) LEVEL 1

272

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2) (b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2) (b)	3rd	Failure to remit sales taxes, amount \$1,000 or more but less than \$20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.

277

Page 10 of 130

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			2020560
278	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
279	319.35(1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
280	320.26(1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
281	322.212 (1) (a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
282	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
283	322.212(5) (a)	3rd	False application for driver license or identification card.
	414.39(3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value

Page 11 of 130

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			2020560
284	443.071(1)	3rd	more than \$200.
285	509.151(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
286	517.302(1)	3rd	Defraud an innkeeper, food or lodging value \$1,000 or more.
287	713.69	3rd	Violation of the Florida Securities and Investor Protection Act.
288	812.014(3) (c)	3rd	Tenant removes property upon which lien has accrued, value \$1,000 or more.
289	812.081(2)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
290	815.04(5) (a)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.

Page 12 of 130

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24-00766-20		2020560	
291		property (i.e., computer programs, data).	
	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
292		3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
293	826.01	3rd	Bigamy.
294	828.122(3)	3rd	Fighting or baiting animals.
295	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
296	831.31(1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
297	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.

Page 13 of 130

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24-00766-20		2020560	
298	832.05(2) (b) & (4) (c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
299	838.15(2)	3rd	Commercial bribe receiving.
300	838.16	3rd	Commercial bribery.
301	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
302	847.011(1) (a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
303	849.09(1) (a) - (d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
304	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
305			

Page 14 of 130

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2020560		
306	3rd	Engaging in bookmaking.
	849.25(2)	
307	3rd	Interfere with a railroad signal.
308	3rd	Operate aircraft while under the influence.
309	3rd	Purchase of cannabis.
310	3rd	Possession of cannabis (more than 20 grams).
311	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
312	(b) LEVEL 2	
313	Florida Statute	Felony Degree Description
314	379.2431 (1)(e)3.	3rd Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
315		

Page 15 of 130

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2020560		
316	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
	379.2431 (1)(e)4.	
317	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
318	3rd	Failure to furnish a prospectus meeting requirements.
319	3rd	Intentional burning of lands.
320	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
	787.04(1)	In violation of court order, take, entice, etc., minor beyond state

Page 16 of 130

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24-00766-20		2020560	
321		limits.	
	806.13(1) (b) 3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
322	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
323	810.09(2) (e)	3rd	Trespassing on posted commercial horticulture property.
324	812.014(2) (c)1.	3rd	Grand theft, 3rd degree; \$750 or more but less than \$5,000.
325	812.014(2) (d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$750, taken from unenclosed curtilage of dwelling.
326	812.015(7)	3rd	Possession, use, or attempted use of an

Page 17 of 130

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24-00766-20		2020560	
327		antishoplifting or inventory control device countermeasure.	
	817.234(1) (a) 2.	3rd	False statement in support of insurance claim.
328	817.481(3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
329	817.52(3)	3rd	Failure to redeliver hired vehicle.
330	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
331	817.60(5)	3rd	Dealing in credit cards of another.
332	817.60(6) (a)	3rd	Forgery; purchase goods, services with false card.
333			

Page 18 of 130

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			24-00766-20		2020560
	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.		
334	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.		
335	831.01	3rd	Forgery.		
336	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.		
337	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.		
338	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.		
339	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.		
340	831.11	3rd	Bringing into the state forged bank bills,		

Page 19 of 130

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		24-00766-20		2020560
		341	832.05(3)(a)	3rd
		342	843.08	3rd
		343	893.13(2)(a)2.	3rd
		344	893.147(2)	3rd
		345		Manufacture or delivery of drug paraphernalia.
		346	(c) LEVEL 3	
		347	Florida Statute	Felony Degree Description
		348	119.10(2)(b)	3rd
				Unlawful use of confidential information from police reports.

Page 20 of 130

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24-00766-20		2020560	
349	316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
350	316.193(2) (b)	3rd	Felony DUI, 3rd conviction.
351	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
352	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
353	319.33(1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
354	319.33(1) (c)	3rd	Procure or pass title on stolen vehicle.
355	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or

Page 21 of 130

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24-00766-20		2020560	
356	327.35(2) (b)	3rd	unlawfully obtained title or registration.
357	328.05(2)	3rd	Felony BUI.
358	328.07(4)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
359	376.302(5)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
360	379.2431 (1) (e) 5.	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
		3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine

Page 22 of 130

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24-00766-20		2020560
361		turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1) (e) 6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1) (e) 7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051 (3)	3rd	False report of workers'

Page 23 of 130

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24-00766-20		2020560
366		compensation fraud or retaliation for making such a report.
501.001 (2) (b)	2nd	Tampering with a consumer product or the container using materially false/misleading information.
624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.

Page 24 of 130

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	24-00766-20		2020560
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
373			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
374			
	810.09(2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
375			
	812.014(2) (c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
376			
	812.0145(2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
377			
	812.015(8) (b)	3rd	Retail theft with intent to sell; conspires with others.
378			
	815.04(5) (b)	2nd	Computer offense devised to defraud or obtain property.
379			

Page 25 of 130

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	24-00766-20		2020560
	817.034(4) (a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
380	817.233	3rd	Burning to defraud insurer.
381	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
382	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.
383	817.236	3rd	Filing a false motor vehicle insurance application.
384	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
385	817.413(2)	3rd	Sale of used goods of \$1,000 or more as new.
386	831.28(2) (a)	3rd	Counterfeiting a payment instrument with intent to

Page 26 of 130

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24-00766-20			2020560	
387			defraud or possessing a counterfeit payment instrument with intent to defraud.	
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.	
388	838.021(3) (b)	3rd	Threatens unlawful harm to public servant.	
389	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.	
390	860.15(3)	3rd	Overcharging for repairs and parts.	
391	870.01(2)	3rd	Riot; inciting or encouraging.	
392	893.13(1) (a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9.,	

24-00766-20			2020560	
393			(2) (c)10., (3), or (4) drugs).	
	893.13(1) (d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (2) (c)10., (3), or (4) drugs within 1,000 feet of university.	
394		2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (2) (c)10., (3), or (4) drugs within 1,000 feet of public housing facility.	
	893.13(1) (f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (2) (c)10., (3), or (4) drugs within 1,000 feet of public housing facility.	
395		3rd	Use or hire of minor; deliver to minor other controlled substances.	
396	893.13(4) (c)	3rd	Possession of any controlled substance other than felony possession of	
	893.13(6) (a)	3rd		

24-00766-20		2020560
397		cannabis.
893.13(7) (a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
398		Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
399		Affix false or forged label to package of controlled substance.
400		Furnish false or fraudulent material information on any document or record required by chapter 893.
401		Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or

24-00766-20		2020560
402		related to the practitioner's practice.
893.13(8) (a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
403		893.13(8) (a)3.
3rd		Knowingly write a prescription for a controlled substance for a fictitious person.
404		893.13(8) (a)4.
3rd		Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
405		918.13(1) (a)
3rd		Alter, destroy, or conceal investigation evidence.
406		944.47
3rd		(1) (a)1. & 2. Introduce contraband to correctional facility.

407	24-00766-20	2020560	
944.47(1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.	
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).	
(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.	
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.	

Page 31 of 130

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

414	24-00766-20	2020560	
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.	
517.07(1)	3rd	Failure to register securities.	
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.	
784.07(2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.	
784.074(1) (c)	3rd	Battery of sexually violent predators facility staff.	
784.075	3rd	Battery on detention or commitment facility staff.	
784.078	3rd	Battery of facility employee by throwing,	

Page 32 of 130

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24-00766-20		2020560	
421	784.08 (2) (c)	3rd	tossing, or expelling certain fluids or materials.
422	784.081 (3)	3rd	Battery on a person 65 years of age or older.
423	784.082 (3)	3rd	Battery on specified official or employee.
424	784.083 (3)	3rd	Battery by detained person on visitor or other detainee.
425	784.085	3rd	Battery on code inspector.
426	787.03 (1)	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
427	787.04 (2)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
			Take, entice, or remove

Page 33 of 130

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24-00766-20		2020560	
428	787.04 (3)	3rd	child beyond state limits with criminal intent pending custody proceedings.
429	787.07	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
430	790.115 (1)	3rd	Human smuggling.
431	790.115 (2) (b)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
432	790.115 (2) (c)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
433	800.04 (7) (c)	3rd	Possessing firearm on school property.
			Lewd or lascivious

Page 34 of 130

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

	24-00766-20		2020560
434			exhibition; offender less than 18 years.
	810.02(4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
435		3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
436	810.06	3rd	Burglary; possession of tools.
437	810.08(2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
438	812.014 (2) (c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
439	812.014 (2) (c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
440			

Page 35 of 130

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	24-00766-20		2020560
		812.0195(2)	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
441		817.505(4) (a)	3rd Patient brokering.
442		817.563(1)	3rd Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
443		817.568(2) (a)	3rd Fraudulent use of personal identification information.
444		817.625(2) (a)	3rd Fraudulent use of scanning device, skimming device, or reencoder.
445		817.625(2) (c)	3rd Possess, sell, or deliver skimming device.
446		828.125(1)	2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any

Page 36 of 130

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24-00766-20			2020560
447		registered horse or cattle.	
	837.02(1)	3rd	Perjury in official proceedings.
448	837.021(1)	3rd	Make contradictory statements in official proceedings.
449	838.022	3rd	Official misconduct.
450	839.13(2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
451	839.13(2) (c)	3rd	Falsifying records of the Department of Children and Families.
452	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
453	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of

Page 37 of 130

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24-00766-20			2020560
454		protection or communication.	
	843.15(1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
455	847.0135(5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
456	874.05(1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
457	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).
458	914.14(2)	3rd	Witnesses accepting bribes.
459	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.

Page 38 of 130

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460	24-00766-20	2020560
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1) (a) 6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1) (h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Page 39 of 130

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465	24-00766-20	2020560
466	(e) LEVEL 5	
467	Florida Statute	Felony Degree Description
468	316.027(2) (a)	3rd Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
469	316.1935(4) (a)	2nd Aggravated fleeing or eluding.
470	316.80(2)	2nd Unlawful conveyance of fuel; obtaining fuel fraudulently.
471	322.34(6)	3rd Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
472	327.30(5)	3rd Vessel accidents involving personal injury; leaving scene.
473		

Page 40 of 130

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24-00766-20
379.365(2)(c)1.

3rd Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

474

379.367(4) 3rd Willful molestation of a commercial harvester's

Page 41 of 130

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2020560

24-00766-20

2020560

spiny lobster trap, line, or buoy.

475 379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

476 381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

477 440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

478 440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

479 440.381(2) 3rd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

480 624.401(4)(b)2. 2nd Transacting insurance

Page 42 of 130

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24-00766-20		2020560	
		without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.	
481	626.902(1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
482	790.01(2)	3rd	Carrying a concealed firearm.
483	790.162	2nd	Threat to throw or discharge destructive device.
484	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
485	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
486	790.23	2nd	Felons in possession of firearms, ammunition, or

24-00766-20		2020560	
		electronic weapons or devices.	
487	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
488	800.04(6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
489	800.04(7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
490	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
491	812.0145(2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
492	812.015 (8) (a) & (c)-(e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
493			

494	24-00766-20 812.019(1)	2nd	Stolen property; dealing in or trafficking in.	2020560
495	812.131(2) (b)	3rd	Robbery by sudden snatching.	
496	812.16(2)	3rd	Owning, operating, or conducting a chop shop.	
497	817.034(4) (a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	
498	817.234(11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.	
499	817.2341(1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.	
	817.568(2) (b)	2nd	Fraudulent use of personal identification	

Page 45 of 130

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500	24-00766-20	2020560	information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
501	817.611(2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
502	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
503	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
	827.071(4)	2nd	Possess with intent to promote any photographic

Page 46 of 130

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24-00766-20		2020560	
504	827.071(5)	3rd	material, motion picture, etc., which includes sexual conduct by a child.
505	828.12(2)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
506	839.13(2) (b)	2nd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
507	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
508		3rd	Resist officer with violence to person; resist arrest with violence.

24-00766-20		2020560	
509	847.0135(5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
510	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
511	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
512	874.05(1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
513	874.05(2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	893.13(1) (a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a),

24-00766-20		2020560
514	893.13(1)(c)2.	(1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)5. drugs).
	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
515	893.13(1)(d)1.	1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)5. drugs) within 1,000 feet of university.
516	893.13(1)(e)2.	2nd Sell, manufacture, or

24-00766-20		2020560
517	893.13(1)(f)1.	deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
518	893.13(4)(b)	1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1) (b), (1) (d), or (2) (a), (2) (b), or (2) (c)5. drugs) within 1,000 feet of public housing facility.
519	893.1351(1)	2nd Use or hire of minor; deliver to minor other controlled substance.
		3rd Ownership, lease, or rental for trafficking in or manufacturing of

24-00766-20		2020560	controlled substance.
520			
521	(f) LEVEL 6		
522	Florida Statute	Felony Degree	Description
523	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
524	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
525	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
526	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
527	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.

Page 51 of 130

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24-00766-20		2020560	
528	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
529	775.0875(1)	3rd	Taking firearm from law enforcement officer.
530	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
531	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
532	784.041	3rd	Felony battery; domestic battery by strangulation.
533	784.048(3)	3rd	Aggravated stalking; credible threat.
534	784.048(5)	3rd	Aggravated stalking of person under 16.
535	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
536	784.074(1)(b)	2nd	Aggravated assault on

Page 52 of 130

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	24-00766-20		2020560
537			sexually violent predators facility staff.
	784.08(2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
538		2nd	Aggravated assault on specified official or employee.
539		2nd	Aggravated assault by detained person on visitor or other detainee.
540		2nd	Aggravated assault on code inspector.
541		3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
542		2nd	Discharging firearm or weapon on school property.
543			

	24-00766-20		2020560
544		2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
	790.161(2)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
	790.164(1)	2nd	
545		2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
	790.19	2nd	
546		3rd	Solicitation of minor to participate in sexual activity by custodial adult.
	794.011(8) (a)	3rd	
547		2nd	Unlawful sexual activity with specified minor.
	794.05(1)	2nd	
548		3rd	Lewd or lascivious molestation; victim 12 years of age or older
	800.04(5) (d)	3rd	

24-00766-20			2020560
549		but less than 16 years of age; offender less than 18 years.	
800.04(6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.	
550			
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.	
551			
810.02(3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.	
552			
810.145(8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.	
553			
812.014(2) (b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.	
554			
812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.	

Page 55 of 130

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24-00766-20			2020560
555		812.015(9) (a)	2nd
556		812.015(9) (b)	2nd
557		812.13(2) (c)	2nd
558		817.4821(5)	2nd
559		817.505(4) (b)	2nd
560		825.102(1)	3rd
561		825.102(3) (c)	3rd

Page 56 of 130

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

562	24-00766-20		2020560	person or disabled adult.
	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.	
563	825.103 (3) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.	
564	827.03 (2) (c)	3rd	Abuse of a child.	
565	827.03 (2) (d)	3rd	Neglect of a child.	
566	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.	
567	836.05	2nd	Threats; extortion.	
568	836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.	
569				

570	24-00766-20		2020560	Aids or assists person to escape.
	843.12	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.	
571	847.011	3rd	Knowingly using a minor in the production of materials harmful to minors.	
572	847.012	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.	
573	847.0135 (2)	3rd	Retaliation against a witness, victim, or informant, with bodily injury.	
574	914.23	2nd	Committing malicious battery upon or inflicting cruel or	
	944.35 (3) (a)2.	3rd		

24-00766-20		2020560	
575	944.40	2nd	inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
576	944.46	3rd	Escapes.
577	944.47(1) (a)5.	2nd	Harboring, concealing, aiding escaped prisoners.
578	951.22(1) (i)	3rd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
579	(g) LEVEL 7		
580	Florida Statute	Felony Degree	Description
581	316.027(2) (c)	1st	Accident involving death, failure to stop; leaving

Page 59 of 130

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24-00766-20		2020560	
583	316.193(3) (c)2.	3rd	scene.
584	316.1935(3) (b)	1st	DUI resulting in serious bodily injury.
585	327.35(3) (c)2.	3rd	Causing serious bodily injury or death to another person; 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.
586	402.319(2)	2nd	Vessel BUI resulting in serious bodily injury.
587	409.920	3rd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.
588	(2) (b)1.a.		Medicaid provider fraud; \$10,000 or less.

Page 60 of 130

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			24-00766-20	
			409.920	2nd Medicaid provider fraud;
			(2) (b)1.b.	more than \$10,000, but less than \$50,000.
589			456.065 (2)	3rd Practicing a health care profession without a license.
590			456.065 (2)	2nd Practicing a health care profession without a license which results in serious bodily injury.
591			458.327 (1)	3rd Practicing medicine without a license.
592			459.013 (1)	3rd Practicing osteopathic medicine without a license.
593			460.411 (1)	3rd Practicing chiropractic medicine without a license.
594			461.012 (1)	3rd Practicing podiatric medicine without a license.
595			462.17	3rd Practicing naturopathy

Page 61 of 130

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			24-00766-20	
			596	2020560 without a license.
			596	463.015(1)
			597	3rd Practicing optometry without a license.
			597	464.016(1)
			598	3rd Practicing nursing without a license.
			598	465.015(2)
			599	3rd Practicing pharmacy without a license.
			599	466.026(1)
			600	3rd Practicing dentistry or dental hygiene without a license.
			600	467.201
			601	3rd Practicing midwifery without a license.
			601	468.366
			602	3rd Delivering respiratory care services without a license.
			602	483.828 (1)
			603	3rd Practicing as clinical laboratory personnel without a license.
			603	483.901 (7)
			604	3rd Practicing medical physics without a license.

Page 62 of 130

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

24-00766-20			2020560
484.013(1) (c)	3rd	Preparing or dispensing optical devices without a prescription.	
484.053	3rd	Dispensing hearing aids without a license.	
494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.	
560.123(8) (b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.	
560.125(5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.	
655.50(10) (b)1.	3rd	Failure to report financial transactions	

Page 63 of 130

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

24-00766-20			2020560
610	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
611	775.21(10) (b)	3rd	Sexual predator working where children regularly congregate.
612	775.21(10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
613	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
614	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of

Page 64 of 130

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

24-00766-20			2020560
615	782.071	2nd	another (manslaughter).
616	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vehicular homicide).
617	784.045(1) (a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
618	784.045(1) (a)2.	2nd	Aggravated battery; using deadly weapon.
619	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
620	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

Page 65 of 130

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24-00766-20			2020560
621	784.048(7)	3rd	Aggravated stalking; violation of court order.
622	784.07(2) (d)	1st	Aggravated battery on law enforcement officer.
623	784.074(1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
624	784.08(2) (a)	1st	Aggravated battery on a person 65 years of age or older.
625	784.081(1)	1st	Aggravated battery on specified official or employee.
626	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
627	784.083(1)	1st	Aggravated battery on code inspector.
628	787.06(3) (a)2.	1st	Human trafficking using coercion for labor and services of an adult.

Page 66 of 130

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

629	24-00766-20	2020560	
	787.06(3) (e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
630	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
631	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
632	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
633	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
634	790.166(3)	2nd	Possessing, selling, using, or attempting to

635	24-00766-20	2020560	
	790.166(4)	2nd	use a hoax weapon of mass destruction.
636	790.23	1st, PBL	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
637	794.08(4)	3rd	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
			Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
638	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
639	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
640			

24-00766-20			2020560
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.	
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.	
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.	
806.01(2)	2nd	Maliciously damage structure by fire or explosive.	
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.	

Page 69 of 130

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24-00766-20			2020560
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.	
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.	
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.	
812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.	
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.	
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.	

Page 70 of 130

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24-00766-20			2020560
812.014(2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.	
812.0145(2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.	
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.	
812.131(2) (a)	2nd	Robbery by sudden snatching.	
812.133(2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.	
817.034(4) (a)1.	1st	Communications fraud, value greater than \$50,000.	
817.234(8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.	

Page 71 of 130

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24-00766-20			2020560
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.	
817.234(11) (c)	1st	Insurance fraud; property value \$100,000 or more.	
817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.	
817.535(2) (a)	3rd	Filing false lien or other unauthorized document.	
817.611(2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.	
825.102(3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm,	

Page 72 of 130

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24-00766-20			2020560
664		disability, or disfigurement.	
825.103(3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.	
665		Neglect of a child causing great bodily harm, disability, or disfigurement.	
827.03(2) (b)	2nd		
666			
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.	
667			
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.	
668			
838.015	2nd	Bribery.	
669			
838.016	2nd	Unlawful compensation or reward for official behavior.	

Page 73 of 130

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24-00766-20			2020560
670	838.021(3) (a)	2nd	Unlawful harm to a public servant.
671	838.22	2nd	Bid tampering.
672	843.0855(2)	3rd	Impersonation of a public officer or employee.
673	843.0855(3)	3rd	Unlawful simulation of legal process.
674	843.0855(4)	3rd	Intimidation of a public officer or employee.
675	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
676	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
677	872.06	2nd	Abuse of a dead human body.
678	874.05(2) (b)	1st	Encouraging or recruiting person under 13 to join a

Page 74 of 130

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24-00766-20		2020560
679		criminal gang; second or subsequent offense.
874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or

24-00766-20		2020560
682	893.13(4)(a)	1st Use or hire of minor; deliver to minor other controlled substance.
683	893.135(1)(a)1.	1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
684	893.135 (1)(b)1.a.	1st Trafficking in cocaine, more than 28 grams, less than 200 grams.
685	893.135 (1)(c)1.a.	1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
686	893.135 (1)(c)2.a.	1st Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
687	893.135 (1)(c)2.b.	1st Trafficking in hydrocodone, 50 grams or more, less than 100 grams.
688		

24-00766-20			2020560
689	893.135 (1) (c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
690	893.135 (1) (c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
691	893.135 (1) (c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
692	893.135 (1) (d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
693	893.135(1) (e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
694	893.135(1) (f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
695	893.135 (1) (g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

24-00766-20			2020560
696	893.135 (1) (h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
697	893.135 (1) (j)1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.
698	893.135 (1) (k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
699	893.135 (1) (m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
700	893.135 (1) (m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
701	893.135 (1) (n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.

			24-00766-20
			893.1351(2)
702	2nd	Possession of place for trafficking in or manufacturing of controlled substance.	2020560
702	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.	896.101(5)(a)
703	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.	896.104(4)(a)1.
704	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.	943.0435(4)(c)
705	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.	943.0435(8)
706	3rd	Sexual offender; failure	943.0435(9)(a)

			24-00766-20
			893.0435(13)
707	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	943.0435(13)
708	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.	943.0435(14)
709	3rd	Sexual offender; failure to comply with reporting requirements.	944.607(9)
710	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.	944.607(10)(a)
711	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	944.607(12)

			2020560
712	24-00766-20 944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
713	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
714	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
715	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
716	(h) LEVEL 8		
717	Florida Statute	Felony Degree	Description

Page 81 of 130

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			2020560
719	24-00766-20 316.193 (3)(c)3.a.	2nd	DUI manslaughter.
720	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
721	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
722	499.0051(6)	1st	Knowing trafficking in contraband prescription drugs.
723	499.0051(7)	1st	Knowing forgery of prescription labels or prescription drug labels.
724	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
725	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or

Page 82 of 130

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24-00766-20		2020560	
726		payment instruments totaling or exceeding \$20,000, but less than \$100,000.	
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.	
727		Accessory after the fact, capital felony.	
728		Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.	
729		Attempted felony murder	

24-00766-20		2020560	
730		while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).	
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.	
731		782.072(2)	1st
		Committing vessel homicide and failing to render aid or give information.	
732		787.06(3)(a)1.	1st
		Human trafficking for labor and services of a child.	
733		787.06(3)(b)	1st
		Human trafficking using coercion for commercial sexual activity of an adult.	
734		787.06(3)(c)2.	1st
		Human trafficking using coercion for labor and services of an unauthorized alien adult.	
735			

24-00766-20		2020560
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
794.011(5)(b)	2nd	Sexual battery; victim

24-00766-20		2020560
740	794.011(5)(c)	2nd
741	794.011(5)(d)	1st
742	794.08(3)	2nd
743	800.04(4)(b)	2nd

744	24-00766-20	2020560	
	800.04(4) (c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
745	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
746	810.02(2) (a)	1st, PBL	Burglary with assault or battery.
747	810.02(2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
748	810.02(2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
749	812.014(2) (a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st

750	24-00766-20	2020560	degree.
751	812.13(2) (b)	1st	Robbery with a weapon.
752	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
753	817.505 (4) (c)	1st	Patient brokering; 20 or more patients.
754	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
755	817.535 (3) (a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
756	817.535 (4) (a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
	817.535 (5) (a)	2nd	Filing false lien or

24-00766-20			2020560
757		other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.	
817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.	
817.611 (2) (c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.	
825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.	
825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.	
825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.	

Page 89 of 130

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

24-00766-20			2020560
762	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
763	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
764	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
765	860.16	1st	Aircraft piracy.
766	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
767	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).

Page 90 of 130

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768	24-00766-20	2020560	
	893.13(6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).
769	893.135(1) (a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
770	893.135 (1) (b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
771	893.135 (1) (c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
772	893.135 (1) (c)2.c.	1st	Trafficking in hydrocodone, 100 grams or more, less than 300 grams.
773	893.135 (1) (c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
774	893.135	1st	Trafficking in fentanyl,

775	24-00766-20	2020560	
	(1) (c)4.b.(II)		14 grams or more, less than 28 grams.
776	893.135 (1) (d)1.b.	1st	Trafficking in phenyclidine, 200 grams or more, less than 400 grams.
777	893.135 (1) (e)1.b.	1st	Trafficking in methaqualone, 5 kilograms or more, less than 25 kilograms.
778	893.135 (1) (f)1.b.	1st	Trafficking in amphetamine, 28 grams or more, less than 200 grams.
779	893.135 (1) (g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
780	893.135 (1) (h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.

24-00766-20			2020560
893.135	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.	
(1) (j)1.b.			
893.135	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.	
(1) (k)2.b.			
893.135	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.	
(1) (m)2.c.			
893.135	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.	
(1) (n)2.b.			
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.	
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.	

Page 93 of 130

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24-00766-20			2020560
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.	
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.	
896.101(5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.	
896.104(4) (a) 2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.	
(i) LEVEL 9			

Page 94 of 130

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			2020560
	Florida Statute	Felony Degree	Description
793	316.193 (3) (c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
794	327.35 (3) (c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
795	409.920 (2) (b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
796	499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
797	560.123(8) (b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
798	560.125(5) (c)	1st	Money transmitter business by unauthorized person, currency, or

Page 95 of 130

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		2020560
		payment instruments totaling or exceeding \$100,000.
799	655.50(10) (b)3.	1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
800	775.0844	1st Aggravated white collar crime.
801	782.04(1)	1st Attempt, conspire, or solicit to commit premeditated murder.
802	782.04(3)	1st, PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
803	782.051(1)	1st Attempted felony murder while perpetrating or attempting to perpetrate

Page 96 of 130

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24-00766-20			2020560
804	782.07(2)	1st	a felony enumerated in s. 782.04(3).
805	787.01(1)(a)1.	1st, PBL	Aggravated manslaughter of an elderly person or disabled adult.
806	787.01(1)(a)2.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
807	787.01(1)(a)4.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
808	787.02(3)(a)	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
			False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

Page 97 of 130

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24-00766-20			2020560
809	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
810	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
811	787.06(3)(f)1.	1st, PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
812	790.161	1st	Attempted capital destructive device offense.
813	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
814	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.

Page 98 of 130

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815	24-00766-20	2020560	
	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
816	794.011(4)(a)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
817	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
818	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
819	794.011(4)(d)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for

Page 99 of 130

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820	24-00766-20	2020560	specified sex offenses.
	794.011(8)(b)	1st, PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
821	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
822	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
823	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
824	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
825	812.135(2)(b)	1st	Home-invasion robbery with weapon.
826	817.535(3)(b)	1st	Filing false lien or other unauthorized

Page 100 of 130

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24-00766-20		2020560	
827		document; second or subsequent offense; property owner is a public officer or employee.	
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.	
828	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.	
829	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.	

Page 101 of 130

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24-00766-20		2020560	
830	827.03(2)(a)	1st	Aggravated child abuse.
831	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
832	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
833	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
834	893.135	1st	Attempted capital trafficking offense.
835	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
836	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
837			

Page 102 of 130

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			2020560
24-00766-20			
893.135	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.	
(1) (c)1.c.			
838			
893.135	1st	Trafficking in hydrocodone, 300 grams or more, less than 30 kilograms.	
(1) (c)2.d.			
839			
893.135	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.	
(1) (c)3.d.			
840			
893.135	1st	Trafficking in fentanyl, 28 grams or more.	
(1) (c)4.b.(III)			
841			
893.135	1st	Trafficking in phenacyclidine, 400 grams or more.	
(1) (d)1.c.			
842			
893.135	1st	Trafficking in methaqualone, 25 kilograms or more.	
(1) (e)1.c.			
843			
893.135	1st	Trafficking in amphetamine, 200 grams or more.	
(1) (f)1.c.			
844			

Page 103 of 130

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			2020560
24-00766-20			
893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.	
(1) (h)1.c.			
845			
893.135	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.	
(1) (j)1.c.			
846			
893.135	1st	Trafficking in Phenethylamines, 400 grams or more.	
(1) (k)2.c.			
847			
893.135	1st	Trafficking in synthetic cannabinoids, 30 kilograms or more.	
(1) (m)2.d.			
848			
893.135	1st	Trafficking in n-benzyl phenethylamines, 200 grams or more.	
(1) (n)2.c.			
849			
896.101(5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.	
850			
896.104(4) (a)3.	1st	Structuring transactions to evade reporting or registration	

Page 104 of 130

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24-00766-20
 2020560
 requirements, financial
 transactions totaling or
 exceeding \$100,000.

851 852 (j) LEVEL 10

853 Florida Statute Felony Degree Description

854 499.0051(9) 1st Knowing sale or purchase
 of contraband
 prescription drugs
 resulting in death.

855 782.04(2) 1st, PBL Unlawful killing of
 human; act is homicide,
 unpremeditated.

856 782.07(3) 1st Aggravated manslaughter
 of a child.

857 787.01(1) (a) 3. 1st, PBL Kidnapping; inflict
 bodily harm upon or
 terrorize victim.

858 787.01(3) (a) Life Kidnapping; child under
 age 13, perpetrator also
 commits aggravated child
 abuse, sexual battery,

Page 105 of 130

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24-00766-20
 2020560
 or lewd or lascivious
 battery, molestation,
 conduct, or exhibition.

859 787.06(3) (g) Life Human trafficking for
 commercial sexual
 activity of a child
 under the age of 18 or
 mentally defective or
 incapacitated person.

860 787.06(4) (a) Life Selling or buying of
 minors into human
 trafficking.

861 794.011(3) Life Sexual battery; victim
 12 years or older,
 offender uses or
 threatens to use deadly
 weapon or physical force
 to cause serious injury.

862 812.135(2) (a) 1st, PBL Home-invasion robbery
 with firearm or other
 deadly weapon.

863 876.32 1st Treason against the
 state.

Page 106 of 130

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24-00766-20 2020560

865 Section 10. Section 921.0023, Florida Statutes, is amended
 866 to read:
 867 921.0023 Public Safety Criminal Punishment Code; ranking
 868 unlisted felony offenses.—A felony offense committed on or after
 869 October 1, 1998, that is not listed in s. 921.0022 is ranked
 870 with respect to offense severity level by the Legislature,
 871 commensurate with the harm or potential harm that is caused by
 872 the offense to the community. Until the Legislature specifically
 873 assigns an offense to a severity level in the offense severity
 874 ranking chart, the severity level is within the following
 875 parameters:
 876 (1) A felony of the third degree within offense level 1.
 877 (2) A felony of the second degree within offense level 4.
 878 (3) A felony of the first degree within offense level 7.
 879 (4) A felony of the first degree punishable by life within
 880 offense level 9.
 881 (5) A life felony within offense level 10.
 882 Section 11. Section 921.0024, Florida Statutes, is amended
 883 to read:
 884 921.0024 Public Safety Criminal Punishment Code; worksheet
 885 computations; scoresheets.—
 886 (1) (a) The Public Safety Criminal Punishment Code worksheet
 887 is used to compute the subtotal and total sentence points as
 888 follows:
 889
 890 FLORIDA PUBLIC SAFETY CRIMINAL PUNISHMENT CODE
 891 WORKSHEET
 892
 893 OFFENSE SCORE

Page 107 of 130

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24-00766-20 2020560

894	Primary Offense			
	895	Level	Sentence Points	Total
896	10	116	=
897	9	92	=
898	8	74	=
899	7	56	=
900	6	36	=
901	5	28	=
902	4	22	=
903	3	16	=
904	2	10	=
905	1	4	=
906				
907				
908				Total

Page 108 of 130

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24-00766-20						2020560
Additional Offenses						
Level	Sentence Points	Counts		Total		
10	58	x	=	
9	46	x	=	
8	37	x	=	
7	28	x	=	
6	18	x	=	
5	5.4	x	=	
4	3.6	x	=	
3	2.4	x	=	
2	1.2	x	=	
1	0.7	x	=	
M	0.2	x	=	

Page 109 of 130

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24-00766-20						2020560
Victim Injury						Total
Level	Sentence Points	Number		Total		
2nd degree murder- death	240	x	=	
Death	120	x	=	
Severe	40	x	=	
Moderate	18	x	=	
Slight	4	x	=	
Sexual penetration	80	x	=	
Sexual contact	40	x	=	

Page 110 of 130

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24-00766-20 2020560

936

937 Primary Offense + Additional Offenses + Victim Injury =

938 TOTAL OFFENSE SCORE

939

940 PRIOR RECORD SCORE

941

942 Prior Record

943

Level	Sentence Points	Number	Total
10	29	x	=
9	23	x	=
8	19	x	=
7	14	x	=
6	9	x	=
5	3.6	x	=
4	2.4	x	=
3	1.6	x	=
2	0.8	x	=
1	0.5	x	=

Page 111 of 130

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24-00766-20 2020560

953 M 0.2 x =

954

955

956 Total

957 TOTAL OFFENSE SCORE.....

958 TOTAL PRIOR RECORD SCORE.....

959

960 LEGAL STATUS.....

961 COMMUNITY SANCTION VIOLATION.....

962 PRIOR SERIOUS FELONY.....

963 PRIOR CAPITAL FELONY.....

964 FIREARM OR SEMIAUTOMATIC WEAPON.....

965 SUBTOTAL.....

966

967 PRISON RELEASEE REOFFENDER (no) (yes).....

968 VIOLENT CAREER CRIMINAL (no) (yes).....

969 HABITUAL VIOLENT OFFENDER (no) (yes).....

970 HABITUAL OFFENDER (no) (yes).....

971 DRUG TRAFFICKER (no) (yes) (x multiplier).....

972 LAW ENF. PROTECT. (no) (yes) (x multiplier).....

973 MOTOR VEHICLE THEFT (no) (yes) (x multiplier).....

974 CRIMINAL GANG OFFENSE (no) (yes) (x multiplier).....

975 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no) (yes)
(x multiplier).....

976 ADULT-ON-MINOR SEX OFFENSE (no) (yes) (x multiplier).....

977

978

Page 112 of 130

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24-00766-20

2020560

TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s.

1000 948.06:

1001 a. Twelve (12) community sanction violation points are
1002 assessed for the violation and for each successive violation of
1003 felony probation or community control where:

I. The violation does not include a new felony conviction;

and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or

24-00766-20

make restitution payments.

1009 b. Twenty-four (24) community sanction violation points are
1010 assessed for the violation and for each successive violation of
1011 felony probation or community control where the violation
1012 includes a new felony conviction.

1013
1014 Multiple counts of community sanction violations before the
1015 sentencing court shall not be a basis for multiplying the
1016 assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital

24-00766-20 2020560

1037 felony offense for which the offender has entered a plea of nolo
 1038 contendere or guilty or has been found guilty; or a felony in
 1039 another jurisdiction which is a capital felony in that
 1040 jurisdiction, or would be a capital felony if the offense were
 1041 committed in this state.

1042

1043 Possession of a firearm, semiautomatic firearm, or machine gun:
 1044 If the offender is convicted of committing or attempting to
 1045 commit any felony other than those enumerated in s. 775.087(2)
 1046 while having in his or her possession: a firearm as defined in
 1047 s. 790.001(6), an additional eighteen (18) sentence points are
 1048 assessed; or if the offender is convicted of committing or
 1049 attempting to commit any felony other than those enumerated in
 1050 s. 775.087(3) while having in his or her possession a
 1051 semiautomatic firearm as defined in s. 775.087(3) or a machine
 1052 gun as defined in s. 790.001(9), an additional twenty-five (25)
 1053 sentence points are assessed.

1054

1055 Sentencing multipliers:

1056

1057 Drug trafficking: If the primary offense is drug trafficking
 1058 under s. 893.135, the subtotal sentence points are multiplied,
 1059 at the discretion of the court, for a level 7 or level 8
 1060 offense, by 1.5. The state attorney may move the sentencing
 1061 court to reduce or suspend the sentence of a person convicted of
 1062 a level 7 or level 8 offense, if the offender provides
 1063 substantial assistance as described in s. 893.135(4).

1064

1065 Law enforcement protection: If the primary offense is a

Page 115 of 130

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24-00766-20 2020560

1066 violation of the Law Enforcement Protection Act under s.
 1067 775.0823(2), (3), or (4), the subtotal sentence points are
 1068 multiplied by 2.5. If the primary offense is a violation of s.
 1069 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
 1070 are multiplied by 2.0. If the primary offense is a violation of
 1071 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 1072 Protection Act under s. 775.0823(10) or (11), the subtotal
 1073 sentence points are multiplied by 1.5.

1074

1075 Grand theft of a motor vehicle: If the primary offense is grand
 1076 theft of the third degree involving a motor vehicle and in the
 1077 offender's prior record, there are three or more grand thefts of
 1078 the third degree involving a motor vehicle, the subtotal
 1079 sentence points are multiplied by 1.5.

1080

1081 Offense related to a criminal gang: If the offender is convicted
 1082 of the primary offense and committed that offense for the
 1083 purpose of benefiting, promoting, or furthering the interests of
 1084 a criminal gang as defined in s. 874.03, the subtotal sentence
 1085 points are multiplied by 1.5. If applying the multiplier results
 1086 in the lowest permissible sentence exceeding the statutory
 1087 maximum sentence for the primary offense under chapter 775, the
 1088 court may not apply the multiplier and must sentence the
 1089 defendant to the statutory maximum sentence.

1090

1091 Domestic violence in the presence of a child: If the offender is
 1092 convicted of the primary offense and the primary offense is a
 1093 crime of domestic violence, as defined in s. 741.28, which was
 1094 committed in the presence of a child under 16 years of age who

Page 116 of 130

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24-00766-20 2020560

1095 is a family or household member as defined in s. 741.28(3) with
 1096 the victim or perpetrator, the subtotal sentence points are
 1097 multiplied by 1.5.

1098

1099 Adult-on-minor sex offense: If the offender was 18 years of age
 1100 or older and the victim was younger than 18 years of age at the
 1101 time the offender committed the primary offense, and if the
 1102 primary offense was an offense committed on or after October 1,
 1103 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
 1104 violation involved a victim who was a minor and, in the course
 1105 of committing that violation, the defendant committed a sexual
 1106 battery under chapter 794 or a lewd act under s. 800.04 or s.
 1107 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
 1108 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
 1109 800.04; or s. 847.0135(5), the subtotal sentence points are
 1110 multiplied by 2.0. If applying the multiplier results in the
 1111 lowest permissible sentence exceeding the statutory maximum
 1112 sentence for the primary offense under chapter 775, the court
 1113 may not apply the multiplier and must sentence the defendant to
 1114 the statutory maximum sentence.

1115 (2) The lowest permissible sentence is the minimum sentence
 1116 that may be imposed by the trial court, absent a valid reason
 1117 for departure. The lowest permissible sentence is any nonstate
 1118 prison sanction in which the total sentence points equals or is
 1119 less than 44 points, unless the court determines within its
 1120 discretion that a prison sentence, which may be up to the
 1121 statutory maximums for the offenses committed, is appropriate.
 1122 When the total sentence points exceeds 44 points, the lowest
 1123 permissible sentence in prison months shall be calculated by

Page 117 of 130

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24-00766-20 2020560

1124 subtracting 28 points from the total sentence points and
 1125 decreasing the remaining total by 25 percent. The total sentence
 1126 points shall be calculated only as a means of determining the
 1127 lowest permissible sentence. The permissible range for
 1128 sentencing shall be the lowest permissible sentence up to and
 1129 including the statutory maximum, as defined in s. 775.082, for
 1130 the primary offense and any additional offenses before the court
 1131 for sentencing. The sentencing court may impose such sentences
 1132 concurrently or consecutively. However, any sentence to state
 1133 prison must exceed 1 year. If the lowest permissible sentence
 1134 under the code exceeds the statutory maximum sentence as
 1135 provided in s. 775.082, the sentence required by the code must
 1136 be imposed. If the total sentence points are greater than or
 1137 equal to 363, the court may sentence the offender to life
 1138 imprisonment. An offender sentenced to life imprisonment under
 1139 this section is not eligible for any form of discretionary early
 1140 release, except executive clemency or conditional medical
 1141 release under s. 947.149.

1142 (3) A single digitized scoresheet shall be prepared for
 1143 each defendant to determine the permissible range for the
 1144 sentence that the court may impose, except that if the defendant
 1145 is before the court for sentencing for more than one felony and
 1146 the felonies were committed under more than one version or
 1147 revision of the guidelines or the code, separate digitized
 1148 scoresheets must be prepared. The scoresheet or scoresheets must
 1149 cover all the defendant's offenses pending before the court for
 1150 sentencing. The state attorney shall prepare the digitized
 1151 scoresheet or scoresheets, which must be presented to the
 1152 defense counsel for review for accuracy in all cases unless the

Page 118 of 130

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24-00766-20 2020560_

1153 judge directs otherwise. The defendant's scoresheet or
 1154 scoresheets must be approved and signed by the sentencing judge.
 1155 (4) The Department of Corrections, in consultation with the
 1156 Office of the State Courts Administrator, state attorneys, and
 1157 public defenders, must develop and submit the revised digitized
 1158 Public Safety Criminal Punishment Code scoresheet to the Supreme
 1159 Court for approval by June 15 of each year, as necessary. The
 1160 digitized scoresheet shall have individual, structured data
 1161 cells for each data field on the scoresheet. Upon the Supreme
 1162 Court's approval of the revised digitized scoresheet, the
 1163 Department of Corrections shall produce and provide the revised
 1164 digitized scoresheets by September 30 of each year, as
 1165 necessary. Digitized scoresheets must include individual data
 1166 cells to indicate whether any prison sentence imposed includes a
 1167 mandatory minimum sentence or the sentence imposed was a
 1168 downward departure from the lowest permissible sentence under
 1169 the Public Safety Criminal Punishment Code.
 1170 (5) The Department of Corrections shall make available the
 1171 digitized Public Safety Criminal Punishment Code scoresheets to
 1172 those persons charged with the responsibility for preparing
 1173 scoresheets.
 1174 (6) The clerk of the circuit court shall transmit a
 1175 complete and accurate digitized copy of the Public Safety
 1176 Criminal Punishment Code scoresheet used in each sentencing
 1177 proceeding to the Department of Corrections. Scoresheets must be
 1178 electronically transmitted no less frequently than monthly, by
 1179 the first of each month, and may be sent collectively.
 1180 (7) A digitized sentencing scoresheet must be prepared for
 1181 every defendant who is sentenced for a felony offense. The

Page 119 of 130

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24-00766-20 2020560_

1182 individual offender's digitized Public Safety Criminal
 1183 Punishment Code scoresheet and any attachments thereto prepared
 1184 pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules
 1185 of Criminal Procedure, or any other rule pertaining to the
 1186 preparation and submission of felony sentencing scoresheets,
 1187 must be included with the uniform judgment and sentence form
 1188 provided to the Department of Corrections.
 1189 Section 12. Section 921.0025, Florida Statutes, is amended
 1190 to read:
 1191 921.0025 Adoption and implementation of revised sentencing
 1192 scoresheets.—Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules
 1193 of Criminal Procedure, as revised by the Supreme Court, and any
 1194 other rule pertaining to the preparation and submission of
 1195 felony sentencing scoresheets, are adopted and implemented in
 1196 accordance with this chapter for application to the Public
 1197 Safety Criminal Punishment Code.
 1198 Section 13. Paragraph (m) of subsection (2) of section
 1199 921.0026, Florida Statutes, is amended to read:
 1200 921.0026 Mitigating circumstances.—This section applies to
 1201 any felony offense, except any capital felony, committed on or
 1202 after October 1, 1998.
 1203 (2) Mitigating circumstances under which a departure from
 1204 the lowest permissible sentence is reasonably justified include,
 1205 but are not limited to:
 1206 (m) The defendant's offense is a nonviolent felony, the
 1207 defendant's Public Safety Criminal Punishment Code scoresheet
 1208 total sentence points under s. 921.0024 are 60 points or fewer,
 1209 and the court determines that the defendant is amenable to the
 1210 services of a postadjudicatory treatment-based drug court

Page 120 of 130

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24-00766-20

1211 program and is otherwise qualified to participate in the program
 1212 as part of the sentence. For purposes of this paragraph, the
 1213 term "nonviolent felony" has the same meaning as provided in s.
 1214 948.08(6).

1215 Section 14. Section 921.0027, Florida Statutes, is amended
 1216 to read:

1217 921.0027 Public Safety Criminal Punishment Code and
 1218 revisions; applicability.—The Florida Public Safety Criminal
 1219 Punishment Code applies to all felonies, except capital
 1220 felonies, committed on or after October 1, 1998. Any revision to
 1221 the Public Safety Criminal Punishment Code applies to sentencing
 1222 for all felonies, except capital felonies, committed on or after
 1223 the effective date of the revision. Felonies, except capital
 1224 felonies, with continuing dates of enterprise shall be sentenced
 1225 under the Public Safety Criminal Punishment Code in effect on
 1226 the beginning date of the criminal activity.

1227 Section 15. Subsection (1) of section 924.06, Florida
 1228 Statutes, is amended to read:

1229 924.06 Appeal by defendant.—

1230 (1) A defendant may appeal from:

1231 (a) A final judgment of conviction when probation has not
 1232 been granted under chapter 948, except as provided in subsection
 1233 (3);

1234 (b) An order granting probation under chapter 948;

1235 (c) An order revoking probation under chapter 948;

1236 (d) A sentence, on the ground that it is illegal; or

1237 (e) A sentence imposed under s. 921.0024 of the Public
 1238 Safety Criminal Punishment Code which exceeds the statutory
 1239 maximum penalty provided in s. 775.082 for an offense at

Page 121 of 130

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2020560

1240 conviction, or the consecutive statutory maximums for offenses
 1241 at conviction, unless otherwise provided by law.

1242 Section 16. Paragraph (i) of subsection (1) of section
 1243 924.07, Florida Statutes, is amended to read:

1244 924.07 Appeal by state.—

1245 (1) The state may appeal from:

1246 (i) A sentence imposed below the lowest permissible
 1247 sentence established by the Public Safety Criminal Punishment
 1248 Code under chapter 921.

1249 Section 17. Paragraph (c) of subsection (3) and paragraph
 1250 (e) of subsection (5) of section 944.17, Florida Statutes, are
 1251 amended to read:

1252 944.17 Commitments and classification; transfers.—

1253 (3)

1254 (c)1. When the highest ranking offense for which the
 1255 prisoner is convicted is a felony, the trial court shall
 1256 sentence the prisoner pursuant to the Public Safety Criminal
 1257 Punishment Code in chapter 921.

1258 2. When the highest ranking offense for which the prisoner
 1259 is convicted is a misdemeanor, the trial court shall sentence
 1260 the prisoner pursuant to s. 775.082(4).

1261 (5) The department shall also refuse to accept a person
 1262 into the state correctional system unless the following
 1263 documents are presented in a completed form by the sheriff or
 1264 chief correctional officer, or a designated representative, to
 1265 the officer in charge of the reception process. The department
 1266 may, at its discretion, receive such documents electronically:
 1267 (e) A copy of the Public Safety Criminal Punishment Code
 1268 scoresheet and any attachments thereto prepared pursuant to Rule

Page 122 of 130

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24-00766-20 2020560

1269 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal
 1270 Procedure, or any other rule pertaining to the preparation of
 1271 felony sentencing scoresheets.

1272

1273 In addition, the sheriff or other officer having such person in
 1274 charge shall also deliver with the foregoing documents any
 1275 available presentence investigation reports as described in s.
 1276 921.231 and any attached documents. After a prisoner is admitted
 1277 into the state correctional system, the department may request
 1278 such additional records relating to the prisoner as it considers
 1279 necessary from the clerk of the court, the Department of
 1280 Children and Families, or any other state or county agency for
 1281 the purpose of determining the prisoner's proper custody
 1282 classification, gain-time eligibility, or eligibility for early
 1283 release programs. An agency that receives such a request from
 1284 the department must provide the information requested. The
 1285 department may, at its discretion, receive such information
 1286 electronically.

1287 Section 18. Paragraph (a) of subsection (7) of section
 1288 948.01, Florida Statutes, is amended to read:

1289 948.01 When court may place defendant on probation or into
 1290 community control.—

1291 (7) (a) Notwithstanding s. 921.0024 and effective for
 1292 offenses committed on or after July 1, 2009, the sentencing
 1293 court may place the defendant into a postadjudicatory treatment-
 1294 based drug court program if the defendant's Public Safety
 1295 Criminal Punishment Code scoresheet total sentence points under
 1296 s. 921.0024 are 60 points or fewer, the offense is a nonviolent
 1297 felony, the defendant is amenable to substance abuse treatment,

Page 123 of 130

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24-00766-20 2020560

1298 and the defendant otherwise qualifies under s. 397.334(3). The
 1299 satisfactory completion of the program shall be a condition of
 1300 the defendant's probation or community control. As used in this
 1301 subsection, the term "nonviolent felony" means a third degree
 1302 felony violation under chapter 810 or any other felony offense
 1303 that is not a forcible felony as defined in s. 776.08.

1304 Section 19. Section 948.015, Florida Statutes, is amended
 1305 to read:

1306 948.015 Presentence investigation reports.—The circuit
 1307 court, when the defendant in a criminal case has been found
 1308 guilty or has entered a plea of nolo contendere or guilty and
 1309 has a lowest permissible sentence under the Public Safety
 1310 Criminal Punishment Code of any nonstate prison sanction, may
 1311 refer the case to the department for investigation or
 1312 recommendation. Upon such referral, the department shall make
 1313 the following report in writing at a time specified by the court
 1314 prior to sentencing. The full report shall include:

1315 (1) A complete description of the situation surrounding the
 1316 criminal activity with which the offender has been charged,
 1317 including a synopsis of the trial transcript, if one has been
 1318 made; nature of the plea agreement, including the number of
 1319 counts waived, the pleas agreed upon, the sentence agreed upon,
 1320 and any additional terms of agreement; and, at the offender's
 1321 discretion, his or her version and explanation of the criminal
 1322 activity.

1323 (2) The offender's sentencing status, including whether the
 1324 offender is a first offender, a habitual or violent offender, a
 1325 youthful offender, or is currently on probation.

1326 (3) The offender's prior record of arrests and convictions.

Page 124 of 130

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24-00766-20 2020560

1327 (4) The offender's educational background.

1328 (5) The offender's employment background, including any

1329 military record, present employment status, and occupational

1330 capabilities.

1331 (6) The offender's financial status, including total

1332 monthly income and estimated total debts.

1333 (7) The social history of the offender, including his or

1334 her family relationships, marital status, interests, and

1335 activities.

1336 (8) The residence history of the offender.

1337 (9) The offender's medical history and, as appropriate, a

1338 psychological or psychiatric evaluation.

1339 (10) Information about the environments to which the

1340 offender might return or to which the offender could be sent

1341 should a sentence of nonincarceration or community supervision

1342 be imposed by the court, and consideration of the offender's

1343 plan concerning employment supervision and treatment.

1344 (11) Information about any resources available to assist

1345 the offender, such as:

1346 (a) Treatment centers.

1347 (b) Residential facilities.

1348 (c) Career training programs.

1349 (d) Special education programs.

1350 (e) Services that may preclude or supplement commitment to

1351 the department.

1352 (12) The views of the person preparing the report as to the

1353 offender's motivations and ambitions and an assessment of the

1354 offender's explanations for his or her criminal activity.

1355 (13) An explanation of the offender's criminal record, if

Page 125 of 130

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24-00766-20 2020560

1356 any, including his or her version and explanation of any

1357 previous offenses.

1358 (14) A statement regarding the extent of any victim's loss

1359 or injury.

1360 (15) A recommendation as to disposition by the court. The

1361 department shall make a written determination as to the reasons

1362 for its recommendation, and shall include an evaluation of the

1363 following factors:

1364 (a) The appropriateness or inappropriateness of community

1365 facilities, programs, or services for treatment or supervision

1366 for the offender.

1367 (b) The ability or inability of the department to provide

1368 an adequate level of supervision for the offender in the

1369 community and a statement of what constitutes an adequate level

1370 of supervision.

1371 (c) The existence of other treatment modalities which the

1372 offender could use but which do not exist at present in the

1373 community.

1374 Section 20. Paragraph (j) of subsection (2) of section

1375 948.06, Florida Statutes, is amended to read:

1376 948.06 Violation of probation or community control;

1377 revocation; modification; continuance; failure to pay

1378 restitution or cost of supervision.—

1379 (2)

1380 (j)1. Notwithstanding s. 921.0024 and effective for

1381 offenses committed on or after July 1, 2009, the court may order

1382 the defendant to successfully complete a postadjudicatory

1383 treatment-based drug court program if:

1384 a. The court finds or the offender admits that the offender

Page 126 of 130

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24-00766-20 2020560

1385 has violated his or her community control or probation;

1386 b. The offender's Public Safety Criminal Punishment Code

1387 scoresheet total sentence points under s. 921.0024 are 60 points

1388 or fewer after including points for the violation;

1389 c. The underlying offense is a nonviolent felony. As used

1390 in this subsection, the term "nonviolent felony" means a third

1391 degree felony violation under chapter 810 or any other felony

1392 offense that is not a forcible felony as defined in s. 776.08;

1393 d. The court determines that the offender is amenable to

1394 the services of a postadjudicatory treatment-based drug court

1395 program;

1396 e. The court has explained the purpose of the program to

1397 the offender and the offender has agreed to participate; and

1398 f. The offender is otherwise qualified to participate in

1399 the program under the provisions of s. 397.334(3).

1400 2. After the court orders the modification of community

1401 control or probation, the original sentencing court shall

1402 relinquish jurisdiction of the offender's case to the

1403 postadjudicatory treatment-based drug court program until the

1404 offender is no longer active in the program, the case is

1405 returned to the sentencing court due to the offender's

1406 termination from the program for failure to comply with the

1407 terms thereof, or the offender's sentence is completed.

1408 Section 21. Subsection (1) of section 948.20, Florida

1409 Statutes, is amended to read:

1410 948.20 Drug offender probation.—

1411 (1) If it appears to the court upon a hearing that the

1412 defendant is a chronic substance abuser whose criminal conduct

1413 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent

Page 127 of 130

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24-00766-20 2020560

1414 felony if such nonviolent felony is committed on or after July

1415 1, 2009, and notwithstanding s. 921.0024, the defendant's Public

1416 Safety Criminal Punishment Code scoresheet total sentence points

1417 are 60 points or fewer, the court may either adjudge the

1418 defendant guilty or stay and withhold the adjudication of guilt.

1419 In either case, the court may also stay and withhold the

1420 imposition of sentence and place the defendant on drug offender

1421 probation or into a postadjudicatory treatment-based drug court

1422 program if the defendant otherwise qualifies. As used in this

1423 section, the term "nonviolent felony" means a third degree

1424 felony violation under chapter 810 or any other felony offense

1425 that is not a forcible felony as defined in s. 776.08.

1426 Section 22. Paragraph (c) of subsection (2) of section

1427 948.51, Florida Statutes, is amended to read:

1428 948.51 Community corrections assistance to counties or

1429 county consortiums.—

1430 (2) **ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.**—A

1431 county, or a consortium of two or more counties, may contract

1432 with the Department of Corrections for community corrections

1433 funds as provided in this section. In order to enter into a

1434 community corrections partnership contract, a county or county

1435 consortium must have a public safety coordinating council

1436 established under s. 951.26 and must designate a county officer

1437 or agency to be responsible for administering community

1438 corrections funds received from the state. The public safety

1439 coordinating council shall prepare, develop, and implement a

1440 comprehensive public safety plan for the county, or the

1441 geographic area represented by the county consortium, and shall

1442 submit an annual report to the Department of Corrections

Page 128 of 130

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24-00766-20 2020560

1443 concerning the status of the program. In preparing the
 1444 comprehensive public safety plan, the public safety coordinating
 1445 council shall cooperate with the juvenile justice circuit
 1446 advisory board established under s. 985.664 in order to include
 1447 programs and services for juveniles in the plan. To be eligible
 1448 for community corrections funds under the contract, the initial
 1449 public safety plan must be approved by the governing board of
 1450 the county, or the governing board of each county within the
 1451 consortium, and the Secretary of Corrections based on the
 1452 requirements of this section. If one or more other counties
 1453 develop a unified public safety plan, the public safety
 1454 coordinating council shall submit a single application to the
 1455 department for funding. Continued contract funding shall be
 1456 pursuant to subsection (5). The plan for a county or county
 1457 consortium must cover at least a 5-year period and must include:
 1458 (c) Specific goals and objectives for reducing the
 1459 projected percentage of commitments to the state prison system
 1460 of persons with low total sentencing scores pursuant to the
 1461 Public Safety Criminal Punishment Code.
 1462 Section 23. Subsection (3) of section 958.04, Florida
 1463 Statutes, is amended to read:
 1464 958.04 Judicial disposition of youthful offenders.—
 1465 (3) The provisions of this section shall not be used to
 1466 impose a greater sentence than the permissible sentence range as
 1467 established by the Public Safety Criminal Punishment Code
 1468 pursuant to chapter 921 unless reasons are explained in writing
 1469 by the trial court judge which reasonably justify departure. A
 1470 sentence imposed outside of the code is subject to appeal
 1471 pursuant to s. 924.06 or s. 924.07.

Page 129 of 130

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24-00766-20 2020560

1472 Section 24. Subsection (4) of section 985.465, Florida
 1473 Statutes, is amended to read:
 1474 985.465 Juvenile correctional facilities or juvenile
 1475 prison.—A juvenile correctional facility or juvenile prison is a
 1476 physically secure residential commitment program with a
 1477 designated length of stay from 18 months to 36 months, primarily
 1478 serving children 13 years of age to 19 years of age or until the
 1479 jurisdiction of the court expires. Each child committed to this
 1480 level must meet one of the following criteria:
 1481 (4) The child is at least 13 years of age at the time of
 1482 the disposition for the current offense, the child is eligible
 1483 for prosecution as an adult for the current offense, and the
 1484 current offense is ranked at level 7 or higher on the Public
 1485 Safety Criminal Punishment Code offense severity ranking chart
 1486 pursuant to s. 921.0022.

1487 Section 25. This act shall take effect July 1, 2020.

Page 130 of 130

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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)

11-12-19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Fla. Director

Address _____
Street _____

Phone 954.557.0016

City _____ State _____ Zip _____

Email cmurphy@fightoncrime.com

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.

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)

11-12-19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville

FL

32614

State

Zip

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

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)

11/12/19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste. 401

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/21/19

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

560

Bill Number (if applicable)

Meeting Date

Topic Sentencing

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 SOUTH MONROE STREET

Phone (850) 681-0024

Street Tallahassee FL 32307

Email jorge@flaparties.com

City Tallahassee State FL

Zip

Speaking: For Against Information

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

Representing FACSL

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

11/12/2019

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

SB 560

Meeting Date

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Scott D. 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 Southern Poverty Law Center 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)

11/12/14

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee FL 32301

City

State

Zip

Speaking: For Against Information

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

Representing ACLU of FL

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)

11/12/19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Philip Sudermann

Job Title Policy Director

Address _____
Street

Phone _____

City _____ State _____

Zip _____

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

November 12, 2019

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 1, 2019

I respectfully request that **Senate Bill #560**, relating to **Sentencing**, 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".

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 572

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Release from Imprisonment

DATE: December 11, 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 572 amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the Department of Corrections (DOC) may grant from up to 10 days to up to 20 days for offenders sentenced for offenses regardless of when the offense was committed. This increase applies both prospectively and retroactively. The bill also provides that any gain-time cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

The bill also amends s. 945.091, F.S., authorizing the DOC to allow an inmate to participate in a supervised community release program (Program) up to 365 days before the inmate's tentative release date as an extension of the inmate's confinement. An inmate is only eligible for such Program if he or she is sentenced to a term of imprisonment of two or more years. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program may include active electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate's participation in the Program may be terminated by the DOC if the inmate fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there are reasonable grounds to believe that the inmate violated his or her supervised community release, the bill authorizes a law enforcement officer or probation officer to arrest the

inmate in accordance with s. 948.06, F.S. An alleged violation of the conditions of the Program must be reported to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges.

The bill also amends s. 944.275(4)(f), F.S., providing that time spent participating in a program authorized by s. 945.091, F.S., even if such program allows the inmate to not be released from prison on some form of community supervision, must be credited toward satisfaction of the 85 percent rule.

The Criminal Justice Estimating Conference (CJIC) has not heard the bill at this time. The CJIC heard SB 642 (2019), which, in part, included the provision of the bill that allows inmates convicted of certain nonviolent felonies to earn an increased amount of gain-time and reduces the requirement to serve a certain percentage of the term of imprisonment from 85 percent to 65 percent. The CJIC found that this provision of the bill will result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).

The DOC reports that the provisions of the bill related to extension of confinement will likely have a negative indeterminate fiscal impact on the DOC. The DOC reports it will require one full-time equivalent position, entitled Correctional Programs Consultant, to provide statewide implementation and oversight of the Program. The DOC reports it will also need one additional FTE position at a Correctional Services Assistant Consultant level. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. 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 five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time, and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁴

Gain-time and the “85 Percent” Requirement

Section 921.002(1)(e), F.S., of the Criminal Punishment Code provides that for noncapital felony offenses committed on or after October 1, 1998, the sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and

¹ Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F.

² Section 921.0022(1), F.S.

³ Section 775.082(3)(b), (d), and (e), F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

meritorious gain-time as provided by law.⁵ 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.⁶ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.⁷

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, 1994.⁸ The only forms of gain-time that can currently be earned are:

- Incentive gain-time;⁹
- Meritorious gain-time;¹⁰ and
- Educational achievement gain-time.¹¹

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

⁵ Persons sentenced for offenses committed prior to October 1, 1995 are not subject to the 85 percent requirement. See *Frequently Asked Questions Regarding Gaintime*, DOC, available at [https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711\(1\).pdf](https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711(1).pdf) (last visited on December 10, 2019).

⁶ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

⁷ Section 944.275(4)(f), F.S.

⁸ Chapter 93-406, L.O.F.

⁹ Section 944.275(4)(b)3., F.S, provides that incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

¹⁰ Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

¹¹ Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

¹² Section 944.275(3)(c), F.S.

¹³ Section 944.275(2)(a), F.S.

¹⁴ Section 944.275(3)(a), F.S.

¹⁵ *Id.* See also s. 944.275(4)(b), F.S.

However, for sentences imposed for offenses committed on or after October 1, 1995, no prisoner is eligible to earn any 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. 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 s. 944.275, F.S., a prisoner shall 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 natural lives, unless granted pardon or clemency.¹⁶

Extension on the Limits of Confinement

There are a limited number of instances where an inmate who is in the custody of the DOC may continue serving his or her sentence outside the physical walls of a prison. When a reasonable belief exists that an inmate will adhere to conditions placed upon him or her, s. 945.091, F.S., authorizes the DOC to allow an inmate to leave the confines of a physical facility unaccompanied for a specified period of time to:

- Visit a:
 - Dying relative or attend a funeral of a relative;
 - Specified location to arrange for employment or for a suitable residence for use upon release;
 - Specified place to aide in the successful transition back into the community;
 - Specifically designated location for any other compelling reason;¹⁷
- Work at paid employment;¹⁸
- Participate in an educational or training program;¹⁹
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;²⁰ or
- Participate in a residential or nonresidential rehabilitative program.²¹

¹⁶ Section 944.275(4)(b)3., F.S.

¹⁷ Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. *See also* the DOC, *Senate Bill 338 (2019) Analysis*, at p. 2 (January 31, 2019) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as “The DOC SB 338 (2019) Analysis”]. SB 338 (2019) was substantially similar to this bill.

¹⁸ This provision is commonly referred to as “Work Release.” Section 945.091(1)(b), F.S., further provides that this form of release occurs while the inmate continues as an inmate of the institution or facility in which the inmate is confined. The only time in which the inmate is released unaccompanied is during the hours of his or her employment, education, training, or service and traveling to and from such approved activity. An inmate is permitted to travel to and from the place of employment, education, or training by walking, bicycling, or using public transportation or transportation that is provided by a family member or employer.

¹⁹ Section 945.091(1)(b), F.S.

²⁰ *Id.*

²¹ Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.²²

Prior to July 1, 1996, a fourth provision, known as the Supervised Community Release Program, existed that allowed inmates to be released on an extension of confinement to participate in a rehabilitative community reentry program on conditional release.²³ This release was for a period of no more than 90 days prior to the termination of his or her confinement. The inmate was released and placed on community supervision, but was not considered to be in the custody or care of the DOC or in confinement. If the inmate did not demonstrate sufficient progress with the reentry program, the DOC was able to terminate the inmate's participation and return the inmate to the prior institution or a new facility as designated by the DOC.²⁴

The DOC's adopted rules related to the extension of confinement are that to be eligible for consideration he or she may not have convictions for certain offenses²⁵ and be classified as community custody in accordance with Rule 33-601.210, F.A.C., or have a recommendation for community custody currently under review.²⁶ Additionally, the DOC will also consider the following factors to ensure community release placement is appropriate:

- Arrest history, with particular attention to violent offenses or offenses in which the circumstances reflect that a sex act was intended, attempted, or completed;
- Pending outside charges;
- Disciplinary history, with particular attention to violence, escape risk, substance abuse, or sexual deviancy;
- Substance abuse history;
- Program needs, including re-entry;
- Victim concerns; and

²² Section 945.091(1), F.S.

²³ Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

²⁴ *Id.*

²⁵ Rule 33-601.602(2)(b), F.A.C., prohibits inmates with the following convictions to participate in a program or release authorized under s. 945.091, F.S.: Certain current or prior sex offense convictions; Current or prior conviction for murder or attempted murder under s. 782.04, F.S.; Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under s. 782.07(2), F.S.; Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under s. 782.07(3), F.S.; Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under s. 782.07(4), F.S.; Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under s. 782.09(1), F.S.; Current or prior conviction for attempted murder of a law enforcement officer under s. 784.07(3), F.S.; Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under s. 790.161(4), F.S.; Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.; A guilty finding on any disciplinary report for escape or attempted escape within the last five years; A current or prior conviction for escape covered by s. 945.092, F.S.; A felony, Immigration and Customs Enforcement, or misdemeanor (other than child support) warrant or detainer; or A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

²⁶ Rule 33-601.602(2)(d), F.A.C.

- The inmate's skills, physical ability, and overall compatibility with the requested community release program.²⁷

Community Control

Section 948.001(3), F.S., defines "community control" to mean a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.²⁸ 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.²⁹

A person on community control (controlee) has an individualized 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.³⁰

Conditions of community control are determined by the court when the offender is placed on such supervision. However, there are standard conditions of community control that all controles must comply with, including, but not limited to:

- Specified contact with the parole and probation officer;
- Confinement to an agreed-upon residence during hours away from employment and public service activities;
- Mandatory public service;
- Supervision by the DOC through an electronic monitoring device or system; and
- The standard conditions of probation³¹ set forth in s. 948.03, F.S.³²

A person may be placed on additional terms of supervision as part of his or her community control sentence.³³

²⁷ Rule 33-601.602(2)(e), F.A.C.

²⁸ Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

²⁹ Section 948.10(1), F.S.

³⁰ *Id. See also* DOC, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf> (last visited on November 4, 2019). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee's officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

³¹ Section 948.001(9), F.S., defines "probation" to mean a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Some of the standard conditions of probation provided for in s. 948.03, F.S., include, but are not limited to, for the offender to report to the probation officer as directed, permit the probation officer to visit him or her at his or her home or elsewhere, work at suitable employment, live without violating any law, and make restitution to the aggrieved party for the damage or loss caused by his or her offense as determined by the court.

³² Section 948.101(1), F.S.

³³ Section 948.101(2), F.S.

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.³⁴ 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.³⁵

The offender must be returned to the court granting such probation or community control.³⁶

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.³⁷

Arrest Authority

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant under specified circumstances, including, but not limited to, when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
- A felony has been committed and the officer reasonably believes that the person committed it.
- The officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another peace officer for execution.
- A violation of ch. 316, F.S. (state uniform traffic control), has been committed in the presence of the officer.
- There is probable cause to believe that the person has violated s. 790.233, F.S. (possession of firearms by a convicted felon), s. 741.31, F.S. (possession of prohibited ammunition), a protective injunction order, or a specified foreign protection order.
- There is probable cause to believe that the person has committed an act of domestic violence or dating violence.

Additionally, a probation officer is authorized to issue an arrest warrant or arrest an offender in limited circumstances. Section 944.405(1), F.S., authorizes the DOC to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences."

³⁴ Section 948.10(3), F.S.

³⁵ Section 948.06(1)(a), F.S.

³⁶ *Id.*

³⁷ Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the offender 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.

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community controles without a written warrant based on a reasonable belief the offender has violated terms of supervision in a material respect.

Evidence-Based Risk Assessment Tools

Risk and needs assessment instruments (RAIs) measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.³⁸ RAIs consist of a set of questions that guide interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminal reoffending. The questioner typically supplements the interview with an official records check, including prior arrests and incarcerations. Responses are statistically weighted, based on research that shows how strongly each item correlates with recidivism. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.³⁹

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. 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.⁴⁰ Dynamic risk factors, also called "criminogenic⁴¹ 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.⁴²

The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. 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.⁴³

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.⁴⁴

³⁸ The 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 November 4, 2019) (hereinafter cited as "The CRS Report").

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. The CRS Report, p. 3, n. 16.

⁴² The CRS Report, p. 3.

⁴³ The CRS Report, Summary Page.

⁴⁴ The CRS Report, p. 4.

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.⁴⁵ Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.⁴⁶ Spectrum has been independently verified through the School of Criminology at the Florida State University.⁴⁷

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.⁴⁸ Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains⁴⁹ and three core program areas.⁵⁰

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.⁵¹ Spectrum was completed in September, 2016, and subsequently deployed throughout the state.⁵²

III. Effect of Proposed Changes:

Gain-Time

The bill amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses regardless of when the offense was committed. This increase applies both prospectively and retroactively.

⁴⁵ The DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited November 4, 2019) (hereinafter cited as "Spectrum Video"); The DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

⁴⁶ Email from Jared Torres, the DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

⁴⁷ Letter from Dr. William D. Bales and Jennifer M. Brown to the 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."

⁴⁸ The DOC Program Information.

⁴⁹ 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.

⁵⁰ 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).

⁵¹ *Id.*

⁵² See WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Cordner, September 23, 2016, available at <http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates> (last visited November 4, 2019).

The bill provides that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony. The bill specifies that “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S. Section 948.08(6), F.S., defines “nonviolent felony” as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony.⁵³

The bill also amends s. 921.002, F.S., to make conforming changes that reference the changes to s. 944.275, F.S., to indicate that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

Extension on Confinement

The bill amends s. 945.091, F.S., to allow an inmate who has a sentence of two years or more to participate in a supervised community release program (Program) as an extension of the inmate’s confinement, similar to the former Supervised Community Release Program discussed above. The Program release term may begin 365 days before the inmate’s provisional or tentative release date and may include active electronic monitoring and community control as defined in s. 948.001, F.S. An inmate participating in such Program is considered to be in the custody, care, supervision, and control of the DOC for purposes of gain-time awards and the 85 percent rule.

The bill requires the DOC to administer a RAI to determine an inmate’s eligibility for this Program. The bill provides that participation in and conditions of the Program will be as proscribed in department rule.

The DOC is authorized to terminate the inmate’s participation in the Program if he or she fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the same institution or another institution designated by the DOC.

The bill allows a law enforcement officer or probation officer to arrest an inmate without a warrant in accordance with s. 948.06(1), F.S., if there are reasonable grounds to believe the inmate violated the terms of the Program. A law enforcement officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate’s alleged violations to the supervising probation office or the DOC’s emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule.⁵⁴ However, the bill provides the inmate is not counted as part of the inmate population and the approved community-based housing in which the inmate lives is not counted in capacity figures for the prison system.

⁵³ A “forcible felony” is: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁵⁴ See s. 944.275(4)(f), F.S.

The bill also amends s. 944.275(4)(f), F.S., providing that time spent participating in a program authorized by s. 945.091, F.S., even if such program allows the inmate to not be released from prison on some form of community supervision, must be credited toward satisfaction of the 85 percent rule as a result of the inmate being considered in the care, custody, supervision, or control of the DOC.

The bill reenacts ss. 775.084, 921.002, and 946.053, F.S., incorporating the changes made by the act.

The bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 365 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time.

Gain-Time and 85 Percent

The CJIC heard SB 642 (2019), which, in part, included the provision of the bill that allows inmates convicted of certain nonviolent felonies to earn an increased amount of gain-time and reduces the requirement to serve a certain percentage of the term of imprisonment from 85 percent to 65 percent. The CJIC found that this provision of the bill will result in a negative indeterminate prison bed impact. Additionally, the CJIC reported that this provision will result in a reduction of over 9,000 prison beds, or over \$860 million, in the next five years.⁵⁵

Extension on Confinement

The DOC reports that this section of the bill would likely result in a negative indeterminate prison bed impact (i.e., an indeterminate decrease in prison beds). The DOC stated that the number is indeterminate for several reasons, including not being able to quantify how many inmates would be interested in the Program and, of those inmates, how many could obtain proper housing placements to warrant release.⁵⁶

The DOC reports that as of October 22, 2019, there are 4,390 inmates who are in community custody and are within 365 days of their tentative release date. Of those, 3,143 are currently at work release centers. The remaining are approved for work release and are awaiting bed space. The DOC further reports that it anticipates that there will be an additional 2,159 inmates meeting the criteria of community custody and being within 365 days of their tentative release date within the next 6 months. The DOC states that the bill may reduce populations at reentry centers, work camps, and work release centers because inmates currently housed in these facilities would be eligible for the Program and may elect to participate in the program.⁵⁷

SB 338 (2019) had similar provisions to the extension of confinement provisions of this bill. In the SB 338 (2019) Analysis, the DOC further reported that the fiscal impact of such provisions will vary based on the number of released inmates placed on active electronic monitoring, the rate at which electronic monitoring costs are paid, and the type of facility from which Program participants are released. The DOC would likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the inmates released to this Program on electronic monitoring. The electronic monitoring per diem rate would be paid for the designated number of days with which the inmate was out in the community instead of housed in an institution, which could result in a cost savings to

⁵⁵ The CJIC, Economic and Demographic Research, *CS/CS/SB 642 (2019) Conference Impact Results*, p. 13 and 21, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSCSSB642.pdf> (last visited December 10, 2019).

⁵⁶ The DOC, *SB 572 Agency Analysis*, at p. 5 (December 3, 2019) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as “The DOC SB 572 Analysis”]. *See also* the DOC SB 338 (2019) Analysis, at p. 4.

⁵⁷ The DOC SB 572 Analysis, p. 5.

the DOC.⁵⁸ SB 572 allows for certain inmates to be released in the Program 365 days prior to the tentative or provisional release date, rather than 180 days as provided in SB 338 (2019). Therefore, it is expected that this bill will have a similar, potentially more significant, negative indeterminate fiscal impact than reported by the DOC in the SB 338 (2019) Analysis.

The DOC reports that the bill will result in the need for one additional full-time equivalent position in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the Program statewide.⁵⁹ The DOC reports it will also need one additional FTE position at a Correctional Services Assistant Consultant level to handle violators and absconders.⁶⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.002, 944.275, and 945.091.

This bill reenacts the following sections of the Florida Statutes: 775.084, 921.002, and 946.503.

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 December 10, 2019:

The committee substitute:

- Increases monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses committed on or after October 1, 1995;
- Reduces the amount of a sentence that must be served by a prisoner convicted of a nonviolent felony from no less than 85 percent to no less than 65 percent;
- Maintains the provision that requires a prisoner to serve no less than 85 percent of his or her sentence if convicted of a violent felony; and

⁵⁸ The DOC SB 338 (2019) Analysis, at p. 4

⁵⁹ The DOC SB 572 Analysis, at p. 5. The DOC reported in the SB 338 (2019) Analysis that it will be requesting funding for the position in the amount of \$69,949 recurring General Revenue, \$4,429 nonrecurring General Revenue funds and salary rate of 45,943.

⁶⁰ The DOC SB 572, at p. 5.

- Deletes the provision that the inmate cannot earn gain-time in an amount that would result in the prisoner's release from the DOC's care, custody, supervision, or control prior to 85 percent.

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 74 - 75

4 and insert:

5 end, or terminate, or that would result in a prisoner's release,

6

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

8 And the title is amended as follows:

9 Delete lines 3 - 9

10 and insert:



11 s. 944.275, F.S.; providing that an inmate is
12 considered in the care, custody, supervision, or
13 control of the Department of Corrections when
14 participating in specified programs and may receive
15 credit towards specified portions of a sentence for
16 such participation;



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 38 - 69

4 and insert:

5 Section 1. Paragraph (e) of subsection (1) of section
6 921.002, Florida Statutes, is amended to read:

7 921.002 The Criminal Punishment Code.—The Criminal
8 Punishment Code shall apply to all felony offenses, except
9 capital felonies, committed on or after October 1, 1998.

10 (1) The provision of criminal penalties and of limitations



11 upon the application of such penalties is a matter of
12 predominantly substantive law and, as such, is a matter properly
13 addressed by the Legislature. The Legislature, in the exercise
14 of its authority and responsibility to establish sentencing
15 criteria, to provide for the imposition of criminal penalties,
16 and to make the best use of state prisons so that violent
17 criminal offenders are appropriately incarcerated, has
18 determined that it is in the best interest of the state to
19 develop, implement, and revise a sentencing policy. The Criminal
20 Punishment Code embodies the principles that:

21 (e) The sentence imposed by the sentencing judge reflects
22 the length of actual time to be served, shortened only by the
23 application of incentive and meritorious gain-time as provided
24 by law, and may not be shortened if the defendant would
25 consequently serve less than 65 percent of his or her term of
26 imprisonment as provided in s. 944.275(4)(b)3.a. or less than 85
27 percent of his or her term of imprisonment as provided in s.
28 944.275(4) or s. 944.275(4)(b)3.b. The provisions of chapter
29 947, relating to parole, shall not apply to persons sentenced
30 under the Criminal Punishment Code.

31 Section 2. Paragraphs (b) and (f) of subsection (4) of
32 section 944.275, Florida Statutes, are amended to read:

33 944.275 Gain-time.—

34 (4)

35 (b) For each month in which an inmate works diligently,
36 participates in training, uses time constructively, or otherwise
37 engages in positive activities, the department may grant
38 incentive gain-time in accordance with this paragraph. The rate
39 of incentive gain-time in effect on the date the inmate



100336

40 committed the offense that ~~which~~ resulted in his or her
41 incarceration shall be the inmate's rate of eligibility to earn
42 incentive gain-time throughout the period of incarceration and
43 may ~~shall~~ not be altered by a subsequent change in the severity
44 level of the offense for which the inmate was sentenced.

45 1. For sentences imposed for offenses committed before
46 ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time
47 may be granted. If granted, such gain-time shall be credited and
48 applied monthly.

49 2. For sentences imposed for offenses committed on or after
50 January 1, 1994, and before October 1, 1995:

51 a. For offenses ranked in offense severity levels 1 through
52 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
53 of incentive gain-time may be granted. If granted, such gain-
54 time shall be credited and applied monthly.

55 b. For offenses ranked in offense severity levels 8, 9, and
56 10, under former s. 921.0012 or former s. 921.0013, up to 20
57 days of incentive gain-time may be granted. If granted, such
58 gain-time shall be credited and applied monthly.

59 3. For sentences imposed for offenses, regardless of the
60 date committed, the department may grant up to 20 days per month
61 of incentive gain-time, except that:

62 a. If the offense is a nonviolent felony, as defined in s.
63 948.08(6), the prisoner is not eligible to earn any type of
64 gain-time in an amount that would cause a sentence to expire,
65 end, or terminate, or that would result in a prisoner's release,
66 before he or she serves a minimum of 65 percent of the sentence
67 imposed. For purposes of this sub-subparagraph, credits awarded
68 by the court for time physically incarcerated must be credited



100336

69 toward satisfaction of 65 percent of the sentence imposed. A
70 prisoner who is granted incentive gain-time pursuant to this
71 sub-subparagraph may not accumulate further gain-time awards at
72 any point when the tentative release date is the same as that
73 date at which the prisoner will have served 65 percent of the
74 sentence imposed. State prisoners sentenced to life imprisonment
75 must be incarcerated for the rest of their natural lives, unless
76 granted pardon or clemency.

77 b. If the offense is not a nonviolent felony, as defined in
78 s. 948.08(6), the prisoner is not eligible to earn any type of
79 gain-time in an amount that would cause a sentence to expire,
80 end, or terminate, or that would result in a prisoner's release,
81 before he or she serves a minimum of 85 percent of the sentence
82 imposed. For purposes of this sub-subparagraph, credits awarded
83 by the court for time physically incarcerated must be credited
84 toward satisfaction of 85 percent of the sentence imposed. A
85 prisoner who is granted incentive gain-time pursuant to this
86 sub-subparagraph may not accumulate further gain-time awards at
87 any point when the tentative release date is the same as that
88 date at which the prisoner will have served 85 percent of the
89 sentence imposed. State prisoners sentenced to life imprisonment
90 must be incarcerated for the rest of their natural lives, unless
91 granted pardon or clemency ~~For sentences imposed for offenses~~
~~committed on or after October 1, 1995, the department may grant~~
~~up to 10 days per month of incentive gain-time.~~

94
95 ===== T I T L E A M E N D M E N T =====

96 And the title is amended as follows:

97 Delete lines 2 - 3



98 and insert:

99 An act relating to release from imprisonment; amending
100 s. 921.002, F.S.; revising a principle of the Criminal
101 Punishment Code relating to a prisoner's required
102 minimum term of imprisonment; amending s. 944.275,
103 F.S.; revising the incentive gain-time that the
104 Department of Corrections may grant a prisoner;
105 providing exceptions; specifying that an inmate is not

By Senator Brandes

24-00768A-20

2020572

A bill to be entitled

An act relating to extension of confinement; amending s. 944.275, F.S.; specifying that an inmate is not eligible to receive specified incentive gain-time if such gain-time would result in the prisoner's release from the care, custody, supervision, or control of the Department of Corrections; requiring that participation in specified programs be credited toward satisfaction of specified portions of a sentence; amending s. 945.091, F.S.; authorizing the department to extend the limits of confinement to allow an inmate to participate in supervised community release, subject to certain requirements, as prescribed by the department by rule; providing that an inmate participating in such supervised community release is considered to be in the custody, care, supervision, and control of the department; authorizing the department to terminate the inmate's supervised community release under certain circumstances; providing that an inmate participating in supervised community release is eligible to earn or lose gain-time, subject to certain restrictions; prohibiting the inmate from being counted in the population of the prison system; prohibiting the inmate's approved community-based housing location from being counted in the capacity figures for the prison system; reenacting ss. 775.084(4)(k) and 921.002(1)(e), F.S., relating to violent criminals and habitual offenders and the Criminal Punishment Code, respectively, to incorporate

Page 1 of 7

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

24-00768A-20

2020572

the amendment made to s. 944.275, F.S., in references thereto; reenacting s. 946.503(2), F.S., relating to the definition of the term "correctional work program" to incorporate the amendment made to s. 945.091, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (f) of subsection (4) of section 944.275, Florida Statutes, is amended, and paragraph (b) of that subsection is republished, to read:

944.275 Gain-time.—

(4)

(b) For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and shall not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

Page 2 of 7

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24-00768A-20

2020572

59 a. For offenses ranked in offense severity levels 1 through
 60 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
 61 of incentive gain-time may be granted. If granted, such gain-
 62 time shall be credited and applied monthly.

63 b. For offenses ranked in offense severity levels 8, 9, and
 64 10, under former s. 921.0012 or former s. 921.0013, up to 20
 65 days of incentive gain-time may be granted. If granted, such
 66 gain-time shall be credited and applied monthly.

67 3. For sentences imposed for offenses committed on or after
 68 October 1, 1995, the department may grant up to 10 days per
 69 month of incentive gain-time.

70 (f) An inmate who is subject to subparagraph (b)3. is not
 71 eligible to earn or receive gain-time under paragraph (a),
 72 paragraph (b), paragraph (c), or paragraph (d) or any other type
 73 of gain-time in an amount that would cause a sentence to expire,
 74 end, or terminate, or that would result in a prisoner's release
 75 from the department's care, custody, supervision, or control,
 76 prior to serving a minimum of 85 percent of the sentence
 77 imposed. For purposes of this paragraph, credits awarded by the
 78 court for time physically incarcerated or time spent in the
 79 department's care, custody, supervision, or control through
 80 participation in a program under s. 945.091 shall be credited
 81 toward satisfaction of 85 percent of the sentence imposed.
 82 Except as provided by this section, a prisoner may not
 83 accumulate further gain-time awards at any point when the
 84 tentative release date is the same as that date at which the
 85 prisoner will have served 85 percent of the sentence imposed.
 86 State prisoners sentenced to life imprisonment shall be
 87 incarcerated for the rest of their natural lives, unless granted

Page 3 of 7

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24-00768A-20

2020572

88 pardon or clemency.

89 Section 2. Paragraph (d) is added to subsection (1) of
 90 section 945.091, Florida Statutes, to read:

91 945.091 Extension of the limits of confinement; restitution
 92 by employed inmates.-

93 (1) The department may adopt rules permitting the extension
 94 of the limits of the place of confinement of an inmate as to
 95 whom there is reasonable cause to believe that the inmate will
 96 honor his or her trust by authorizing the inmate, under
 97 prescribed conditions and following investigation and approval
 98 by the secretary, or the secretary's designee, who shall
 99 maintain a written record of such action, to leave the confines
 100 of that place unaccompanied by a custodial agent for a
 101 prescribed period of time to:

102 (d) Participate in supervised community release as
 103 prescribed by the department by rule. An inmate who has a
 104 sentence of 2 years or more may begin participation in
 105 supervised community release 365 days before his or her
 106 provisional or tentative release date. The supervised community
 107 release may include active electronic monitoring and community
 108 control as defined in s. 948.001. An inmate participating in
 109 such supervised community release is considered to be in the
 110 custody, care, supervision, and control of the department for
 111 purposes of ss. 921.002 and 944.275 and must be assigned to the
 112 caseload of a community control officer. The department must
 113 administer a risk assessment instrument to appropriately
 114 determine an inmate's ability to be released pursuant to this
 115 paragraph.

116 1. If a participating inmate fails to comply with the

Page 4 of 7

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24-00768A-20 2020572
 117 conditions prescribed in the department's rule for supervised
 118 community release, the department may terminate the inmate's
 119 supervised community release and return him or her to the same
 120 or another institution designated by the department. A law
 121 enforcement officer or a probation officer may arrest the inmate
 122 without a warrant in accordance with s. 948.06, if there are
 123 reasonable grounds to believe he or she has violated the terms
 124 and conditions of supervised community release. The law
 125 enforcement officer must report the inmate's alleged violations
 126 to the supervising probation office or the department's
 127 emergency action center for disposition of disciplinary charges
 128 as prescribed by the department by rule.

2. An inmate participating in supervised community release
 130 under this paragraph remains eligible to earn or lose gain-time
 131 in accordance with s. 944.275 and department rule, but may not
 132 receive gain-time or other sentence credit in an amount that
 133 would cause his or her sentence to expire, end, or terminate, or
 134 that would result in his or her release before serving a minimum
 135 of 85 percent of the sentence imposed. The inmate may not be
 136 counted in the population of the prison system, and the inmate's
 137 approved community-based housing location may not be counted in
 138 the capacity figures for the prison system.

Section 3. For the purpose of incorporating the amendment
 140 made by this act to section 944.275, Florida Statutes, in a
 141 reference thereto, paragraph (k) of subsection (4) of section
 142 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders
 143 and habitual violent felony offenders; three-time violent felony
 144 offenders; definitions; procedure; enhanced penalties or

Page 5 of 7

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

24-00768A-20 2020572
 146 mandatory minimum prison terms.—
 147 (4)
 148 (k)1. A defendant sentenced under this section as a
 149 habitual felony offender, a habitual violent felony offender, or
 150 a violent career criminal is eligible for gain-time granted by
 151 the Department of Corrections as provided in s. 944.275(4)(b).
 152 2. For an offense committed on or after October 1, 1995, a
 153 defendant sentenced under this section as a violent career
 154 criminal is not eligible for any form of discretionary early
 155 release, other than pardon or executive clemency, or conditional
 156 medical release granted pursuant to s. 947.149.
 157 3. For an offense committed on or after July 1, 1999, a
 158 defendant sentenced under this section as a three-time violent
 159 felony offender shall be released only by expiration of sentence
 160 and shall not be eligible for parole, control release, or any
 161 form of early release.
 162 Section 4. For the purpose of incorporating the amendment
 163 made by this act to section 944.275, Florida Statutes, in a
 164 reference thereto, paragraph (e) of subsection (1) of section
 165 921.002, Florida Statutes, is reenacted to read:
 166 921.002 The Criminal Punishment Code.—The Criminal
 167 Punishment Code shall apply to all felony offenses, except
 168 capital felonies, committed on or after October 1, 1998.
 169 (1) The provision of criminal penalties and of limitations
 170 upon the application of such penalties is a matter of
 171 predominantly substantive law and, as such, is a matter properly
 172 addressed by the Legislature. The Legislature, in the exercise
 173 of its authority and responsibility to establish sentencing
 174 criteria, to provide for the imposition of criminal penalties,

Page 6 of 7

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24-00768A-20

2020572

175 and to make the best use of state prisons so that violent
176 criminal offenders are appropriately incarcerated, has
177 determined that it is in the best interest of the state to
178 develop, implement, and revise a sentencing policy. The Criminal
179 Punishment Code embodies the principles that:

180 (e) The sentence imposed by the sentencing judge reflects
181 the length of actual time to be served, shortened only by the
182 application of incentive and meritorious gain-time as provided
183 by law, and may not be shortened if the defendant would
184 consequently serve less than 85 percent of his or her term of
185 imprisonment as provided in s. 944.275(4). The provisions of
186 chapter 947, relating to parole, shall not apply to persons
187 sentenced under the Criminal Punishment Code.

188 Section 5. For the purpose of incorporating the amendment
189 made by this act to section 945.091, Florida Statutes, in a
190 reference thereto, subsection (2) of section 946.503, Florida
191 Statutes, is reenacted to read:

192 946.503 Definitions to be used with respect to correctional
193 work programs.—As used in this part, the term:

194 (2) "Correctional work program" means any program presently
195 a part of the prison industries program operated by the
196 department or any other correctional work program carried on at
197 any state correctional facility presently or in the future, but
198 the term does not include any program authorized by s. 945.091
199 or s. 946.40.

200 Section 6. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11-12-19

Meeting Date

572

Bill Number (if applicable)

Topic Confinement

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Phone 352-682-2542

Street

Gainesville

FL

32614

City

State

Zip

Email gnewburn@fam.edu

Speaking: For Against Information

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

Representing FAAM

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)

11-12-19
Meeting Date

572
Bill Number (if applicable)

Topic Confinement

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Fla. Director

Address _____
Street _____

Phone 954.557.0016

City _____ State _____ Zip _____

Email cmurphy@rightoncrime.org

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

11/12/2019

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

SB 572

Meeting Date

Bill Number (if applicable)

Topic Extention of Confinement

Amendment Barcode (if applicable)

Name Scott D. 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 Southern Poverty Law Center 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)

November 12, 2019

572

Meeting Date

Bill Number (if applicable)

Topic Extension of Confinement

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 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

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: November 1, 2019

I respectfully request that **Senate Bill #572**, relating to **Extension of Confinement**, 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".

Senator Jeff Brandes
Florida Senate, District 24



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 338
BILL TITLE:	Extension of Confinement
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2019

<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:	
<u>Is this bill part of an agency package?</u>	

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 31, 2019
LEAD AGENCY ANALYST:	Joe Winkler
ADDITIONAL ANALYST(S):	Gregory Roberts, Sibyle Walker, Lee Adams
LEGAL ANALYST:	Philip Fowler
FISCAL ANALYST:	Suzanne Hamilton

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends s. 945.091 F.S., authorizes the Florida Department of Corrections (FDC or Department) to extend the limits of confinement of an inmate in the last 180 days of a sentence to participate in supervised community supervision.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Extended Limits of Confinement

Subsection 945.091(1)(a), F.S., allows for the extension of the limits of confinement by allowing trusted inmates under prescribed conditions to leave direct Department supervision. With Department approval, inmates may visit a dying relative, attend a funeral of a relative, or arrange for employment or residence for use when released. Inmates may also be released for specified periods to designated places if it will otherwise aid in their rehabilitation or successful transition back into the community.

Subsection 945.091(1)(b), F.S., provides that an inmate may participate in paid employment, an education or training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while still being confined by the Department, with exception of the hours served in any of the above activities. Section 945.091(c), F.S., states that an inmate may participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based groups. The Department may contract with agencies to provide treatment to the inmate.

Community Work Release

Currently under s. 945.091 F.S., inmates are allowed to work at paid employment in the community through the community work release program. Community Work Release (CWR) is a portion of the Community Release Program that allows selected inmates to work at paid employment in the community during the last months of their confinement. Work Release provides an inmate with a gradual reintegration back into the community, gainful employment, accumulation of savings from paid employment, and preservation of family and community ties. Within two weeks of admission to the community work release program, a written Personalized Program Plan is developed for each inmate. This plan incorporates the inmate's individual needs and provides a positive framework for program participation (i.e., orientation and intake, employment, furloughs, personal budget, substance abuse counseling, academic and vocational education, mental health, and medical rehabilitative programs). The plan includes program objectives to be accomplished while an inmate is assigned to the community work release program. Measurable criteria are established in determining completion of the objectives, along with a reasonable time schedule to achieve each goal and a progress review for evaluating progress toward objectives. Inmates are allowed to work in the community without Department supervision but must reside in a Community Release Center during the period they are not at work. As of January 25, 2019, there are 3,247 inmates in Community Work Release Centers.

Community Release Centers

Community Release Centers (CRC): No sex offenders may be assigned to community release centers. Facilities that house two categories of community custody inmates, those who are participating in community work release and work at paid employment in the community, those who work in a support capacity for the center (CWA). Inmates must be within 6 to 36 months of their release date, depending on their assignment.

Those assigned to CWA perform such tasks as: food service, maintenance of the center, or assignment to work squads. There are no perimeter fences and inmates must remain at the CRC when they are not working or attending programs outside the CRC.

Custody Level

The Department uses custody level as the fundamental determinant of an inmate's trustworthiness as required by statute. To be assigned to a community work release center an inmate must be classified as "community" custody. The following will prevent an inmate from being classified as community custody:

1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under s. 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under ss. 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under ss. 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under ss. 782.07(4), F.S.;
6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under ss. 782.09(1), F.S.;
7. Current or prior conviction for attempted murder of a law enforcement officer under ss. 784.07(3), F.S.;
8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under ss. 790.161(4), F.S.;
9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.
10. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;
11. A current or prior conviction for escape covered by ss. 945.092, F.S.;
12. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;
13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

Community Control

In ss. 948.001(3), F.S., it 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. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced."

s. 948.10, F.S., provides that "community control" programs are to "focus on the provision of home confinement subject to an authorized level of limited freedom and special conditions that are commensurate with the seriousness of the crime. The program shall offer the courts and the Florida Commission on Offender Review an alternative, community-based method to punish an offender in lieu of incarceration and shall provide intensive supervision to closely monitor compliance with restrictions and special conditions, including, but not limited to, treatment or rehabilitative programs."

Arrest/Warrant Authority

In ss. 944.405, F.S., it authorizes the Department to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences." S. 948.06(1), F.S., authorizes probation officers or law enforcement officers to arrest probationers and community controles without written warrant based on a belief the offender has violated terms of supervision.

Escape

In ss. 945.091(4), F.S., it provides that the willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the Department shall be deemed as an escape from the custody of the Department and shall be punishable as prescribed by law.

2. EFFECT OF THE BILL:

The bill requires the Department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released. The department currently uses custody level when determining eligibility for inmate placed on community work release.

S. 945.091(1)(b) authorizes participation in paid employment in the community to inmates "as to whom there is reasonable cause to believe that the inmate will honor his or her trust". It requires the Department to administer a

risk assessment instrument to appropriately determine an inmate's ability to be released. The custody classification system is the instrument by which the department determines if an inmate meets this standard.

The bill is similar to a program in effect under s.945.091, F.S. from 1986 to 1996 called Supervised Community Release Program (SCR). This program was limited to inmates within the last 90 days of sentence who were assigned to a community release center, or who were medically unable to participate in work release. SCR participants were not considered to be inmates but were able to earn gain time and were under the disciplinary rules of the Department.

The bill expands on the current concept of the "extension of the limits of confinement" under s.945.091, F.S. to create another step in the transition process by allowing an inmate, regardless of where he/she is assigned, to continue serving his/her state prison sentence while under custodial supervision in the community during the last 180 days of the sentence. Since the inmate remains in service of the court-imposed sentence while participating in the program, and the Department maintains the calculation of the release date in accordance with s.944.275, F.S. program participation remains consistent with the requirement that inmate serve 85% of the sentence. To allow an inmate to participate there must be "reasonable cause to believe that the inmate will honor his or her trust". The bill authorizes the Department to impose community control standards of supervision as well as electronic monitoring tracking technology, and provides the Department authority to establish standards for assessing progress in the program and for termination for failure to meet those standards. Program participants remain eligible to earn and forfeit gain time under Department rules.

As of December 31, 2018, there were about 479 inmates that were 180 days out from their release date that had served at least 85% of their sentence. Within the next 6 months there will be about 2508 additional inmates falling within this criterion.

Since the program would expose participating inmates to disciplinary penalties including loss of gain time, to avoid ex post facto violations participation would have to be voluntary as to crimes committed before the statutory change. Inmates sentenced for crimes committed after the statute changed could be required to participate; however, that may not be prudent considering the level of trust needed for inmates assigned in a community setting. If the inmate does not want to be in the program it may be best to allow for recusal. Also, a number of inmates would likely rather serve slightly more time in prison than be under community supervision, especially if that includes electronic monitoring (EM), risking return to prison for additional time if they violate. Finally, it is unknown as whether how many inmates in the pool have a suitable employment or residence to release to. Thus, the bed impact of the bill is indeterminate. Further, the fiscal impact of the bill will also vary based on the number of released inmates placed on electronic monitoring, and the rate at which they pay the EM costs, as well as the type of facility from which program participants were released (based on the different per diems between community release facilities, major institutions, and work camps). Finally, depending on the number of participants in the program, there could be a need for additional correctional probation officer positions.

The bill also provides authority for warrantless arrest by probation officers and law enforcement officers, similar to the authority currently under ss. 948.06(1), F.S.

Additionally, please note to implement the provisions of the bill, the Department will likely have to promulgate rules and/or amend existing rules and procedures.

Furthermore, when the 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. The Department's FY 17-18 average per diem for community supervision was \$5.47.

In addition, the current cost of supervision via electronic monitoring device is \$3.90 per day for contracted facilities and \$5.29 for department operated facilities.

The Department is requesting 1 (Correctional Programs Consultant) position to be located in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the SCR program statewide. Duties would include, but not be limited to: Rule, policy, and procedure creation/promulgation and interpretation. On-going management of eligible inmates by providing guidance, oversight, database creation/updating as it relates to the placement, removal, and reinstatement of inmates into and out of the SCR program. Provide statewide training, coordination, and implementation of the operation of the SCR program.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	Rulemaking will be necessary to effectuate the implementation of the bill.
Is the change consistent with the agency's core mission?	<input checked="" type="checkbox"/> <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Addition of a rule for Supervised Community Release. Rule adjustments (additions and deletions for gain time application, disciplinary procedures, escape policies for absconders, conditions of supervision with DC form for instructions and signature by the inmate, specification as to who shall be responsible for carrying out the provisions of this bill (warden, probation officer, central office staff, etc.), specifications of the amount of the handling of inmate trust fund accounts, release gratuity, 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?

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?

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

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:	The overall inmate and community supervision population fiscal impact is indeterminate			
Expenditures:	The overall inmate and community supervision population fiscal impact is indeterminate. The cost associated with 1 Correctional Program Consultant is as follows:			
Class Title				
	Class Code	Salary & Benefits	FTE	FY 19-20 Annual Costs
Correctional Program Consultant	8094	\$ 66,242	1	\$ 66,242
Total salaries & benefits			1	\$ 66,242
Recurring expense - Professional		\$ 3,378		3,378
Non-recurring expense - Professional		\$ 4,429		4,429
Total expenses				\$ 7,807
Human Resource Services		\$ 329		\$ 329
Total Operating			1	\$ 74,378
Summary of Costs				
	Recurring			\$ 69,949
	Non-recurring			4,429
	Total			\$ 74,378
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:	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.	The technology systems impact is significant, but indeterminate. There would likely be a significant technology impact due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens.
--	---

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:	As referenced in the Policy analysis above, rulemaking by FDC will be necessary to effectuate the intent of the bill.
---------------------------	---

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

Florida Department of Corrections

Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED

- 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: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Thursday, January 25, 2018 4:58 PM
To: Cox, Ryan
Cc: Vaughan, Scotti
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,



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,

A handwritten signature in black ink that appears to read "William D. Bales".

William D. Bales, Ph.D.

A handwritten signature in black ink that appears to read "Jennifer M. Brown".

Jennifer M. Brown, ABD

Cox, Ryan

From: Torres, Jared <Jared.Torres@fdc.myflorida.com>
Sent: Thursday, January 25, 2018 4:52 PM
To: Cox, Ryan
Cc: Vaughan, Scotti
Subject: Per request - Spectrum Verification of Risk Assessment Tool
Attachments: Letter to FDC Secretary Julie Jones.pdf; ATT00001.txt

Per request. Regarding: Independent verification of risk assessment tool. Thanks!

Our Vision: "Inspiring success by transforming one life at a time."

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 11/12/2019 10:32:25 AM

Ends: 11/12/2019 11:59:49 AM Length: 01:27:25

10:32:24 AM Meeting called to order by Chair Perry
10:32:26 AM Roll call by Administrative Assistant Sue Arnold
10:32:31 AM Quorum present
10:32:37 AM Comments from Chair Perry
10:32:43 AM Chair turned over to Senator Brandes
10:32:59 AM Introduction of Tab 3, SB 464 by Chair Brandes
10:33:06 AM Explanation of Tab 3, SB 464, Certain Defendants with Mental Illness by Senator Wright
10:34:47 AM Introduction of Amendment Barcode No. 868090 by Senator Brandes
10:34:56 AM Explanation of Amendment by Senator Wright
10:35:08 AM Comments from Chair Brandes
10:35:17 AM Closure waived on Amendment
10:35:21 AM Amendment Barcode No. 868090 adopted
10:35:31 AM Closure waived by Senator Wright
10:35:42 AM Roll call by Administrative Assistant Sue Arnold
10:35:46 AM CS/SB 464 reported favorably
10:35:56 AM Introduction of Tab 5 by Chair Brandes
10:36:03 AM Explanation of SB 510, Bail Pending Appellate Review by Senator Wright
10:37:16 AM Question from Chair Brandes
10:37:22 AM Response from Senator Wright
10:37:37 AM Comments from Chair Brandes
10:37:53 AM Response from Senator Wright
10:38:00 AM Question from Senator Pizzo
10:38:04 AM Response from Senator Wright
10:38:37 AM Follow-up question from Senator Pizzo
10:38:45 AM Response from Senator Wright
10:39:04 AM Senator Flores in debate
10:40:28 AM Senator Pizzo in debate
10:41:43 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in support on SB 510
10:41:54 AM Closure waived by Senator Wright
10:41:57 AM Roll call by Administrative Assistant Sue Arnold
10:42:02 AM SB 510 reported favorably
10:42:10 AM Introduction of Tab 1 by Chair Brandes
10:42:22 AM Explanation of SB 346, Controlled Substances by Senator Bradley
10:59:00 AM Question from Senator Bracy
10:59:08 AM Response from Senator Bradley
11:01:21 AM Question from Senator Pizzo
11:01:31 AM Response from Senator Bradley
11:03:27 AM Follow-up question from Senator Pizzo
11:03:38 AM Response from Senator Bradley
11:04:59 AM Additional question from Senator Pizzo
11:05:10 AM Response from Senator Bradley
11:05:41 AM Additional question from Senator Pizzo
11:05:48 AM Response from Senator Bradley
11:07:14 AM Introduction of Amendment Barcode No. 196590 by Chair Brandes
11:07:25 AM Explanation of Amendment by Senator Bradley
11:07:46 AM Closure waived
11:08:00 AM Amendment Barcode No. 196590 adopted
11:08:06 AM Introduction of Amendment Barcode No. 527338 by Chair Brandes
11:08:10 AM Explanation of Amendment by Senator Bradley
11:08:26 AM Seth Miller, Executive Director, Innocence Project of Florida waives in support of Amendment
11:08:33 AM Closure waived
11:08:37 AM Amendment Barcode No. 527338 adopted

11:08:44 AM Melissa Viller, Executive Director, NORML Tallahassee
11:08:51 AM Speaker Gary Hester, Government Affairs, Florida Police Chiefs Association in opposition
11:15:55 AM Question from Chair Brandes
11:16:01 AM Response from Mr. Hester
11:16:30 AM Question from Senator Pizzo
11:17:30 AM Response from Mr. Hester
11:18:07 AM Question from Senator Pizzo
11:18:21 AM Response from Mr. Hester
11:18:45 AM Question from Senator Flores
11:19:00 AM Response from Mr. Hester
11:20:00 AM Follow-up question from Senator Flores
11:20:07 AM Response from Mr. Hester
11:21:43 AM Comments from Senator Flores
11:22:17 AM Response from Mr. Hester
11:24:09 AM Speaker Phillip Suderman, Americans for Prosperity in support
11:25:46 AM Speaker Greg Newburn, Florida Director, FAMM in support
11:31:12 AM Jorge Chamizo, FACDL waives in support
11:31:18 AM Barney Bishop III CEO, Florida Smart Justice Alliance waives in opposition
11:31:23 AM Seth Miller, Executive Director, Innocence Project of Florida waives in support
11:31:29 AM Pamela Burch Fort, ACLU of FL waives in support
11:31:45 AM Speaker Cesar Grajales, Coalitions Director, the Libre Initiatives in support
11:32:46 AM Speaker Andy Thomas, Public Defender, 2nd Circuit, Florida Public Defender Association in support
11:35:40 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center Action Fund waives in support
11:36:02 AM Speaker Melissa Viller, Executive Director, NORML Tallahassee for information
11:38:20 AM Senator Brady in debate
11:39:08 AM Comments from Chair Brandes
11:39:51 AM Senator Bradley in closure
11:43:15 AM Roll call by Administrative Assistant Sue Arnold
11:44:16 AM CS/SB 346 reported favorably
11:44:31 AM Chair returned to Chair Perry
11:44:39 AM Introduction of Tab 6 by Chair Perry
11:44:44 AM Explanation of SB 520, Drones by Senator Gruters
11:45:34 AM Speaker Michael Crabb, Lieutenant, Orange County Sheriff's Office in support
11:46:09 AM Jess McCarty, Assistant County Attorney, Miami-Dade County/Miami-DAOF Police waives in support
11:46:12 AM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in support
11:46:17 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in support
11:46:20 AM Pamela Burch Fort, ACLU of FL waives in opposition
11:46:27 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in support
11:46:34 AM Closure waived
11:46:40 AM Roll call by Administrative Assistant Sue Arnold
11:46:47 AM SB 510 reported favorably
11:46:56 AM Introduction of Tab 2 by Chair Perry
11:47:02 AM Explanation of SB 436, Youth in Confinement by Senator Montford
11:48:32 AM Question from Senator Brandes
11:48:37 AM Response from Senator Montford
11:48:42 AM Speaker Alex Lavelle, FSU Public Interest Law Center in support
11:51:30 AM Olivia Babis, Public Policy Analyst, Disability Rights Florida waives in support
11:51:35 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in opposition
11:51:42 AM Ken Kniepmann, Florida Conference Catholic Bishops waives in support
11:51:49 AM Karina Flores, FSU Public Interest Law Center waives in support
11:51:54 AM Caitlyn Kio, FSU Public Interest Law Center waives in support
11:52:00 AM Alison Marshall, FSU Public Interest Law Center waives in support
11:52:01 AM Pamela Burch Fort, ACLU of FL waives in support
11:52:07 AM Andy Thomas, Public Defender, 2nd Circuit, Florida Public Defender Association waives in support
11:52:15 AM Closure waived
11:52:23 AM Roll call by Administrative Assistant Sue Arnold
11:52:27 AM SB 436 reported favorably
11:52:40 AM Introduction of Tab 4 by Chair Perry
11:52:49 AM Explanation of SB 470, Searches of Cellular Phones and Other Electronic Devices by Senator
11:53:31 AM Introduction of Amendment Barcode No. 158654 by Chair Perry
11:53:35 AM Explanation of Amendment by Senator Brandes
11:53:56 AM Andy Thomas, Public Defender, 2nd Circuit, Florida Public Defender Association waives

11:54:05 AM Amendment Barcode No. 158654 adopted
11:54:12 AM Jorge Chamizo, FACDL waives in support
11:54:14 AM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in opposition
11:54:19 AM Phillip Suderman, Policy Director, Americans for Prosperity waives in support
11:54:23 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in opposition
11:54:31 AM Senator Brandes in closure
11:55:18 AM Roll call by Administrative Assistant Sue Arnold
11:55:23 AM CS/SB 470 reported favorably
11:55:32 AM Introduction of Tab 7 by Chair Perry
11:55:37 AM Explanation of SB 556, Inmate Conditional Medical Release by Senator Brandes
11:56:52 AM Introduction of Amendment Barcode No. 575744 by Chair Perry
11:56:57 AM Explanation of Amendment by Senator Brandes
11:57:18 AM Closure waived
11:57:23 AM Amendment Barcode No. 575744 adopted
11:57:29 AM Ken Kniepricann, Florida Conference Catholic Bishops waives in support
11:57:36 AM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in support
11:57:44 AM Greg Newburn, Florida Director, FAMM waives in support
11:57:44 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center Action Fund waives in support
11:57:47 AM Phillip Suderman, Policy Director waives in support
11:57:49 AM Pamela Burch Fort, ACLU of FL waives in support
11:57:51 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in support
11:57:55 AM Olivia Babis, Disability Rights Florida waives in support
11:58:03 AM Senator Pizzo in debate
11:58:15 AM Closure waives
11:58:18 AM Roll call by Administrative Assistant Sue Arnold
11:58:22 AM CS/SB 556 reported favorably
11:58:33 AM Introduction of Tab 8 by Chair Perry
11:58:45 AM Explanation of SB 560, Sentencing by Senator Brandes
11:59:09 AM Question from Senator Bracy
11:59:17 AM Senator Perry states that Appearance cards will be placed in public records
11:59:24 AM Closure waived
11:59:26 AM Roll call by Administrative Assistant Sue Arnold
11:59:29 AM SB 560 reported favorably
11:59:35 AM Senator Bracy moves to adjourn, meeting adjourned