

Tab 1	SB 96 by Bean (CO-INTRODUCERS) Hutson, Book, Wright; (Identical to H 00067) Police, Fire, and Search and Rescue Dogs					
361560	A	S	CJ, Bean	Delete L.39 - 65:	02/01	01:19 PM
666876	A	S	CJ, Bean	Delete L.113 - 114:	02/01	01:19 PM
Tab 2	SB 130 by Stewart; (Identical to H 00395) Sexual Battery Prosecution Time Limitation					
Tab 3	SB 204 by Brandes; Detention Facilities					
487700	A	S	CJ, Brandes	Delete L.68:	02/01	01:20 PM
Tab 4	SB 248 by Hooper (CO-INTRODUCERS) Baxley; (Similar to H 00203) Public Records/Civilian Personnel Employed by a Law Enforcement Agency					
417100	T	S	CJ, Hooper	In title, delete L.3:	02/01	01:20 PM
730452	A	S	CJ, Hooper	Delete L.336:	02/01	01:20 PM
Tab 5	SB 332 by Pizzo (CO-INTRODUCERS) Rodriguez, Book, Thurston, Taddeo, Farmer; (Similar to H 00049) Incarcerated Women					
404354	A	S	CJ, Pizzo	Delete L.26 - 33:	02/01	01:21 PM
Tab 6	SB 338 by Brandes; Extension of Confinement					
240586	A	S	CJ, Brandes	Delete L.69 - 70:	02/01	01:21 PM
Tab 7	SB 346 by Brandes; (Identical to H 00607) Conditional Medical Release					
283408	A	S	CJ, Brandes	Delete L.32 - 51:	02/01	01:22 PM
Tab 8	SB 370 by Harrell; (Identical to H 00219) Victims of Human Trafficking					
672736	A	S	CJ, Harrell	Delete L.40:	02/01	01:22 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Monday, February 4, 2019
TIME: 1:30—3:30 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 96 Bean (Identical H 67)	Police, Fire, and Search and Rescue Dogs; Increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines, fire canines, or search and rescue canines, etc.	CJ 02/04/2019 JU RC
2	SB 130 Stewart (Identical H 395, Compare H 165)	Sexual Battery Prosecution Time Limitation; Creating an exception to the general time limitations which allows a prosecution to be commenced at any time for specified sexual battery offenses against victims younger than a certain age at the time the offense was committed, etc.	CJ 02/04/2019 JU ACJ AP
3	SB 204 Brandes	Detention Facilities; Requiring that a custodial interrogation at a place of detention be electronically recorded in its entirety in connection with certain offenses; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a place other than a place of detention to prepare a specified report; prohibiting introduction into or possession of any cellular telephone or other portable communication device on the grounds of any county detention facility, etc.	CJ 02/04/2019 JU RC

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, February 4, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 248 Hooper (Similar H 203, Compare H 7009, S 7004)	Public Records/Civilian Personnel Employed by a Law Enforcement Agency; Defining the term "home addresses" for purposes of public records exemptions for personal identifying and location information of certain agency personnel and their family members; exempting personal identifying and location information of active or former civilian personnel employed by a law enforcement agency, and of spouses and children of such personnel, from public records requirements; providing for legislative review and repeal of the exemptions; providing statements of public necessity, etc.	CJ 02/04/2019 GO RC
5	SB 332 Pizzo (Similar H 49)	Incarcerated Women; Citing this act as the "Dignity for Incarcerated Women Act"; requiring correctional facilities to provide incarcerated women with certain health care products, subject to certain requirements; providing requirements for male correctional facility employees in certain circumstances; requiring documentation of certain incidents involving male correctional facility employees, etc.	CJ 02/04/2019 ACJ AP
6	SB 338 Brandes	Extension of Confinement; Authorizing the Department of Corrections 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; requiring the department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released; authorizing a law enforcement or probation officer to arrest an inmate without a warrant under certain circumstances, etc.	CJ 02/04/2019 ACJ AP
7	SB 346 Brandes	Conditional Medical Release; Defining the terms "conditional medical release" and "electronic monitoring device"; expanding eligibility for conditional medical release to include inmates with debilitating illnesses; defining the term "inmate with a debilitating illness"; redefining the term "terminally ill inmate", etc.	CJ 02/04/2019 ACJ AP

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, February 4, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 370 Harrell (Identical H 219)	Victims of Human Trafficking; Requiring a mandatory minimum term of incarceration for solicitation of prostitution offenses involving victims of human trafficking, etc. CJ 02/04/2019 ACJ AP	

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 96

INTRODUCER: Senator Bean and others

SUBJECT: Police, Fire, and Search and Rescue Dogs

DATE: February 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 96 increases the penalty from a third degree felony to a second degree felony for intentionally and knowingly, without lawful cause or justification, causing great bodily harm or death to a police canine, fire canine, or search and rescue (SAR) canine. Additionally, the bill makes the corresponding changes to the offense severity ranking chart.

The bill also replaces every instance of the word “dog” with the word “canine” in s. 843.19, F.S.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill would result in a “positive insignificant” prison bed impact (10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Law enforcement and fire department special K-9 and mounted units

Specially-trained dogs are utilized by various agencies and departments throughout the state in their K-9 units. In 2017, there were 140 police departments and 65 sheriff’s offices with active canine units.¹ These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,² and building and article searches.³ Additionally, some

¹ Information provided by email from Amy Mercer, Executive Director, The Florida Police Chiefs Association (January 15, 2019) (on file with Senate Criminal Justice Committee).

² City of Orlando, *K-9 Unit*, available at <http://www.cityoforlando.net/police/k-9-unit/> (last visited January 24, 2019).

³ St. Petersburg Police Department, *K-9 Unit*, available at <http://police.stpete.org/usb/k-9.html> (last visited January 24, 2019).

fire departments utilize dogs as part of arson detection programs.⁴ Various non-profit organizations also use dogs for the purpose of SAR, such as the Community Emergency Response Team, which provides support to the Federal Emergency Management Agency.⁵

Though not as frequently used as K-9 units, select law enforcement agencies throughout the state have mounted units,⁶ whereby specially-trained horses are used to assist with crowd control, special events, and additional patrol functions, among other tasks.⁷

Offenses against police animals

Police dogs are often deployed by their handlers to chase after fleeing felons in high-intensity situations. As a result, the dogs can be caught in the line of fire while on the job. Two recent incidents resulted in the death of a police dog while the dog was on duty. In September 2018, 3-year old Fang, a member of Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.⁸ Similarly, in December 2018, Palm Beach County Sheriff's Office's canine, 3-year-old Cigo, was shot and killed by an attempted murder suspect outside of a shopping mall.⁹

Protecting police animals from intentional harm

In an effort to deter intentional harm toward police animals, legislation aimed at creating stiffer penalties for such crimes has been introduced at both the federal and state level. In August 2000, Congress passed the Federal Law Enforcement Animal Protection Act of 2000, which made it a crime to willfully and maliciously harm a police animal, or attempt or conspire to do so, resulting in a penalty of imprisonment for up to one year. Additionally, permanently disabling or causing serious bodily injury or death to a police animal would result in a term of imprisonment of up to 10 years under the act.¹⁰

⁴ City of Orlando, *Accelerant Detection Canines*, available at <http://www.cityoforlando.net/fire/accelerant-detection-canines/> (last visited January 24, 2019).

⁵ Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, available at <https://www.boondocksk9.org/> (last visited January 24, 2019).

⁶ The following agencies have mounted units: Escambia County Sheriff's Office see <http://www.escambiaso.com/mounted-unit/>; Hillsborough County Sheriff's Office see <http://www.hcso.tampa.fl.us/A-Z-Directory/M/Mounted-Unit.aspx>; Key West Police Department see <https://www.cityofkeywest-fl.gov/department/division.php?structureid=147>; Marion County Sheriff's Office see <http://www.marionso.com/mounted-unit/>; Orlando Police Department see <http://www.cityoforlando.net/police/mounted-patrol/>; Palm Beach County Sheriff's Office see <https://www.pbso.org/services/countywide-operations/mounted-unit/>; Pinellas Park Police Department see <https://www.pinellas-park.com/642/Mounted-Patrol>; and St. Petersburg Police Department see <http://police.stpete.org/usb/mounted-unit.html> (last visited January 25, 2019).

⁷ City of Orlando, *Mounted Patrol*, available at <http://www.cityoforlando.net/police/mounted-patrol/> (last visited January 24, 2019).

⁸ Colette DuChanois and Tarik Minor, *Audio, video evidence released in case of teen held in K-9's death*, NEWS4JAX, November 12, 2018, available at <https://www.news4jax.com/news/local/jacksonville/new-evidence-details-case-against-teen-accused-of-killing-jso-k-9> (last visited January 24, 2019).

⁹ Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas eve, police say*, ABC NEWS, December 25, 2018, available at <https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552> (last visited January 24, 2019).

¹⁰ 18 U.S.C.A. s. 1368 (2002).

Similar efforts to increase penalties for such crimes have been attempted at the state level as well. In Utah, legislation was introduced in 2018 to increase the penalty from a third degree felony to a second degree felony for intentionally or knowingly causing death to a police dog.¹¹ Additionally, in South Carolina, legislation in 2018 named after two police dogs that were killed in the line of duty¹² proposed to increase the penalty for harming a police animal to a maximum prison sentence of 10 years and a potential \$10,000 fine.¹³ Current Michigan law provides that a person who intentionally kills or causes serious physical harm to a police dog, police horse, or SAR dog is guilty of a felony punishable by imprisonment of up to 5 years, a fine of up to \$10,000, or both.¹⁴

Currently, Florida law provides that it is a third degree felony¹⁵ to intentionally and knowingly, without lawful cause or justification, cause great bodily harm, permanent disability, or death to, or use a deadly weapon upon a police dog, police horse, fire dog, or SAR dog.¹⁶ Those animals have specific definitions in law and are defined in the following manner:

- “Police dog” and “police horse” means any dog or horse, respectively, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;
- “Fire dog” means any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detention of flammable materials or the investigation of fires; and
- “SAR dog” means any search and rescue dog that is owned, or the service of which is employed, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.¹⁷

III. Effect of Proposed Changes:

The bill increases the penalty from a third degree felony to a second degree felony¹⁸ for intentionally and knowingly, without lawful cause or justification, causing great bodily harm or death to a police canine, fire canine, or SAR canine. The penalty for committing the same crime against a police horse remains a third degree felony.

Additionally, the bill replaces every instance of the word “dog” with the word “canine” in s. 843.19, F.S.

¹¹ 2018 General Session, state of Utah, S.B. 57 (2018).

¹² Tim Smith, *Police dog protection: Stiffer penalty proposed for harming K-9s*, GREENVILLE NEWS, February 13, 2018, available at <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/02/13/police-dog-protection-stiffer-penalty-proposed-harming-k-9-s/332391002/> (last visited January 24, 2019).

¹³ 122nd Session, South Carolina General Assembly, S. 6 (2017-18).

¹⁴ MICHIGAN COMPILED LAWS ANN. s. 750.50c.

¹⁵ Section 843.19(2), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

¹⁶ Section 843.19(2), F.S.

¹⁷ Section 843.19(1)(a)-(c), F.S.

¹⁸ A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

The bill makes these corresponding changes to the offense severity ranking chart.¹⁹

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed this bill. However, a preliminary estimate prepared by the Legislature's Office of Economic and Demographic Research (EDR) predicted that this bill would result in a "positive insignificant" prison bed impact (10 or fewer prison beds). In fiscal year 2017-18, one person was sentenced pursuant to s. 843.19, F.S., and no offenders were sentenced to prison.²⁰

¹⁹ Section 921.0022, F.S.

²⁰ Information provided by EDR staff (on file with the Senate Criminal Justice Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 843.19 and 921.0022.

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.



361560

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 39 - 65

and insert:

(2) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



361560

11 (3) Any person who actually and intentionally maliciously
12 touches, strikes, or causes bodily harm to a police canine ~~dog~~,
13 fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a
14 misdemeanor of the first degree, punishable as provided in s.
15 775.082 or s. 775.083.

16 (4) Any person who intentionally or knowingly maliciously
17 harasses, teases, interferes with, or attempts to interfere with
18 a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police
19 horse while the animal is in the performance of its duties
20 commits a misdemeanor of the second degree, punishable as
21 provided in s. 775.082 or s. 775.083.

22 (5) A person convicted of an offense under this section
23 shall make restitution for injuries caused to the police canine
24 ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse and shall
25 pay the replacement cost of the animal if, as a result of the
26 offense, the animal can no longer perform its duties.

27 Section 2. Subsection (1) of section 767.16, Florida
28 Statutes, is amended to read:

29 767.16 Police canine or service dog; exemption.-

30 (1) Any canine ~~dog~~ that is owned, or the service of which
31 is employed, by a law enforcement agency, is exempt from this
32 part.

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

34 And the title is amended as follows:

35 Delete lines 3 - 9

36 and insert:

37 dogs and police horses; amending s. 843.19, F.S.;

38 revising the defined terms "police dog" to "police

39 canine," "fire dog" to "fire canine," and "SAR dog" to



361560

40 "SAR canine"; increasing the penalty for intentionally
41 and knowingly causing great bodily harm, permanent
42 disability, or death to, or using a deadly weapon
43 upon, police canines or horses, fire canines, or SAR
44 canines; amending s. 767.16, F.S.; revising the term
45 "dog" to "canine" to conform to changes made by the
46 act;



666876

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 113 - 114

and insert:

843.19

2nd ~~3rd~~

Injure, disable, or kill
police, fire, or SAR
canine, dog or police
horse.

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666876

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 10 - 11

10 and insert:

11 amending s. 921.0022, F.S.; conforming a provision to
12 changes made by

By Senator Bean

4-00293B-19

201996__

A bill to be entitled

An act relating to police, fire, and search and rescue dogs; amending s. 843.19, F.S.; revising the defined terms "police dog" to "police canine," "fire dog" to "fire canine," and "SAR dog" to "SAR canine"; increasing the penalty for intentionally and knowingly causing great bodily harm, permanent disability, or death to, or using a deadly weapon upon, police canines, fire canines, or search and rescue canines; amending s. 921.0022, F.S.; updating a cross-reference; 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 843.19, Florida Statutes, is amended to read:

843.19 Offenses against police canines ~~dogs~~, fire canines ~~dogs~~, SAR canines ~~dogs~~, or police horses.—

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

(a) "Police canine ~~dog~~" means any canine ~~dog~~, and "police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

(b) "Fire canine ~~dog~~" means any canine ~~dog~~ that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable

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materials or the investigation of fires.

(c) "SAR canine ~~dog~~" means any search and rescue canine ~~dog~~ that is owned, or the service of which is employed ~~utilized~~, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

(2) (a) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police canine ~~dog~~, fire canine ~~dog~~, or SAR canine ~~dog~~, or ~~police horse~~ commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police horse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine ~~dog~~, fire canine ~~dog~~, SAR canine ~~dog~~, or police horse while the animal is in the performance of its duties

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59 commits a misdemeanor of the second degree, punishable as
60 provided in s. 775.082 or s. 775.083.

61 (5) A person convicted of an offense under this section
62 shall make restitution for injuries caused to the police canine
63 ~~dog~~, fire canine dog, SAR canine dog, or police horse and shall
64 pay the replacement cost of the animal if, as a result of the
65 offense, the animal can no longer perform its duties.

66 Section 2. Paragraph (c) of subsection (3) of section
67 921.0022, Florida Statutes, is amended to read:
68 921.0022 Criminal Punishment Code; offense severity ranking
69 chart.-

70 (3) OFFENSE SEVERITY RANKING CHART
71 (c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement

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77 officer in patrol vehicle
with siren and lights
activated.

319.30(4) 3rd Possession by junkyard of motor vehicle with identification number plate removed.

319.33(1)(a) 3rd Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

319.33(4) 3rd With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

327.35(2)(b) 3rd Felony BUI.

328.05(2) 3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of

83	4-00293B-19		201996__	vessels.
84	328.07(4)	3rd		Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
85	376.302(5)	3rd		Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
86	379.2431 (1)(e)5.	3rd		Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
86	379.2431 (1)(e)6.	3rd		Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species

87	4-00293B-19		201996__	described in the Marine Turtle Protection Act.
88	379.2431 (1)(e)7.	3rd		Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
89	400.9935(4)(a) or (b)	3rd		Operating a clinic, or offering services requiring licensure, without a license.
90	400.9935(4)(e)	3rd		Filing a false license application or other required information or failing to report information.
91	440.1051(3)	3rd		False report of workers' compensation fraud or retaliation for making such a report.
91	501.001(2)(b)	2nd		Tampers with a consumer product or the container using materially false/misleading information.

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92	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.	
93	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.	
94	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.	
95	697.08	3rd	Equity skimming.	
96	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.	
97	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	
98	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.	
99				

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	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	
100	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	
101	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.	
102	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.	
103	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.	
104	817.233	3rd	Burning to defraud insurer.	
105	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
106	817.234(11)(a)	3rd	Insurance fraud; property	

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 value less than \$20,000.

107 817.236 3rd Filing a false motor
 vehicle insurance
 application.

108 817.2361 3rd Creating, marketing, or
 presenting a false or
 fraudulent motor vehicle
 insurance card.

109 817.413(2) 3rd Sale of used goods as new.

110 831.28(2) (a) 3rd Counterfeiting a payment
 instrument with intent to
 defraud or possessing a
 counterfeit payment
 instrument.

111 831.29 2nd Possession of instruments
 for counterfeiting driver
 licenses or identification
 cards.

112 838.021(3) (b) 3rd Threatens unlawful harm to
 public servant.

113 843.19(2) (a) ~~2nd 3rd~~ Injure, disable, or kill
 police, fire, or SAR canine

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~~dog or horse.~~

114 843.19(2) (b) 3rd Injure, disable, or kill
police horse.

115 860.15(3) 3rd Overcharging for repairs
 and parts.

116 870.01(2) 3rd Riot; inciting or
 encouraging.

117 893.13(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.,
 (2) (c)10., (3), or (4)
 drugs).

118 893.13(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.

119

	4-00293B-19		201996__
	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.
120	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
121	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
122	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
123	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

	4-00293B-19		201996__
124	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
125	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
126	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
127	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.
128	893.13(8)(a)3.	3rd	Knowingly write a prescription for a

	4-00293B-19		201996	controlled substance for a fictitious person.
129	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.
130	918.13(1)(a)	3rd		Alter, destroy, or conceal investigation evidence.
131	944.47	3rd		Introduce contraband to correctional facility.
132	(1)(a)1. & 2.			
	944.47(1)(c)	2nd		Possess contraband while upon the grounds of a correctional institution.
133	985.721	3rd		Escapes from a juvenile facility (secure detention or residential commitment facility).
134				
135	Section 3. This act shall take effect October 1, 2019.			

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 130

INTRODUCER: Senator Stewart

SUBJECT: Sexual Battery Prosecution Time Limitation

DATE: February 1, 2019

REVISED: _____

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

I. Summary:

SB 130 provides that there is no time limitation for prosecuting offenses of sexual battery when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2019. The bill creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred. There are standard time limitations for initiating a criminal prosecution for felony offenses based on the degree of the offense as well as a number of exceptions that apply to certain offenses or victims. Section 794.011, F.S., related to sexual battery, is an offense to which many of these exceptions apply.

The bill is effective July 1, 2019.

II. Present Situation:

Statute of Limitations

Historical Perspective

At common law, there was no time limit restriction under which a criminal charge was barred from prosecution. Time limitations, or statutes of limitation, for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the sovereign.¹

¹ *State v. Hickman*, 189 So. 2d 254, 261 (Fla. 2d DCA 1966).

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.²

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.³
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution⁵ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.⁶

Existing Provisions

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred. The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.⁷

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.⁸
- A 4-year time limitation for prosecuting a first degree felony.⁹
- A 3-year time limitation for prosecuting a second or third degree felony.¹⁰

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. Section 794.011, F.S.,

² *Id.*

³ *Beyer v. State*, 76 So.3d 1132, 1135 (Fla. 4th DCA 2012).

⁴ *Id.*

⁵ FLA. CONST. art. I, s. 10.

⁶ *Andrews v. State*, 392 So.2d 270, 271 (Fla. 2d DCA 1980).

⁷ Section 775.15(3), F.S.

⁸ Section 775.15(1), F.S.

⁹ Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine and a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

related to sexual battery, is an offense to which many of these exceptions apply, including that there is:

- No time limitation for prosecuting:
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;¹¹
 - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;¹²
 - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;¹³
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;¹⁴
- An eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense and he or she did not report the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before July 1, 2015.¹⁵

In addition to these enumerated time periods, the prosecution for specified offenses,¹⁶ including sexual battery, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.¹⁷

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.¹⁸

III. Effect of Proposed Changes:

The bill provides that there is no time limitation for prosecuting offenses of sexual battery when the victim is younger than 18 years of age and the offense was not barred from prosecution on or before July 1, 2019. This creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

¹¹ Section 775.15(13)(b), F.S.

¹² Section 775.15(13)(c), F.S.

¹³ Section 775.15(13)(a), F.S.

¹⁴ Section 775.15(14)(a), F.S.

¹⁵ Section 775.15(14)(b), F.S.

¹⁶ The offenses that this provision apply to include aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping under s. 787.01, F.S.; an offense of sexual battery under ch. 794, F.S.; false imprisonment under s. 787.02, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S. Section 775.15(16)(a), F.S.

¹⁷ Section 775.15(16)(a), F.S.

¹⁸ Section 775.15(13)(a), F.S.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not heard the bill at this time. However, the bill creates a new exception to the time limitations for prosecuting sexual battery offenses against specified victims. To the extent that this increases the ability for felony sexual offenses to be prosecuted that would otherwise have been barred, the Department of Corrections will likely see a positive indeterminate prison bed impact.

Additionally, the bill will likely result in a positive indeterminate fiscal impact to the courts, State Attorneys, and Public Defenders due to additional resources necessary to litigate cases that would have otherwise been barred from prosecution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.15 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 Stewart

13-00249-19

2019130__

1 A bill to be entitled
 2 An act relating to the sexual battery prosecution time
 3 limitation; amending s. 775.15, F.S.; creating an
 4 exception to the general time limitations which allows
 5 a prosecution to be commenced at any time for
 6 specified sexual battery offenses against victims
 7 younger than a certain age at the time the offense was
 8 committed; providing applicability; providing an
 9 effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (20) is added to section 775.15,
 14 Florida Statutes, and subsection (2) of that section is
 15 republished, to read:

16 775.15 Time limitations; general time limitations;
 17 exceptions.—

18 (2) Except as otherwise provided in this section,
 19 prosecutions for other offenses are subject to the following
 20 periods of limitation:

21 (a) A prosecution for a felony of the first degree must be
 22 commenced within 4 years after it is committed.

23 (b) A prosecution for any other felony must be commenced
 24 within 3 years after it is committed.

25 (c) A prosecution for a misdemeanor of the first degree
 26 must be commenced within 2 years after it is committed.

27 (d) A prosecution for a misdemeanor of the second degree or
 28 a noncriminal violation must be commenced within 1 year after it
 29 is committed.

Page 1 of 2

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

13-00249-19

2019130__

30 (20) If a victim is younger than 18 years of age at the
 31 time the offense was committed, a prosecution for a violation of
 32 s. 794.011 may be commenced at any time. This subsection applies
 33 to an offense that is not otherwise barred from prosecution on
 34 or before July 1, 2019.

35 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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

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 204

INTRODUCER: Senator Brandes

SUBJECT: Detention Facilities

DATE: February 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 204 requires a law enforcement officer to electronically record the entirety of a custodial interrogation if it:

- Takes place at a place of detention; and
- Relates to a covered offense.

A place of detention is defined to mean a police station, sheriff's office, correctional facility, prisoner holding 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.

The covered offenses specified by the bill include 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, and carjacking.

Other provisions of the bill:

- Define terms;
- Provide exceptions to the recording requirement;
- Require a court to consider an officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a statement;
- Require a law enforcement officer to write a report explaining why he or she did not record the custodial interrogation;
- Require a law enforcement officer to write a report explaining why a custodial interrogation was conducted at a place *other than a place of detention*;

- Allow a defendant to request and receive a cautionary jury instruction when a non-recorded statement from a custodial interrogation is admitted into evidence;
- Make a law enforcement agency immune from civil liability for a violation of the requirement to record an interrogation if the agency enforces rules that are reasonably designed to insure compliance with the requirement;
- Specify that the bill does not create a cause of action against a law enforcement officer;
- Add cellular telephones and portable communications devices to the list of articles that are considered contraband at a county detention facility; and
- Reduce the penalty for smuggling or possessing less serious types of contraband articles on the grounds of a county detention facility.

The bill is effective January 1, 2020.

II. Present Situation:

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that “No person . . . shall be compelled in any criminal case to be a witness against himself.”¹ Likewise, the Florida Constitution extends the same protection.² The voluntariness of a defendant’s statement and the admissibility of the statement against him or her in court is a creature of both case law and statutory law in Florida.

Custodial Interrogation

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.³ In *Traylor v. State*, the Supreme Court of Florida found that “[T]o 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”⁴

The test to determine if a person is in custody for the purposes of one’s *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.”⁵

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.”⁶

¹ U.S. Const. amend. V.

² “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. article I, s. 9.

³ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

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

⁵ *Id.* at 966 at n. 16.

⁶ *Id.* at 966 at n. 17.

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.⁷ The warning must include the right to remain silent as well as the explanation that anything a person 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 waving such a right.⁸

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.⁹ 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.¹⁰

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 discussed above, 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.¹¹ 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.¹² 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.¹³

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.¹⁴

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.

⁷ See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

⁸ *Sliney v. State*, 699 So. 2d 662, 669 (Fla. 1997), cert. denied, 522 U.S. 1129 (1998).

⁹ *Nickels v. State*, 90 Fla. 659, 668 (1925).

¹⁰ *Supra* n. 8 at 667.

¹¹ *Supra* n. 5.

¹² *Voorhees v. State*, 699 So. 2d 602, 608 (Fla. 1997).

¹³ *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999).

¹⁴ *Supra* n. 8 at 668.

Interrogation Recording in Florida

Law enforcement agencies in Florida are not currently required to record the custodial interrogation of a crime suspect, either by audio, video, or a combination of means. Fifty-seven agencies in Florida voluntarily record custodial interrogations, at least to some extent.¹⁵

Other States

Currently twenty-three states and the District of Columbia record custodial interrogations statewide.¹⁶ These states have statutes, court rules, or court cases that require law enforcement officers to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.¹⁷

Contraband Articles at County Detention Facilities

Existing law declares that a number of items are contraband when a person smuggles or possesses them on the grounds of a county detention facility. These articles include: written or recorded communications, currency and coins, food and clothing, tobacco products, including cigarettes and cigars, intoxicating beverages, various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts.¹⁸ A person who smuggles or possesses any article of contraband on the grounds of a county detention facility commits a third degree felony.¹⁹

¹⁵ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 36-37, August 2016, National Association of Criminal Defense Lawyers, <https://www.nacdl.org/electronicrecordingproject> (last viewed January 24, 2019). See also *Electronic Recording of Suspect Interrogations*, Interim Report 2004-123, Florida Senate Committee on Criminal Justice, http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-123cj.pdf (last viewed January 28, 2019).

¹⁶ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 7-8, August 2016, National Association of Criminal Defense Lawyers, <https://www.nacdl.org/electronicrecordingproject> (last viewed January 24, 2019).

¹⁷ See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006); N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last viewed January 24, 2019).

¹⁸ Section 951.22, F.S.

¹⁹ A person who commits a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

Custodial Interrogations

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

The bill provides definitions for terms used in the bill. These are:

- “Custodial interrogation” which means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which 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” which means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” which lists 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” which means a police station, sheriff’s office, correctional facility, prisoner holding 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” which means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation related 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 the custodial interrogation at the 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.

Contraband Articles at County Detention Facilities

Currently, a person who smuggles or possesses any article of contraband on the grounds of a county detention facility commits a third degree felony. The bill reduces the penalty for smuggling or possessing some of the less dangerous types of contraband articles to a first degree misdemeanor.

The bill retains the third degree felony status for various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts. The bill also adds cellular phones and portable communications devices to the list of contraband articles that are a third degree felony.

The bill makes smuggling or possessing the following contraband on the grounds of a county detention facility a first degree misdemeanor: written or recorded communications, currency and coins, food and clothing, tobacco products, including cigarettes and cigars, and intoxicating beverages.²⁰

Effective Date

The bill is effective January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the requirements of the bill related to electronic recording could result in local fund expenditures for equipment, maintenance, and operation. 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.

²⁰ A first degree misdemeanor is punishable by up to 1 year in the county detention facility and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although local law enforcement agencies may incur costs related to the electronic recording requirement in the bill, that cost is indeterminate.

In a preliminary estimate of the prison bed impact of the bill, the Office of Economic and Demographic Research determined that the impact of the bill is indeterminate.²¹

The Florida Department of Law Enforcement anticipates no fiscal impact to the department resulting from the provisions of the bill relating to custodial interrogations.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 951.22 and 921.0022.

This bill creates section 900.06 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.

²¹ E-mail from the Office of Economic and Demographic Research (January 25, 2019) (on file with the Senate Committee on Criminal Justice).

²² Florida Department of Law Enforcement, *2019 Legislative Bill Analysis, SB 204* (December 21, 2018) (on file with the Senate Committee on Criminal Justice).



487700

LEGISLATIVE ACTION

Senate

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. .
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. .
. .

House

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

Senate Amendment

Delete line 68
and insert:
office, correctional facility, prisoner holding facility, county
detention facility, or

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to detention facilities; creating s.
 3 900.06, F.S.; defining terms and specifying covered
 4 offenses; requiring that a custodial interrogation at
 5 a place of detention be electronically recorded in its
 6 entirety in connection with certain offenses;
 7 requiring law enforcement officers who do not comply
 8 with the electronic recording requirement or who
 9 conduct custodial interrogations at a place other than
 10 a place of detention to prepare a specified report;
 11 providing exceptions to the electronic recording
 12 requirement; requiring a court to consider a law
 13 enforcement officer's failure to comply with the
 14 electronic recording requirements in determining the
 15 admissibility of a statement, unless an exception
 16 applies; requiring a court, upon the request of a
 17 defendant, to give cautionary instructions to a jury
 18 under certain circumstances; providing immunity from
 19 civil liability to law enforcement agencies that
 20 enforce certain rules; providing that no cause of
 21 action is created against a law enforcement officer;
 22 amending s. 951.22, F.S.; prohibiting introduction
 23 into or possession of any cellular telephone or other
 24 portable communication device on the grounds of any
 25 county detention facility; defining the term "portable
 26 communication device"; providing criminal penalties;
 27 amending s. 921.0022, F.S.; conforming a cross-
 28 reference; conforming a provision to changes made by
 29 the act; providing an effective date.

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

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 900.06, Florida Statutes, is created to
 34 read:
 35 900.06 Recording of custodial interrogations for certain
 36 offenses.—
 37 (1) As used in this section, the term:
 38 (a) "Custodial interrogation" means questioning or other
 39 conduct by a law enforcement officer which is reasonably likely
 40 to elicit an incriminating response from an individual and which
 41 occurs under circumstances in which a reasonable individual in
 42 the same circumstances would consider himself or herself to be
 43 in the custody of a law enforcement agency.
 44 (b) "Electronic recording" means an audio recording or an
 45 audio and video recording that accurately records a custodial
 46 interrogation.
 47 (c) "Covered offense" includes:
 48 1. Arson.
 49 2. Sexual battery.
 50 3. Robbery.
 51 4. Kidnapping.
 52 5. Aggravated child abuse.
 53 6. Aggravated abuse of an elderly person or disabled adult.
 54 7. Aggravated assault with a deadly weapon.
 55 8. Murder.
 56 9. Manslaughter.
 57 10. Aggravated manslaughter of an elderly person or
 58 disabled adult.

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- 59 11. Aggravated manslaughter of a child.
 60 12. The unlawful throwing, placing, or discharging of a
 61 destructive device or bomb.
 62 13. Armed burglary.
 63 14. Aggravated battery.
 64 15. Aggravated stalking.
 65 16. Home-invasion robbery.
 66 17. Carjacking.
 67 (d) "Place of detention" means a police station, sheriff's
 68 office, correctional facility, prisoner holding facility, or
 69 other governmental facility where an individual may be held in
 70 connection with a criminal charge that has been or may be filed
 71 against the individual.
 72 (e) "Statement" means a communication that is oral,
 73 written, electronic, nonverbal, or in sign language.
 74 (2) (a) A custodial interrogation at a place of detention,
 75 including the giving of a required warning, the advisement of
 76 the rights of the individual being questioned, and the waiver of
 77 any rights by the individual, must be electronically recorded in
 78 its entirety if the interrogation is related to a covered
 79 offense.
 80 (b) If a law enforcement officer conducts a custodial
 81 interrogation at a place of detention without electronically
 82 recording the interrogation, the officer must prepare a written
 83 report explaining the reason why he or she did not record the
 84 interrogation.
 85 (c) As soon as practicable, a law enforcement officer who
 86 conducts a custodial interrogation at a place other than a place
 87 of detention shall prepare a written report explaining the

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- 88 circumstances of the interrogation at that place and summarizing
 89 the custodial interrogation process and the individual's
 90 statements made at that place.
 91 (d) Paragraph (a) does not apply:
 92 1. If an unforeseen equipment malfunction prevents
 93 recording the custodial interrogation in its entirety;
 94 2. If a suspect refuses to participate in a custodial
 95 interrogation if his or her statements are to be electronically
 96 recorded;
 97 3. If an equipment operator error prevents recording the
 98 custodial interrogation in its entirety;
 99 4. If the statement is made spontaneously and not in
 100 response to a custodial interrogation question;
 101 5. If the statement is made during the processing of the
 102 arrest of a suspect;
 103 6. If the custodial interrogation occurs when the law
 104 enforcement officer participating in the interrogation does not
 105 have any knowledge of facts and circumstances that would lead an
 106 officer to reasonably believe that the individual being
 107 interrogated may have committed a covered offense;
 108 7. If the law enforcement officer conducting the custodial
 109 interrogation reasonably believes that making an electronic
 110 recording would jeopardize the safety of the officer, the
 111 individual being interrogated, or others; or
 112 8. If the custodial interrogation is conducted outside of
 113 this state.
 114 (3) Unless a court finds that one or more of the
 115 circumstances specified in paragraph (2) (d) apply, the court
 116 must consider the circumstances of an interrogation conducted by

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117 a law enforcement officer in which he or she did not
 118 electronically record all or part of a custodial interrogation
 119 in determining whether a statement made during the interrogation
 120 is admissible. If the court admits into evidence a statement
 121 made during a custodial interrogation that was not
 122 electronically recorded as required under paragraph (2) (a), the
 123 court must, upon request of the defendant, give cautionary
 124 instructions to the jury regarding the law enforcement officer's
 125 failure to comply with that requirement.

126 (4) A law enforcement agency in this state which has
 127 enforced rules adopted pursuant to this section which are
 128 reasonably designed to ensure compliance with the requirements
 129 of this section is not subject to civil liability for damages
 130 arising from a violation of this section. This section does not
 131 create a cause of action against a law enforcement officer.

132 Section 2. Section 951.22, Florida Statutes, is amended to
 133 read:

134 951.22 County detention facilities; contraband articles.-

135 (1) It is unlawful, except through regular channels as duly
 136 authorized by the sheriff or officer in charge, to introduce
 137 into or possess upon the grounds of any county detention
 138 facility as defined in s. 951.23 or to give to or receive from
 139 any inmate of any such facility wherever said inmate is located
 140 at the time or to take or to attempt to take or send therefrom
 141 any of the following articles, ~~which are hereby declared to be~~
 142 contraband:

143 ~~(a) for the purposes of this act, to wit: Any written or~~
 144 recorded communication.

145 (b) Any currency or coin.

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146 (c) Any article of food or clothing.

147 (d) Any tobacco products as defined in s. 210.25(12).

148 (e) Any cigarette as defined in s. 210.01(1).

149 (f) Any cigar.

150 (g) Any intoxicating beverage or beverage ~~that which~~ causes
 151 or may cause an intoxicating effect.

152 (h) Any narcotic, hypnotic, or excitative drug or drug of
 153 any kind or nature, including nasal inhalators, sleeping pills,
 154 barbiturates, and controlled substances as defined in s.

155 893.02(4).

156 (i) Any firearm or any instrumentality customarily used or
 157 which is intended to be used as a dangerous weapon. ~~and~~

158 (j) Any instrumentality of any nature ~~which that~~ may be or
 159 is intended to be used as an aid in effecting or attempting to
 160 effect an escape from a county facility.

161 (k) Any cellular telephone or other portable communication
 162 device intentionally and unlawfully introduced inside the secure
 163 perimeter of a county detention facility without prior
 164 authorization or consent from the sheriff or officer in charge
 165 of such detention facility. As used in this paragraph, the term
 166 "portable communication device" means any device carried, worn,
 167 or stored which is designed or intended to receive or transmit
 168 verbal or written messages, access or store data, or connect
 169 electronically to the Internet, or any other electronic device
 170 and which allows communications in any form. Such devices
 171 include, but are not limited to, portable two-way pagers,
 172 handheld radios, cellular telephones, Blackberry-type devices,
 173 personal digital assistants, laptop computers, or any components
 174 of these devices which are intended to be used to assemble such

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175 devices. The term also includes any new technology that is
 176 developed for similar purposes. The term does not include any
 177 device that has communication capabilities which has been
 178 approved or issued by the sheriff or officer in charge for
 179 investigative or institutional security purposes or for
 180 conducting other official business.

181 (2) A person who ~~whoever~~ violates paragraph (1) (a),
 182 paragraph (1) (b), paragraph (1) (c), paragraph (1) (d), paragraph
 183 (1) (e), paragraph (1) (f), or paragraph (1) (g) commits a
 184 misdemeanor of the first degree, punishable as provided in s.
 185 775.082 or s. 775.083. A person who violates paragraph (1) (h),
 186 paragraph (1) (i), paragraph (1) (j), or paragraph (1) (k) commits
 187 subsection (1) shall be guilty of a felony of the third degree,
 188 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

189 Section 3. Paragraph (f) of subsection (3) of section
 190 921.0022, Florida Statutes, is amended to read:
 191 921.0022 Criminal Punishment Code; offense severity ranking
 192 chart.-

193 (3) OFFENSE SEVERITY RANKING CHART
 194 (f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2) (b)	3rd	Felony DUI, 4th or subsequent

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		conviction.
198	400.9935(4) (c)	2nd Operating a clinic, or offering services requiring licensure, without a license.
199	499.0051(2)	2nd Knowing forgery of transaction history, transaction information, or transaction statement.
200	499.0051(3)	2nd Knowing purchase or receipt of prescription drug from unauthorized person.
201	499.0051(4)	2nd Knowing sale or transfer of prescription drug to unauthorized person.
202	775.0875(1)	3rd Taking firearm from law enforcement officer.
203	784.021(1) (a)	3rd Aggravated assault; deadly weapon without intent to kill.
204	784.021(1) (b)	3rd Aggravated assault; intent to commit felony.
205	784.041	3rd Felony battery; domestic

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 battery by strangulation.
 206 784.048 (3) 3rd Aggravated stalking; credible threat.
 207 784.048 (5) 3rd Aggravated stalking of person under 16.
 208 784.07 (2) (c) 2nd Aggravated assault on law enforcement officer.
 209 784.074 (1) (b) 2nd Aggravated assault on sexually violent predators facility staff.
 210 784.08 (2) (b) 2nd Aggravated assault on a person 65 years of age or older.
 211 784.081 (2) 2nd Aggravated assault on specified official or employee.
 212 784.082 (2) 2nd Aggravated assault by detained person on visitor or other detainee.
 213 784.083 (2) 2nd Aggravated assault on code inspector.
 214 787.02 (2) 3rd False imprisonment; restraining

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 with purpose other than those
 in s. 787.01.
 215 790.115 (2) (d) 2nd Discharging firearm or weapon on school property.
 216 790.161 (2) 2nd Make, possess, or throw destructive device with intent to do bodily harm or damage property.
 217 790.164 (1) 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.
 218 790.19 2nd Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
 219 794.011 (8) (a) 3rd Solicitation of minor to participate in sexual activity by custodial adult.
 220 794.05 (1) 2nd Unlawful sexual activity with specified minor.
 221

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	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
222			
	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
223			
	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
224			
	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
225			
	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
226			
	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
227			
	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
228			
	812.015(9)(a)	2nd	Retail theft; property stolen

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			\$300 or more; second or subsequent conviction.
229			
	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
230			
	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
231			
	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
232			
	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
233			
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
234			
	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
235			
	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
236			
	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is

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				valued at less than \$10,000.
237				
	827.03(2)(c)	3rd		Abuse of a child.
238				
	827.03(2)(d)	3rd		Neglect of a child.
239				
	827.071(2) & (3)	2nd		Use or induce a child in a sexual performance, or promote or direct such performance.
240				
	836.05	2nd		Threats; extortion.
241				
	836.10	2nd		Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
242				
	843.12	3rd		Aids or assists person to escape.
243				
	847.011	3rd		Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
244				
	847.012	3rd		Knowingly using a minor in the production of materials harmful to minors.
245				

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	847.0135(2)	3rd		Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
246				
	914.23	2nd		Retaliation against a witness, victim, or informant, with bodily injury.
247				
	944.35(3)(a)2.	3rd		Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
248				
	944.40	2nd		Escapes.
249				
	944.46	3rd		Harboring, concealing, aiding escaped prisoners.
250				
	944.47(1)(a)5.	2nd		Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
251				
	<u>951.22</u>	3rd		<u>Introduction of contraband into county detention facility</u>
	<u>(1)(h)-(k)</u>			<u>Intoxicating drug, firearm, or weapon introduced into county facility.</u>
	951.22(1)			

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253

Section 4. This act shall take effect January 1, 2020.

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 248

INTRODUCER: Senators Hooper and Baxley

SUBJECT: Public Records/Civilian Personnel Employed by a Law Enforcement Agency

DATE: February 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 248 amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families. The term “home addresses” is currently undefined. The bill expands these exemptions by defining the term “home addresses” to include various location information.

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective July 1, 2019.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁴ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Public Records Exemptions for Specified Agency Personnel and Their Families (s. 119.071(4)(d), F.S)

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;²⁰
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²¹
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²²
- Current or former certified firefighters;²³
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;²⁴
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;²⁵
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;²⁶
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;²⁷
- Current or former code enforcement officers;²⁸
- Current or former guardians ad litem;²⁹
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;³⁰
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³¹
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³²

²⁰ Section 119.071(4)(d)2.a., F.S.

²¹ Section 119.071(4)(d)2.b., F.S.

²² Section 119.071(4)(d)2.c., F.S.

²³ Section 119.071(4)(d)2.d., F.S.

²⁴ Section 119.071(4)(d)2.e., F.S.

²⁵ Section 119.071(4)(d)2.f., F.S.

²⁶ Section 119.071(4)(d)2.g., F.S.

²⁷ Section 119.071(4)(d)2.h., F.S.

²⁸ Section 119.071(4)(d)2.i., F.S.

²⁹ Section 119.071(4)(d)2.j., F.S.

³⁰ Section 119.071(4)(d)2.k., F.S.

³¹ Section 119.071(4)(d)2.l., F.S.

³² Section 119.071(4)(d)2.m., F.S.

- County tax collectors;³³
- Certain current or former personnel of the Department of Health;³⁴
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;³⁵
- Current or former certified emergency medical technicians and paramedics;³⁶
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;³⁷
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;³⁸ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.³⁹

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.⁴⁰ Further, all of these exemptions have retroactive application.⁴¹

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of families members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the State Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

Law Enforcement and Other Specified Personnel (s. 119.071(4)(d)2.a., F.S.)

The public record exemption in s. 119.071(4)(d)2.a., F.S., covers current or former personnel from several agencies engaged in law enforcement, corrections, certain crime-related

³³ Section 119.071(4)(d)2.n., F.S.

³⁴ Section 119.071(4)(d)2.o., F.S.

³⁵ Section 119.071(4)(d)2.p., F.S.

³⁶ Section 119.071(4)(d)2.q., F.S.

³⁷ Section 119.071(4)(d)2.r., F.S.

³⁸ Section 119.071(4)(d)2.s., F.S.

³⁹ Section 119.071(4)(d)2.t., F.S.

⁴⁰ Section 119.071(4)(d)3., F.S.

⁴¹ Section 119.071(4)(d)4., F.S.

investigations or child abuse or neglect investigations, revenue collection, and revenue and child support enforcement. Specifically, the exemption covers:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including:
 - Correctional and correctional probation officers,
 - Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities,
 - Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and
 - Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families. The term “home addresses” is currently undefined. The bill expands these exemptions by defining the term “home addresses” to include various location information.

The bill defines the term “home addresses” to mean

the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure home addresses of certain agency personnel and their families. The public necessity statement states that the term “home addresses” needs to be defined “so that the safety and privacy of various personnel and their family members are not compromised.” This statement notes

[t]he Legislature has previously recognized that such personnel and their family members are at a heightened risk of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or

professional practices have come under scrutiny of such personnel, and, as a result, has enacted various public records exemptions.⁴²

Further, the public necessity statement indicates

the current exemptions do not provide protection for various forms of descriptive property information that may be used on its own, or in conjunction with other information, to reveal the home addresses that otherwise should be protected from public disclosure.

The public necessity statement also identifies a similar public safety rationale for exempting various identifying information and location information (see discussion, *supra*) regarding civilian personnel of law enforcement agencies and their families.

The civilian personnel of law enforcement agencies perform a variety of important duties that ensure public safety and welfare and encourage safe and secure communities. As a result of such duties, these civilian personnel often come into close contact with individuals who not only may be a threat to those personnel, but who might also seek to take revenge against them by harming their spouses and children.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.⁴³

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill expands several existing exemptions and creates a new exemption. Therefore, the bill requires a two-thirds vote to be enacted.

⁴² For example, s. 119.071(4)(d), F.S., exempts from public disclosure telephone numbers of certain agency personnel and their families. In 2012, the Legislature defined “telephone number” to include personal pager numbers because personnel and their families “could potentially be identified, located, and put at risk” if personal pager numbers were subject to public disclosure. Ch. 2012-149, L.O.F.

⁴³ The bill also removes current sunset dates relevant to particular exemptions in s. 119.071(4)(d), F.S.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The public necessity statement identifies the public safety rationales for defining “home addresses” for purposes of the exemptions in s. 119.071(4)(d), F.S., and for creating an exemption in this paragraph for various identifying information and location information regarding civilian personnel of law enforcement agencies and their families. (See “Effect of Proposed Changes” section of this analysis.) The exemptions are based upon public safety rationales which have supported previous exemptions relating to information identifying agency personnel and their families. Further, an exemption only occurs upon written request of a covered employee or his or her agency. For these reasons, the exemptions do not appear broader than necessary to accomplish the stated purpose of the law.

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 may reduce financial losses caused or aided by the fraudulent use of public information on home addresses of agency personnel.

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information

from the records custodian if the employee or the employee's agency requests that the home address information be exempted.

C. Government Sector Impact:

Indeterminate. Agencies or records custodians may incur costs to comply with requests to remove location information covered by the definition of "home addresses" in the bill if that information is currently available to the public on their websites. If a record requested by the public contains information that is subject to public disclosure and home address information that cannot be publicly disclosed, the records custodian may incur costs in redacting the home address information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.



417100

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

In title, delete line 3

and insert:

119.071, F.S.; expanding exemptions from public records requirements for agency personnel information by defining the term "home addresses" for



730452

LEGISLATIVE ACTION

Senate

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. .

House

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

Senate Amendment

Delete line 336
and insert:
on October 2, 2024, unless reviewed and saved from repeal

By Senator Hooper

16-00556-19

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A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining the term "home addresses" for purposes of public records exemptions for personal identifying and location information of certain agency personnel and their family members; exempting personal identifying and location information of active or former civilian personnel employed by a law enforcement agency, and of spouses and children of such personnel, from public records requirements; providing for legislative review and repeal of the exemptions; providing statements of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers,

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personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn ~~or civilian~~ law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal

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59 activities, or state regulatory requirement violations; the
 60 names, home addresses, telephone numbers, dates of birth, and
 61 places of employment of the spouses and children of such
 62 personnel; and the names and locations of schools and day care
 63 facilities attended by the children of such personnel are exempt
 64 from s. 119.07(1) and s. 24(a), Art. I of the State
 65 Constitution. ~~This sub-subparagraph is subject to the Open
 66 Government Sunset Review Act in accordance with s. 119.15 and
 67 shall stand repealed on October 2, 2021, unless reviewed and
 68 saved from repeal through reenactment by the Legislature.~~

69 c. The home addresses, telephone numbers, dates of birth,
 70 and photographs of current or former nonsworn investigative
 71 personnel of the Office of Financial Regulation's Bureau of
 72 Financial Investigations whose duties include the investigation
 73 of fraud, theft, other related criminal activities, or state
 74 regulatory requirement violations; the names, home addresses,
 75 telephone numbers, dates of birth, and places of employment of
 76 the spouses and children of such personnel; and the names and
 77 locations of schools and day care facilities attended by the
 78 children of such personnel are exempt from s. 119.07(1) and s.
 79 24(a), Art. I of the State Constitution. ~~This sub-subparagraph
 80 is subject to the Open Government Sunset Review Act in
 81 accordance with s. 119.15 and shall stand repealed on October 2,
 82 2022, unless reviewed and saved from repeal through reenactment
 83 by the Legislature.~~

84 d. The home addresses, telephone numbers, dates of birth,
 85 and photographs of current or former firefighters certified in
 86 compliance with s. 633.408; the names, home addresses, telephone
 87 numbers, photographs, dates of birth, and places of employment

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88 of the spouses and children of such firefighters; and the names
 89 and locations of schools and day care facilities attended by the
 90 children of such firefighters are exempt from s. 119.07(1) and
 91 s. 24(a), Art. I of the State Constitution. ~~This sub-
 92 subparagraph is subject to the Open Government Sunset Review Act
 93 in accordance with s. 119.15, and shall stand repealed on
 94 October 2, 2022, unless reviewed and saved from repeal through
 95 reenactment by the Legislature.~~

96 e. The home addresses, dates of birth, and telephone
 97 numbers of current or former justices of the Supreme Court,
 98 district court of appeal judges, circuit court judges, and
 99 county court judges; the names, home addresses, telephone
 100 numbers, dates of birth, and places of employment of the spouses
 101 and children of current or former justices and judges; and the
 102 names and locations of schools and day care facilities attended
 103 by the children of current or former justices and judges are
 104 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 105 Constitution. ~~This sub-subparagraph is subject to the Open
 106 Government Sunset Review Act in accordance with s. 119.15 and
 107 shall stand repealed on October 2, 2022, unless reviewed and
 108 saved from repeal through reenactment by the Legislature.~~

109 f. The home addresses, telephone numbers, dates of birth,
 110 and photographs of current or former state attorneys, assistant
 111 state attorneys, statewide prosecutors, or assistant statewide
 112 prosecutors; the names, home addresses, telephone numbers,
 113 photographs, dates of birth, and places of employment of the
 114 spouses and children of current or former state attorneys,
 115 assistant state attorneys, statewide prosecutors, or assistant
 116 statewide prosecutors; and the names and locations of schools

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117 and day care facilities attended by the children of current or
118 former state attorneys, assistant state attorneys, statewide
119 prosecutors, or assistant statewide prosecutors are exempt from
120 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

121 g. The home addresses, dates of birth, and telephone
122 numbers of general magistrates, special magistrates, judges of
123 compensation claims, administrative law judges of the Division
124 of Administrative Hearings, and child support enforcement
125 hearing officers; the names, home addresses, telephone numbers,
126 dates of birth, and places of employment of the spouses and
127 children of general magistrates, special magistrates, judges of
128 compensation claims, administrative law judges of the Division
129 of Administrative Hearings, and child support enforcement
130 hearing officers; and the names and locations of schools and day
131 care facilities attended by the children of general magistrates,
132 special magistrates, judges of compensation claims,
133 administrative law judges of the Division of Administrative
134 Hearings, and child support enforcement hearing officers are
135 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
136 Constitution. ~~This sub-subparagraph is subject to the Open
137 Government Sunset Review Act in accordance with s. 119.15 and
138 shall stand repealed on October 2, 2022, unless reviewed and
139 saved from repeal through reenactment by the Legislature.~~

140 h. The home addresses, telephone numbers, dates of birth,
141 and photographs of current or former human resource, labor
142 relations, or employee relations directors, assistant directors,
143 managers, or assistant managers of any local government agency
144 or water management district whose duties include hiring and
145 firing employees, labor contract negotiation, administration, or

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146 other personnel-related duties; the names, home addresses,
147 telephone numbers, dates of birth, and places of employment of
148 the spouses and children of such personnel; and the names and
149 locations of schools and day care facilities attended by the
150 children of such personnel are exempt from s. 119.07(1) and s.
151 24(a), Art. I of the State Constitution.

152 i. The home addresses, telephone numbers, dates of birth,
153 and photographs of current or former code enforcement officers;
154 the names, home addresses, telephone numbers, dates of birth,
155 and places of employment of the spouses and children of such
156 personnel; and the names and locations of schools and day care
157 facilities attended by the children of such personnel are exempt
158 from s. 119.07(1) and s. 24(a), Art. I of the State
159 Constitution.

160 j. The home addresses, telephone numbers, places of
161 employment, dates of birth, and photographs of current or former
162 guardians ad litem, as defined in s. 39.820; the names, home
163 addresses, telephone numbers, dates of birth, and places of
164 employment of the spouses and children of such persons; and the
165 names and locations of schools and day care facilities attended
166 by the children of such persons are exempt from s. 119.07(1) and
167 s. 24(a), Art. I of the State Constitution. ~~This sub-
168 subparagraph is subject to the Open Government Sunset Review Act
169 in accordance with s. 119.15 and shall stand repealed on October
170 2, 2022, unless reviewed and saved from repeal through
171 reenactment by the Legislature.~~

172 k. The home addresses, telephone numbers, dates of birth,
173 and photographs of current or former juvenile probation
174 officers, juvenile probation supervisors, detention

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175 superintendents, assistant detention superintendents, juvenile
 176 justice detention officers I and II, juvenile justice detention
 177 officer supervisors, juvenile justice residential officers,
 178 juvenile justice residential officer supervisors I and II,
 179 juvenile justice counselors, juvenile justice counselor
 180 supervisors, human services counselor administrators, senior
 181 human services counselor administrators, rehabilitation
 182 therapists, and social services counselors of the Department of
 183 Juvenile Justice; the names, home addresses, telephone numbers,
 184 dates of birth, and places of employment of spouses and children
 185 of such personnel; and the names and locations of schools and
 186 day care facilities attended by the children of such personnel
 187 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 188 Constitution.

189 1. The home addresses, telephone numbers, dates of birth,
 190 and photographs of current or former public defenders, assistant
 191 public defenders, criminal conflict and civil regional counsel,
 192 and assistant criminal conflict and civil regional counsel; the
 193 names, home addresses, telephone numbers, dates of birth, and
 194 places of employment of the spouses and children of current or
 195 former public defenders, assistant public defenders, criminal
 196 conflict and civil regional counsel, and assistant criminal
 197 conflict and civil regional counsel; and the names and locations
 198 of schools and day care facilities attended by the children of
 199 current or former public defenders, assistant public defenders,
 200 criminal conflict and civil regional counsel, and assistant
 201 criminal conflict and civil regional counsel are exempt from s.
 202 119.07(1) and s. 24(a), Art. I of the State Constitution.

203 m. The home addresses, telephone numbers, dates of birth,

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204 and photographs of current or former investigators or inspectors
 205 of the Department of Business and Professional Regulation; the
 206 names, home addresses, telephone numbers, dates of birth, and
 207 places of employment of the spouses and children of such current
 208 or former investigators and inspectors; and the names and
 209 locations of schools and day care facilities attended by the
 210 children of such current or former investigators and inspectors
 211 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 212 Constitution. ~~This sub-subparagraph is subject to the Open
 213 Government Sunset Review Act in accordance with s. 119.15 and
 214 shall stand repealed on October 2, 2022, unless reviewed and
 215 saved from repeal through reenactment by the Legislature.~~

216 n. The home addresses, telephone numbers, and dates of
 217 birth of county tax collectors; the names, home addresses,
 218 telephone numbers, dates of birth, and places of employment of
 219 the spouses and children of such tax collectors; and the names
 220 and locations of schools and day care facilities attended by the
 221 children of such tax collectors are exempt from s. 119.07(1) and
 222 s. 24(a), Art. I of the State Constitution. ~~This sub-
 223 subparagraph is subject to the Open Government Sunset Review Act
 224 in accordance with s. 119.15 and shall stand repealed on October
 225 2, 2022, unless reviewed and saved from repeal through
 226 reenactment by the Legislature.~~

227 o. The home addresses, telephone numbers, dates of birth,
 228 and photographs of current or former personnel of the Department
 229 of Health whose duties include, or result in, the determination
 230 or adjudication of eligibility for social security disability
 231 benefits, the investigation or prosecution of complaints filed
 232 against health care practitioners, or the inspection of health

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233 care practitioners or health care facilities licensed by the
 234 Department of Health; the names, home addresses, telephone
 235 numbers, dates of birth, and places of employment of the spouses
 236 and children of such personnel; and the names and locations of
 237 schools and day care facilities attended by the children of such
 238 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 239 the State Constitution. ~~This sub-subparagraph is subject to the Open
 240 Government Sunset Review Act in accordance with s. 119.15
 241 and shall stand repealed on October 2, 2019, unless reviewed and
 242 saved from repeal through reenactment by the Legislature.~~

243 p. The home addresses, telephone numbers, dates of birth,
 244 and photographs of current or former impaired practitioner
 245 consultants who are retained by an agency or current or former
 246 employees of an impaired practitioner consultant whose duties
 247 result in a determination of a person's skill and safety to
 248 practice a licensed profession; the names, home addresses,
 249 telephone numbers, dates of birth, and places of employment of
 250 the spouses and children of such consultants or their employees;
 251 and the names and locations of schools and day care facilities
 252 attended by the children of such consultants or employees are
 253 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 254 Constitution. ~~This sub-subparagraph is subject to the Open
 255 Government Sunset Review Act in accordance with s. 119.15 and
 256 shall stand repealed on October 2, 2020, unless reviewed and
 257 saved from repeal through reenactment by the Legislature.~~

258 q. The home addresses, telephone numbers, dates of birth,
 259 and photographs of current or former emergency medical
 260 technicians or paramedics certified under chapter 401; the
 261 names, home addresses, telephone numbers, dates of birth, and

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262 places of employment of the spouses and children of such
 263 emergency medical technicians or paramedics; and the names and
 264 locations of schools and day care facilities attended by the
 265 children of such emergency medical technicians or paramedics are
 266 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 267 Constitution. ~~This sub-subparagraph is subject to the Open
 268 Government Sunset Review Act in accordance with s. 119.15 and
 269 shall stand repealed on October 2, 2021, unless reviewed and
 270 saved from repeal through reenactment by the Legislature.~~

271 r. The home addresses, telephone numbers, dates of birth,
 272 and photographs of current or former personnel employed in an
 273 agency's office of inspector general or internal audit
 274 department whose duties include auditing or investigating waste,
 275 fraud, abuse, theft, exploitation, or other activities that
 276 could lead to criminal prosecution or administrative discipline;
 277 the names, home addresses, telephone numbers, dates of birth,
 278 and places of employment of spouses and children of such
 279 personnel; and the names and locations of schools and day care
 280 facilities attended by the children of such personnel are exempt
 281 from s. 119.07(1) and s. 24(a), Art. I of the State
 282 Constitution. ~~This sub-subparagraph is subject to the Open
 283 Government Sunset Review Act in accordance with s. 119.15 and
 284 shall stand repealed on October 2, 2021, unless reviewed and
 285 saved from repeal through reenactment by the Legislature.~~

286 s. The home addresses, telephone numbers, dates of birth,
 287 and photographs of current or former directors, managers,
 288 supervisors, nurses, and clinical employees of an addiction
 289 treatment facility; the home addresses, telephone numbers,
 290 photographs, dates of birth, and places of employment of the

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291 spouses and children of such personnel; and the names and
 292 locations of schools and day care facilities attended by the
 293 children of such personnel are exempt from s. 119.07(1) and s.
 294 24(a), Art. I of the State Constitution. For purposes of this
 295 sub-subparagraph, the term "addiction treatment facility" means
 296 a county government, or agency thereof, that is licensed
 297 pursuant to s. 397.401 and provides substance abuse prevention,
 298 intervention, or clinical treatment, including any licensed
 299 service component described in s. 397.311(26). ~~This sub-~~
 300 ~~subparagraph is subject to the Open Government Sunset Review Act~~
 301 ~~in accordance with s. 119.15 and shall stand repealed on October~~
 302 ~~2, 2023, unless reviewed and saved from repeal through~~
 303 ~~reenactment by the Legislature.~~

304 t. The home addresses, telephone numbers, dates of birth,
 305 and photographs of current or former directors, managers,
 306 supervisors, and clinical employees of a child advocacy center
 307 that meets the standards of s. 39.3035(1) and fulfills the
 308 screening requirement of s. 39.3035(2), and the members of a
 309 child protection team as described in s. 39.303 whose duties
 310 include supporting the investigation of child abuse or sexual
 311 abuse, child abandonment, child neglect, and child exploitation
 312 or to provide services as part of a multidisciplinary case
 313 review team; the names, home addresses, telephone numbers,
 314 photographs, dates of birth, and places of employment of the
 315 spouses and children of such personnel and members; and the
 316 names and locations of schools and day care facilities attended
 317 by the children of such personnel and members are exempt from s.
 318 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This~~
 319 ~~sub-subparagraph is subject to the Open Government Sunset Review~~

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320 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
 321 ~~October 2, 2023, unless reviewed and saved from repeal through~~
 322 ~~reenactment by the Legislature.~~

323 3. An agency that is the custodian of the information
 324 specified in subparagraph 2. and that is not the employer of the
 325 officer, employee, justice, judge, or other person specified in
 326 subparagraph 2. shall maintain the exempt status of that
 327 information only if the officer, employee, justice, judge, other
 328 person, or employing agency of the designated employee submits a
 329 written request for maintenance of the exemption to the
 330 custodial agency.

331 4. The exemptions in this paragraph apply to information
 332 held by an agency before, on, or after the effective date of the
 333 exemption.

334 5. This paragraph is subject to the Open Government Sunset
 335 Review Act in accordance with s. 119.15 and shall stand repealed
 336 on October 2, 2023, unless reviewed and saved from repeal
 337 through reenactment by the Legislature.

338 Section 2. (1) The Legislature finds that it is a public
 339 necessity to define the term "home addresses" for purposes of
 340 the public records exemptions for agency personnel information
 341 under s. 119.071(4)(d), Florida Statutes. The public records
 342 exemptions for agency personnel information protect identifying
 343 and location information of numerous types of personnel,
 344 including, but not limited to, current or former law enforcement
 345 officers, investigative personnel, state attorneys and
 346 prosecutors, public defenders, guardians ad litem, Supreme Court
 347 justices, various judges, and the spouses and children of such
 348 personnel. The Legislature has previously recognized that such

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 349 personnel and their family members are at a heightened risk of
 350 physical and emotional harm from disgruntled individuals who
 351 have contentious reactions to actions taken by such personnel,
 352 or whose business or professional practices have come under
 353 scrutiny of such personnel, and, as a result, has enacted
 354 various public records exemptions. While home addresses of such
 355 personnel and their family members are already exempt from s.
 356 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 357 State Constitution, the current exemptions do not provide
 358 protection for various forms of descriptive property information
 359 that may be used on its own, or in conjunction with other
 360 information, to reveal the home addresses that otherwise should
 361 be protected from public disclosure. Therefore, the Legislature
 362 finds that it is a public necessity to specifically define the
 363 term "home addresses" so that the safety and privacy of various
 364 personnel and their family members are not compromised.

365 (2) The Legislature further finds that it is a public
 366 necessity that the home addresses, telephone numbers, dates of
 367 birth, and photographs of active or former civilian personnel
 368 employed by a law enforcement agency; the names, home addresses,
 369 telephone numbers, photographs, dates of birth, and places of
 370 employment of the spouses and children of such personnel; and
 371 the names and locations of schools and day care facilities
 372 attended by the children of such personnel be exempt from public
 373 records requirements. Existing law already provides that the
 374 identifying and location information of active or former
 375 civilian law enforcement personnel and their spouses and
 376 children are exempt from public records requirements. The
 377 amendment made by this act further specifies that any active or

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 378 former civilian personnel employed by a law enforcement agency
 379 and their spouses and children are entitled to the protections
 380 of the public records exemption. The civilian personnel of law
 381 enforcement agencies perform a variety of important duties that
 382 ensure public safety and welfare and encourage safe and secure
 383 communities. As a result of such duties, these civilian
 384 personnel often come into close contact with individuals who not
 385 only may be a threat to those personnel, but who might also seek
 386 to take revenge against them by harming their spouses and
 387 children. The Legislature finds that modifying the public
 388 records exemption to apply to all active or former civilian
 389 personnel employed by a law enforcement agency and their spouses
 390 and children will serve the public interest by further ensuring
 391 the safety of such personnel.

392 Section 3. This act shall take effect July 1, 2019.

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 332

INTRODUCER: Senator Pizzo and others

SUBJECT: Incarcerated Women

DATE: February 1, 2019

REVISED: _____

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

I. Summary:

SB 332, which is cited as the “Dignity for Incarcerated Women Act,” creates new statutory language to address how correctional facilities handle certain procedural and administrative circumstances that are unique to the incarceration of women inmates.

Legislation to ensure access to various health care products has been filed in Congress, as well as in a number of states, to address other health care concerns that have been raised by inmates. Additionally, many correctional facility systems, including the Federal Bureau of Prisons, have promulgated new rules to address these policy concerns.

First, the bill requires all correctional facilities, including jails and the Department of Juvenile Justice (DJJ) facilities, to make “health care products” available to each incarcerated woman. These items must be available in common housing areas and medical care facilities, at no cost, and in a quantity that is appropriate to the needs of the woman. The Department of Corrections (DOC) and DJJ report that many of these policy concerns are contemplated in current rules.

Over the last several years, various entities throughout the nation have reported about unique challenges that are presented by the incarceration of women and how these circumstances are addressed in correctional facilities across the nation. The Federal Prison Rape Elimination Act of 2003 (PREA) was one of the first attempts in recent years to attempt to address concerns raised by these women. The PREA Act provided standards for cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities and prohibited such searches absent exigent circumstances.

Additionally, the bill provides that a male correctional facility employee:

- Is prohibited from conducting a pat-down or body cavity search on an incarcerated woman except in situations where the incarcerated woman is presenting an immediate risk of harm and a female correctional facility employee is not available to do the search;

- Must announce his presence upon entering a housing unit for incarcerated women; and
- With the exception of specified circumstances, must not enter specified areas of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed.

The bill requires male correctional employees to document any incident that violates the above-mentioned provisions within three days. Such documentation must include details of the circumstances that necessitated the employee's actions.

The bill defines several terms to provide clarity to the provisions of the act, including "correctional facility," "correctional facility employee," "health care products," and "state of undress."

To the extent that the bill requires any of the specified facilities to provide additional or different products than are currently being offered, the bill will likely have a positive fiscal impact (i.e., unquantifiable increase in costs) to the correctional facilities. See Section V. Fiscal Impact Statement.

The bill is effective on July 1, 2019.

II. Present Situation:

Over the last several years, various entities throughout the nation have reported about unique challenges that are presented by the incarceration of women and how these circumstances are addressed in correctional facilities across the nation.¹ Many women who have been incarcerated have claimed that access to feminine hygiene products and other hygiene products is inconsistent and sometimes inadequate.²

In 2017, United States Senators Booker, Warren, Durbin, and Harris introduced a federal "Dignity for Incarcerated Women Act." The bill, in part, provided access to health care products free of charge to female inmates and restricted Federal Bureau of Prisons (BOP) employees from entering restrooms of incarcerated individuals of the opposite sex except in exigent circumstances. The bill did not become law.³

¹ Vera Institute for Justice, *Overlooked: Women and Jails in an Era of Reform*, August 2016, available at <https://www.vera.org/publications/overlooked-women-and-jails-report> (last visited January 31, 2019); CNN, *Why women in Arizona are sending a state representative pads and tampons*, Amir Vera, February 13, 2018, available at <https://www.cnn.com/2018/02/13/health/women-pads-arizona-state-representative-trnd/index.html> (last visited January 31, 2019); Fox 40, *Movement Focuses on the Mistreatment of Incarcerated Women*, March 10, 2018, available at <https://fox40.com/2018/03/10/movement-focuses-on-the-mistreatment-of-incarcerated-women/> (last visited January 31, 2019); CNN, *The powerful movement for incarcerated women*, Van Jones and Topeka K. Sam, March 10, 2018, available at <https://www.cnn.com/2018/03/09/opinions/justice-for-female-prisoners-jones-sam-opinion/index.html> (last visited January 31, 2019); *The Baltimore Sun*, *Female prisoners deserve dignity*, Nila Bala, June 18, 2018, available at <https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0619-prisoner-dignity-20180618-story.html> (last visited January 31, 2019); and *The New York Times*, *In Jail, Pads and Tampons as Bargaining Chips*, Zoe Greenberg, April 20, 2017, available at <https://www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html> (last visited January 31, 2019).

² *See Id.*

³ United States SB 1524 – 115th Congress (2017-2018), available at <https://www.congress.gov/bill/115th-congress/senate-bill/1524?q=%7B%22search%22%3A%5B%22dignity+for+incarcerated+women%22%5D%7D&s=1&r=3> (last visited

At the same time that the “Dignity for Incarcerated Women Act” was pending, the BOP issued new policies regarding the access to feminine hygiene products.⁴ Before the policy change, the BOP only broadly required “sanitary products” to be made available for free, and the specific type of products available at no cost varied depending on the BOP facility. The new policy required wardens to ensure inmates were provided with specified products at no cost to the inmates, including:

- Tampons, regular and super-size;
- Maxi pads with wings, regular and super-size; and
- Panty liners, regular.⁵

Additionally, the “First Step Act of 2018,” which became law in December, 2018, in part, requires the Director of BOP to make tampons and sanitary napkins “available to prisoners for free, in a quantity that is appropriate to the healthcare needs of each prisoner.” The Director must also ensure that the quality of these products conform to applicable industry standards.⁶

In addition to federal facilities, many states have evaluated their policies on these issues after reports surfaced about inconsistencies. Several states have made changes either statutorily or through procedural rules changes.⁷

Prison Rape Elimination Act

The United States Congress passed the “Prison Rape Elimination Act of 2003” (PREA) to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide resources and recommendations to protect individuals from prison rape. In addition to providing resources, funding was provided to all levels of correctional facilities to assist facilities throughout the nation with implementing standards to reduce the

January 31, 2019). See also Cory Booker, *Senators Booker, Warren, Durbin, Harris Introduce Landmark Bill to Reform the Way Women Are Treated Behind Bars*, July 11, 2017, available at https://www.booker.senate.gov/?p=press_release&id=629 (last visited January 30, 2019).

⁴ United States Department of Justice, Federal Bureau of Prisons, *Provision of Feminine Hygiene Products*, August 1, 2017, available at https://www.bop.gov/policy/om/001_2017.pdf (last visited January 31, 2019)(hereinafter cited as “BOP Policy”); See also Cory Booker, *Booker Commends New Bureau of Prisons Policy Requiring Certain Feminine Health Care Products to be Provided to Women Free of Charge*, August 16, 2017, available at https://www.booker.senate.gov/?p=press_release&id=654 (last visited January 31, 2019).

⁵ BOP Policy.

⁶ First Step Act of 2018, Pub. L. No. 115-391, s. 611 (2018).

⁷ NPR, *Arizona Department Of Corrections Changes Sanitary Pad Policy Following Backlash*, Amy Held, February 15, 2018, available at <https://www.npr.org/sections/thetwo-way/2018/02/15/586134335/arizona-department-of-corrections-changes-sanitary-pad-policy-following-backlash> (last visited January 31, 2019)(Arizona Department of Corrections modified its policy from limiting female inmates’ access to sanitary napkins from 12 to 36 per month); The Washington Post, *‘They’re as necessary as toilet paper’: New York City Council approves free tampon program*, Katie Mettler, June 23, 2016, available at https://www.washingtonpost.com/news/morning-mix/wp/2016/06/23/menstrual-equity-ny-city-council-approves-giving-away-tampons-to-women-in-schools-prisons-and-homeless-shelters/?utm_term=.b410efb4ff12 (last visited January 31, 2019)(New York City council approved a measure that would give all women in public schools, prisons, and homeless shelters access to feminine hygiene products free of charge).

occurrence of prison rape.⁸ The statute applies to any confinement facility, including jails, police lockups, and juvenile facilities,⁹ and defines “rape” to include a broad range of unwanted sexual activity.¹⁰

In passing the PREA, Congress noted that the nation was “largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.”¹¹ The legislation also established a National Prison Rape Elimination Commission (Commission) to perform a comprehensive legal and factual study on various impacts of prison rape in the United States and to recommend to the Attorney General national standards for detecting, preventing, reducing, and punishing prison rape.¹²

The PREA standards adopted by the Commission included a phased-in ban on cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities absent exigent circumstances.¹³ The PREA standards also:

- Prohibit cross-gender strip searches and visual body cavity searches in all facilities, except in exigent circumstances or when performed by medical practitioners;¹⁴
- Require facilities to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks;
- Require staff of the opposite gender to announce their presence when entering an inmate housing unit; and
- Prohibit cross-gender pat-down searches of both female and male residents in juvenile facilities.¹⁵

Both the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) are in compliance with the PREA Guidelines and have adopted zero tolerance policies regarding actions that are prohibited by the PREA standards. Additionally, each agency employs a designated PREA Coordinator responsible for the development, implementation, and oversight of the agency’s efforts to comply with the PREA standards.¹⁶ Additionally, s. 901.211, F.S., and the Florida Model Jail Standards (FMJS), provide the minimum standards that Florida’s jails must meet and contain similar search standards as the PREA standards.

⁸ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79 (2003); National PREA Resource Center, *Prison Rape Elimination Act, About Page*, available at <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea> (last visited January 31, 2019).

⁹ 42 U.S.C. s. 15609(7)

¹⁰ 42 U.S.C. s. 15609(9).

¹¹ 42 U.S.C. 15601(12). See Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape Executive Summary*, p. 1, May 16, 2012, available at https://ojp.gov/programs/pdfs/prea_executive_summary.pdf (last visited January 30, 2019)(hereinafter cited as “PREA Executive Summary”).

¹² 42 U.S.C. s. 15606(d)(1), (e)(1).

¹³ PREA Executive Summary, p. 5. The PREA standards specifically prohibit compliance with the cross-gender search provision from restricting female inmates’ access to programming and out-of-cell opportunities.

¹⁴ *Id.* If a cross-gender search is conducted in this manner it must be documented.

¹⁵ *Id.*

¹⁶ DOC, *PREA*, available at <http://www.dc.state.fl.us/PREA/index.html> (last visited January 30, 2019); DJJ, *PREA*, available at <http://www.djj.state.fl.us/partners/prison-rape-elimination-act-%28prea%29> (last visited January 30, 2019).

Policies Related to Florida's Incarcerated Women

Department of Corrections

Section 944.09(1), F.S., provides the DOC with broad rule making authority to implement its statutory responsibilities, including, in part, the:

- Operation and management of the correctional institution or facility and its personnel and functions;
- Conduct of custodial and other personnel; and
- Furnishing of health and comfort items to indigent prisoners.

The DOC has promulgated several rules that address these specific operational areas. Inmate health and comfort items must be provided in accordance with the guidelines in the Inmate Health and Comfort Items – Issuance, Form NI1-071 (Form).¹⁷ The Form addresses, in part, the provision of health care items such as toothbrushes,¹⁸ toothpaste,¹⁹ disposable razors,²⁰ bath soap,²¹ toilet paper,²² and feminine hygiene products.²³ This procedure provides consistency with the issuance of these types of products.

Searches of inmates are to be made with discretion and conducted to control the introduction and movement of contraband and to prevent escapes.²⁴ Clothed searches of female inmates may only be performed by male staff during an emergency situation as determined by the shift supervisor, except for:

- Instances when time and circumstances do not permit the arrival of female staff; or
- In the event of an imminent threat of physical violence and a search is needed to secure the inmate to prevent injury to staff or inmates, provided there is consultation with the shift supervisor prior to conducting the search.²⁵

Strip searches of inmates must be conducted only by correctional officers who are the same sex as the inmate, except in emergency circumstances. The Rule details specified circumstances

¹⁷ Fla. Admin. Code R. 33-602.101(12). Form NI1-071, Inmate Health and Comfort Items – Issuance can be accessed at <http://www.flrules.org/Gateway/reference.asp?No=Ref-09985> (last visited on January 31, 2019).

¹⁸ *Id.* The Form provides that each inmate is provided one tooth brush upon initial arrival. The housing officers/sergeant on the shift designated in the institutional schedule must also issue toothbrushes on a one-for-one exchange basis, once every 30 days.

¹⁹ *Id.* Each inmate is provided one tube upon initial arrival and can be replaced when empty or once every 30 days.

²⁰ *Id.* This provision only applies to female inmates who are part of the general population and provides that one razor is issued upon initial arrival and once every seven days.

²¹ *Supra*, n. 16. Each inmate is provided one bar of soap upon initial arrival, which may be replaced once every seven days. The DOC states that the bath soap provided by the DOC is a soap whose ingredient is to moisturize, but it is called a deodorizing soap. The Department of Corrections, SB 332 Agency Analysis, p. 4, January 23, 2019 (on file with Senate Criminal Justice Staff)(hereinafter cited as “The DOC SB 332 Analysis”).

²² *Id.* Each inmate is provided one roll upon initial arrival and can be provided outside of a seven day interval in certain instances.

²³ *Id.* Each inmate will be issued feminine hygiene products on an as needed basis and in accordance with Fla. Admin. Code R 33-602.101, which requires the inmate to make a medical request.

²⁴ Fla. Admin. Code R. 33-602.204.

²⁵ Fla. Admin. Code R. 33-602.204(1)(a).

when strip searches are appropriate.²⁶ Internal examination of the body orifices, when required, will be made by medical personnel only, as well as examination of any bandages or casts.²⁷

The DOC reports that as of June 30, 2018, there were 6,658 female inmates accounting for 6.9 percent of the overall total inmate population.²⁸

Department of Juvenile Justice

Section 985.64, F.S., provides the DJJ with rulemaking authority to implement all provisions of ch. 985, F.S. All rules and policies must conform to accepted standards of care and treatment.²⁹ Specifically, the DJJ must adopt rules to ensure the effective provision of health services, including ordinary medical care, to youth in facilities or programs operated or contracted by the DJJ.³⁰

The DJJ reports that it provides all female youth with basic health products.³¹ The DJJ is required to provide youth with individual hygiene supplies, including:

- Toothbrush and toothpaste;
- Soap;
- Shampoo;
- Combs or brushes;
- Shaving supplies;
- Body lotion; and
- Feminine hygiene supplies for females.³²

²⁶ Fla. Admin. Code R. 33-602.204(2)(a) and (b). The instances include upon an inmate's arrival at the institution from court, other institutions, or from any other place where they may have come in contact with the public; when an inmate is apprehended after an escape, attempted escape or hideout, they will also be given a strip search. There may be other occasions for a strip search, such as before they are admitted to confinement or at any time when they are suspected of carrying contraband.

²⁷ Fla. Admin. Code R. 33-602.204(2)(e)4.

²⁸ The DOC SB 332 Analysis, p. 2.

²⁹ Section 985.64(1), F.S.

³⁰ Section 985.64(2)(a), F.S.

³¹ The DJJ, HB 49 Agency Analysis, January 16, 2019, p. 2 (on file with the Senate Criminal Justice Committee)(hereinafter cited as "The DJJ HB 49 Analysis")(HB 49 is substantially similar to the current bill). The products specifically mentioned in the analysis include body wash, shampoo, maxi pads, deodorant, toothbrushes, toothpaste, hair combs, hair brushes, body lotion, hair ties, and any health products as needed by youth or prescribed by a doctor.

³² Fla. Admin. Code R. 63E-7.007 (residential commitment programs) and Fla. Admin. Code R. 63G-2.025 (detention centers)(This Rule uses the phrase "sanitary napkins" instead of "feminine hygiene supplies."). Additionally, Fla. Admin. Code R. 63E-7.006, requires the residential commitment programs to address the needs of a targeted gender group and that health and hygiene, in part, are key components in providing a gender specific program.

The DJJ also has established rules for both its residential³³ and detention³⁴ youth populations detailing when different types of searches, including frisk,³⁵ strip,³⁶ and cavity searches, are necessary and the appropriate conditions under which such searches can occur. All searches must be documented in designated logs, the Facility Management System³⁷ or a manual logbook used for these recordings, and on the shift report.³⁸ Frisk searches must be conducted during specified times³⁹ and an officer of the same sex as the youth being searched must conduct a frisk search.⁴⁰

Strip searches must be conducted during admission or if there is a reasonable suspicion a youth is harboring contraband. These searches must occur in a private area in the presence of two staff members of the same gender as the youth being searched. However, if two staff of the same gender as the youth are not available, one staff of the same gender as the youth may conduct the strip search while a staff of the opposite gender is positioned to observe the staff person conducting the search. However, in these instances, the cross-gender employee cannot view the youth.⁴¹

Cavity searches must be approved by the Superintendent or designee when it is strongly suspected that a youth has concealed contraband in a body cavity. Trained medical personnel must conduct a cavity search in a hospital setting and detention staff are not authorized to conduct cavity searches.⁴²

The DJJ reports that there were 2,871 female youth served in secure detention and 554 female youths committed to residential programs during FY 2017-18.⁴³

³³ Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines “restrictiveness level,” addresses the different levels of commitment programs, including “minimum-risk nonresidential,” “nonsecure residential,” and “high-risk residential.”

³⁴ Section 985.03(18), F.S., provides “detention care” means the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order. Further, it provides that “Secure detention” means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement and “Nonsecure detention” means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

³⁵ Fla. Admin. Code R. 63G-2.014(32). Frisk searches are defined as a physical search of the person involving the passing of hands over the person’s outer clothing.

³⁶ Fla. Admin. Code R. 63G-2.014(63). Strip searches are defined as a visual check of a youth without clothing. A strip search shall be conducted in a private area with two staff members present, both of the same sex as the youth being searched.

³⁷ Fla. Admin. Code R. 63G-2.014(29). The computer based system used by state-operated juvenile detention centers as the primary source of documentation and reporting for facility operations. Forms and reports generated by the Facility Management System are considered to be both the official and original documentation.

³⁸ Fla. Admin. Code R. 63G-2.019.

³⁹ These include during admission, following activities outside the secure area of the facility, following visitation with a person(s) from outside of the facility (visitation, attorney, clergy, etc.), prior to and after transportation, if there is a reasonable suspicion that a youth is harboring contraband, or prior to being placed in behavioral confinement. Fla. Admin. Code R. 63G-2.019(11)(e)1.-3. *See also* Fla. Admin. Code R. 63E-7.013(10)(b) and (11), for slight variations to these circumstances applicable to residential commitment programs.

⁴⁰ *Id.*

⁴¹ Fla. Admin. Code R. 63G-2.019(11)(e)4. and 5. (detention facilities); Fla. Admin. Code R. 63E-7.004(1)(a) (residential commitment programs).

⁴² Fla. Admin. Code R. 63G-2.019(11)(e)8.; Fla. Admin. Code R. 63E-7.013(10)(c).

⁴³ Email from Rachel Moscoso, Legislative Affairs Director, DJJ, Re: SB 332 (on file with Senate Criminal Justice Committee)(January 30, 2019).

Local Correctional Facilities

Section 901.211, F.S., provides procedures for conducting searches of any person arrested in Florida. A person arrested for a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance, cannot be subjected to a strip search⁴⁴ unless:

- There is probable cause to believe that the individual is concealing a weapon, a controlled substance, or stolen property; or
- A judge at first appearance has found that the person arrested cannot be released either on recognizance or bond and therefore shall be incarcerated in the county jail.⁴⁵

Each strip search must be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search. A person observing a search must be of the same gender as the arrested person.⁴⁶ Any body cavity search must be performed under sanitary conditions.⁴⁷

Additionally, 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.⁴⁸ The FMJS Committee is required to develop and continually enforce model standards adopted by the group. There are six subcommittees each having distinct missions and objectives, which, in part, include a Medical Subcommittee and a PREA Subcommittee.

As it relates to searches, the FMJS outlines that an inmate must be examined for contraband upon admission and booking.⁴⁹ The FMJS specifies that a body cavity search must only be conducted by licensed medical personnel and a written report documenting such action must be submitted to the Officer-in-Charge or designee. The FMJS requires that inmates be searched by certified staff when being admitted to a detention facility. However, FMJS provides that an inmate being admitted to the facility for traffic, regulatory, or non-violent misdemeanor offenses will be strip searched only for cause. The FMJS specifies that a strip search must be conducted by a person of the same gender as the arrested person and in such a manner that the search cannot be seen by persons not physically conducting or observing the search. Additionally, any person observing the search must be of the same gender as the arrested person. The FMSJ provides that a body cavity search must only be made for cause and be conducted by licensed medical personnel.⁵⁰

⁴⁴ Section 901.211(1), F.S., defines strip search to mean having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

⁴⁵ Section 901.211(2), F.S. Additionally, a law enforcement officer must not order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty. Section 901.211(5), F.S.

⁴⁶ Section 901.211(3), F.S.

⁴⁷ Section 901.211(4), F.S.

⁴⁸ Florida Sheriff's Association (FSA), *Florida Model Jail Standards, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited January 30, 2019) (hereinafter cited as "FMJS Rule").

⁴⁹ FMJS Rule 4.2.

⁵⁰ FMJS Rule 4.3.

It is unclear whether there are consistent rules throughout the Sheriff's entities regarding the manner, type, and frequency of the provision of health care products, including, but not limited to, feminine hygiene products. Statutes and the FMJS are silent on this issue. One example of a local correctional facility's policy has been reported on in response to recent legislation. David Teems, spokesman for the Leon County Sheriff's Office, reports that the feminine hygiene product offered at the Leon County Jail is one that is "more universally used" and "there is no limit to how many are provided to inmates. There is no charge to the inmates for the product."⁵¹

III. Effect of Proposed Changes:

The bill creates new statutory language to address how correctional facilities must handle certain procedural and administrative processes that are unique to the incarceration of women. The bill provides that the act may be cited as the "Dignity for Incarcerated Women Act."

Definitions

The bill defines various terms, including:

- "Correctional facility," which means any part of the correctional system⁵² and any jail,⁵³ juvenile detention center⁵⁴ or facility,⁵⁵ temporary holding center, or other criminal detention facility operated by or on behalf of the state or any political subdivision.
- "Correctional facility employee," which means any part of the correctional system and any jail, juvenile detention center or facility, temporary holding center, or other criminal detention facility operated by or on behalf of the state or any political subdivision.
- "Health Care products," which is defined as:
 - Feminine hygiene products;
 - Moisturizing soap that is not lye-based;
 - Toothbrushes and toothpaste; and
 - Any other health care product the correctional facility deems appropriate.
- "State of undress," which means not dressed or not fully dressed.

Access to Health Care Products

The bill requires "health care products" to be made available to each incarcerated woman at no cost and in a quantity that is appropriate to the needs of the woman. Additionally, the bill

⁵¹ Tallahassee Democrat, *Florida lawmakers demand 'dignity for incarcerated women'*, James Call, January 26, 2019, available at <https://www.tallahassee.com/story/news/2019/01/26/florida-lawmakers-demand-dignity-incarcerated-women-sanitary-napkins-tampons/2676725002/> (last visited January 30, 2019).

⁵² Sections 944.02(2) and 945.01(1), F.S., provide "correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the DOC.

⁵³ The Florida Statutes does not define the term "jail," but s. 951.23(1)(a), F.S., provides that "county detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.

⁵⁴ Section 985.03(19), F.S., provides that "detention care facility" means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility.

⁵⁵ *Supra*, n. 33.

requires that health care products be made available in common housing areas and medical care facilities. The bill prohibits a correctional facility from requiring a medical:

- Referral for an inmate to be provided such health care products; or
- Diagnosis for an incarcerated woman to access health care products.

Limitations on Male Correctional Facility Employees

The bill also requires certain conduct to be followed by male correctional facility employees in times when such employees are supervising women inmates. Specifically, the bill provides that a male correctional facility employee:

- Is prohibited from conducting a pat-down or body cavity search on an incarcerated woman except in situations where the incarcerated woman is presenting an immediate risk of harm and a female correctional facility employee is not available to conduct the search; and
- Must announce his presence upon entering a housing unit for incarcerated women.

Additionally, with the exception of specified circumstances, a male correctional facility employee is prohibited from entering an area of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed. The bill provides that such areas include, but are not limited to restrooms, shower areas, and medical treatment areas. The exceptions provided in the bill specific to this provision include when there is a medical emergency or when an incarcerated woman is presenting a danger to herself or others. If one of these limited circumstances is presented, a male correctional facility employee may enter an area where incarcerated women may be in a state of undress, if:

- A female correctional facility employee is unavailable; or
- A female correctional facility employee requires assistance.

A male correctional facility employee must document any incident, including the circumstances that necessitated the employee's actions, where the male employee either performs a search of an incarcerated woman or enters a prohibited area within three days of the incident.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private companies that currently have contracts with state and local correctional facilities to provide certain health care products that do not meet the criteria laid out in the bill may have a negative fiscal impact (i.e., decrease in profits) if the current contracts have to be cancelled or modified.

Additionally, private companies that can supply products that do meet the criteria of the products defined in this bill could have a positive fiscal impact (i.e., increase in profits) if the bill results in new contracts for such products or modifications to current contracts to offer these additional or different types of products.

C. Government Sector Impact:

The bill requires specified health care products to be provided at no cost to female inmates in all correctional facilities in the state. To the extent that the bill requires any of the specified facilities to provide additional or different products than are currently being offered, the bill will likely have a positive fiscal impact (i.e., unquantifiable increase in costs) to the correctional facilities.

The DOC states that the fiscal impact of the bill is indeterminate at this time.⁵⁶ The DOC is in substantial compliance with the provisions of the bill related to male correctional facility employees and female inmates. However, there will likely be a positive fiscal impact (i.e., unquantifiable increase in costs) if the DOC is required to provide health care products outside of the products it is currently providing through its contracted vendors.

The DJJ reports that it currently meets all requirements of the proposed bill and therefore the bill will not result in a fiscal impact.⁵⁷

The Florida Sheriff's Association has not submitted an analysis on the impact this bill will have on its members. As mentioned above, it is unclear what types of health care

⁵⁶ The DOC SB 332 Analysis, p. 4.

⁵⁷ The DJJ HB 49 Analysis, p. 3.

products are currently being offered to female inmates in local correctional facilities. To the extent that this bill requires the facilities to modify the products they are currently offering free of charge to female inmates, the bill will likely result in a positive fiscal impact (i.e., unquantifiable increase in costs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 944.242 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.



404354

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 26 - 33
and insert:
correctional system, any county detention facility, juvenile
detention center or residential facility, temporary holding
center, or other criminal detention facility operated by or on
behalf of the state or any political subdivision.

(b) "Correctional facility employee" means a correctional
officer employed by a correctional facility.



404354

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12

(c) "Health care products" includes the following:
1. Feminine hygiene products, including tampons.

By Senator Pizzo

38-00800-19

2019332__

1 A bill to be entitled
 2 An act relating to incarcerated women; providing a
 3 short title; creating s. 944.242, F.S.; providing
 4 definitions; requiring correctional facilities to
 5 provide incarcerated women with certain health care
 6 products, subject to certain requirements; requiring a
 7 correctional facility to make health care products
 8 available in common housing areas and in medical care
 9 facilities; providing requirements for male
 10 correctional facility employees in certain
 11 circumstances; requiring documentation of certain
 12 incidents involving male correctional facility
 13 employees; requiring the correctional facility to
 14 review and retain such documentation; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. This act may be cited as the "Dignity for
 20 Incarcerated Women Act."

21 Section 2. Section 944.242, Florida Statutes, is created to
 22 read:

23 944.242 Dignity for women in correctional facilities.—

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

25 (a) "Correctional facility" means any part of the
 26 correctional system and any jail, juvenile detention center or
 27 facility, temporary holding center, or other criminal detention
 28 facility operated by or on behalf of the state or any political
 29 subdivision.

Page 1 of 3

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

38-00800-19

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30 (b) "Correctional facility employee" means any employee of
 31 a correctional facility.

32 (c) "Health care products" includes the following:

33 1. Feminine hygiene products.

34 2. Moisturizing soap that is not lye-based.

35 3. Toothbrushes.

36 4. Toothpaste.

37 5. Any other health care product the correctional facility
 38 deems appropriate.

39 (d) "State of undress" means not dressed or not fully
 40 dressed.

41 (2) HEALTH CARE PRODUCTS.—A correctional facility shall
 42 make available health care products to each woman incarcerated
 43 in the facility at no cost to the woman in a quantity that is
 44 appropriate to the needs of the woman without a medical
 45 referral. A correctional facility may not require that a woman
 46 be diagnosed with an illness in order to access health care
 47 products. A correctional facility shall make health care
 48 products available in common housing areas and in medical care
 49 facilities.

50 (3) MALE CORRECTIONAL FACILITY EMPLOYEES.—

51 (a) A male correctional facility employee may not conduct a
 52 pat-down search or body cavity search on an incarcerated woman
 53 unless the woman presents an immediate risk of harm to herself
 54 or others and a female correctional facility employee is not
 55 available to do the search.

56 (b) A male correctional facility employee shall announce
 57 his presence upon entering a housing unit for incarcerated
 58 women.

Page 2 of 3

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

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59 (c) A male correctional facility employee may not enter an
60 area of the correctional facility in which an incarcerated woman
61 may be in a state of undress or an area where an incarcerated
62 woman in a state of undress may be viewed, including, but not
63 limited to, restrooms, shower areas, and medical treatment
64 areas. If a female correctional facility employee is not
65 available or if a female correctional facility employee requires
66 assistance, a male correctional facility employee may enter such
67 area only in the event of a medical emergency or if an
68 incarcerated woman presents an immediate risk of harm to herself
69 or others.

70 (d) If a male correctional facility employee conducts a
71 pat-down search or body cavity search or enters a prohibited
72 area in an emergency situation as provided in paragraph (a) or
73 paragraph (c), the male correctional facility employee shall
74 document the incident, including the circumstances necessitating
75 the male correctional facility employee's actions, no later than
76 3 days after the incident. The correctional facility shall
77 review and retain all documentation.

78 Section 3. This act shall take effect July 1, 2019.

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 338

INTRODUCER: Senator Brandes

SUBJECT: Extension of Confinement

DATE: February 1, 2019

REVISED: _____

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

I. Summary:

SB 338 amends s. 945.091, F.S., authorizing the Department of Corrections (DOC) to consider an inmate to participate in a supervised community release program (Program) up to 180 days before the inmate’s tentative release date as an extension of the inmate’s confinement. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program must 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 the rules promulgated under this act. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there is 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 supervised community release program must be reported to a correctional officer for disposition of disciplinary charges as proscribed in the DOC rules.

The bill also reenacts several sections of law to incorporate changes made by the act.

The bill likely has a negative indeterminate fiscal impact (i.e., a decrease in prison beds) on the DOC due to certain eligible participants being released from correctional facilities. In addition, the DOC will likely see cost savings due to paying the per diem rate for electronic monitoring, rather than the variable per diem rate for a prison bed. The DOC also requests one full-time equivalent position, entitled “Correctional Programs Consultant,” to provide statewide implementation and oversight of the Program. The DOC requests \$69,949 recurring General Revenue funds and \$4,429 nonrecurring General Revenue funds for the position. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

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

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;⁵
- Work at paid employment;⁶
- Participate in an educational or training program;⁷
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;⁸ or

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), F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ 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 Department of Corrections, *Senate Bill 1206 (2018) Analysis*, at p. 3 (January 8, 2018) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as “The DOC SB 1206 (2018) Analysis”].

⁶ 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.

⁷ *Id.*

⁸ *Id.*

- Participate in a residential or nonresidential rehabilitative program.⁹

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.¹⁰

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.¹¹ 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.¹²

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.¹³ 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.¹⁴

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, 1994.¹⁵ The only forms of gain-time that can currently be earned are:

- Incentive gain-time;¹⁶
- Meritorious gain-time;¹⁷ and

⁹ 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.

¹⁰ Section 945.091(1), F.S.

¹¹ Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

¹² *Id.*

¹³ 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.

¹⁴ Section 944.275(4)(f), F.S.

¹⁵ Chapter 93-406, L.O.F.

¹⁶ Section 944.275(4)(b), F.S., provides 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.

¹⁷ 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

- Educational achievement gain-time.¹⁸

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.¹⁹ 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.²⁰

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.²¹ 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.²²

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.²³ 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.²⁴

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.²⁵

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 controlees must comply with, including, but not limited to:

- Specified contact with the parole and probation officer;

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.

¹⁸ 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.

¹⁹ Section 944.275(3)(c), F.S.

²⁰ Section 944.275(2)(a), F.S.

²¹ Section 944.275(3)(a), F.S.

²² *Id.* See also s. 944.275(4)(b), F.S.

²³ Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

²⁴ Section 948.10(1), F.S.

²⁵ *Id.* See also Florida Department of Corrections, *Succeeding on Community Control*, available at

<http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf> (last visited on January 30, 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.

- 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 probation²⁶ set forth in s. 948.03, F.S.²⁷

A person may be placed on additional terms of supervision as part of his or her community control sentence.²⁸

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.²⁹ 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.³⁰

The offender must be returned to the court granting such probation or community control.³¹ 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.³²

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.

²⁶ 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.

²⁷ Section 948.101(1), F.S.

²⁸ Section 948.101(2), F.S.

²⁹ Section 948.10(3), F.S.

³⁰ Section 948.06(1)(a), F.S.

³¹ *Id.*

³² 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.

- 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.”

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community controlees 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.³³ 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.³⁴

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.³⁵ Dynamic risk factors, also called “criminogenic³⁶ 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.³⁷

³³ 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 January 28, 2019) (hereinafter cited as CRS Report).

³⁴ *Id.*

³⁵ *Id.*

³⁶ “Criminogenic” is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, p. 3, n. 16.

³⁷ CRS Report, p. 3.

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.³⁸

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.³⁹

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.⁴⁰ Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.⁴¹ Spectrum has been independently verified through the School of Criminology at the Florida State University.⁴²

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.⁴³ Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains⁴⁴ and three core program areas.⁴⁵

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

³⁸ CRS Report, Summary Page.

³⁹ CRS Report, p. 4.

⁴⁰ DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited January 28, 2019) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

⁴¹ Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

⁴² Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

⁴³ DOC Program Information.

⁴⁴ 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.

⁴⁵ 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).

to reentry service providers in the local community and community corrections.⁴⁶ Spectrum was completed in September, 2016, and subsequently deployed throughout the state.⁴⁷

III. Effect of Proposed Changes:

The bill amends s. 945.091, F.S., to allow an inmate 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 180 days before the inmate's provisional or tentative release date and must include active electronic monitoring and community control as defined in s. 948.001, F.S. 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 or probation officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate's alleged violations to a correctional officer 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, which includes the prohibition on an inmate earning or receiving gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.⁴⁸ 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.

The bill reenacts ss. 944.516, 945.092, and 946.503, F.S., incorporating the changes made by the act.

The DOC reports that as of December 31, 2018, there were approximately 479 inmates that were 180 days out from their release date that had served at least 85 percent of their sentence. Additionally, the DOC reports that there will be about 2,508 additional inmates meeting this criterion within the next 6 months.⁴⁹

⁴⁶ *Id.*

⁴⁷ See WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Corder, September 23, 2016, available at <http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates> (last visited January 30, 2019).

⁴⁸ See s. 944.275(4)(f), F.S.

⁴⁹ The DOC, SB 338 Agency Analysis, p. 4, January 31, 2019 (hereinafter cited as "The DOC SB 338 Analysis")(on file with the Senate Criminal Justice Committee).

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 180 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 Estimating Conference has not heard the bill at this time.

The DOC reports that the bill will 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.⁵⁰

⁵⁰ The DOC SB 338 Analysis, p. 4.

The DOC further reports that the fiscal impact of the bill will vary based on the number of released inmates placed on active electronic monitoring, the rate at which such inmates pay the electronic monitoring costs, and the type of facility⁵¹ from which Program participants are released. The current per diem rate for inmates placed on electronic monitoring who are assigned to community release centers is \$3.90 per day for contracted facilities and \$5.29 for facilities operated by the DOC. The variable per diem rate is \$20.04, which is associated with the individual inmate care costs such as medical, food, inmate clothing, and personal care items. The DOC reports that the average per diem for community supervision in FY 2017-18 was \$5.47. Therefore, the DOC will 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.⁵² 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 the DOC.⁵³

The DOC requests the creation of one full-time equivalent position, entitled “Correctional Programs Consultant,” to oversee, provide guidance, and coordinate the statewide implementation and administration of the Program.⁵⁴ The DOC projects the funding for the position to be \$69,949 recurring General Revenue funds and \$4,429 nonrecurring General Revenue funds.⁵⁵ Finally, the DOC states that there could be a need for additional correctional probation officer positions depending upon the number of participants in the program.⁵⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.091 of the Florida Statutes.

This bill reenacts sections 944.516, 945.092, and 946.503 of the Florida Statutes.

⁵¹ There are different per diems for each type of facility, including community release facilities, major institutions, and work camps, based upon the level of security and services provided at the facility. *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ The DOC SB 338 Analysis, p. 4.

⁵⁵ *Id.*, p. 6.

⁵⁶ *Id.*, p. 4.

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.



240586

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 69 - 70
and insert:
enforcement officer must report the inmate's alleged violations
to the supervising probation office or the department's
emergency action center for

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

And the title is amended as follows:



11 Delete lines 16 - 17
12 and insert:
13 enforcement officer to report alleged violations to a
14 supervising probation office or the department's
15 emergency action center for disposition

By Senator Brandes

24-00740A-19

2019338__

1 A bill to be entitled
 2 An act relating to extension of confinement; amending
 3 s. 945.091, F.S.; authorizing the Department of
 4 Corrections to extend the limits of confinement to
 5 allow an inmate to participate in supervised community
 6 release, subject to certain requirements, as
 7 prescribed by the department by rule; requiring the
 8 department to administer a risk assessment instrument
 9 to appropriately determine an inmate's ability to be
 10 released; authorizing the department to terminate the
 11 inmate's supervised community release and return him
 12 or her to the same or another institution under
 13 certain circumstances; authorizing a law enforcement
 14 or probation officer to arrest an inmate without a
 15 warrant under certain circumstances; requiring the law
 16 enforcement or probation officer to report alleged
 17 violations to a correctional officer for disposition
 18 of disciplinary charges as prescribed by the
 19 department by rule; requiring an inmate participating
 20 in supervised community release to remain eligible to
 21 earn or lose gain-time, subject to certain
 22 restrictions; prohibiting the inmate from being
 23 counted in the population of the prison system;
 24 prohibiting the inmate's approved community-based
 25 housing location from being counted in the capacity
 26 figures for the prison system; reenacting ss.
 27 944.516(2), 945.092, and 946.503(2), F.S., relating to
 28 money or other property received for personal use or
 29 benefit of an inmate, limits on work-release and

Page 1 of 5

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

24-00740A-19

2019338__

30 minimum security custody for persons who have
 31 committed the crime of escape, and definitions to be
 32 used with respect to correctional work programs,
 33 respectively, to incorporate the amendment made to s.
 34 945.091, F.S., in references thereto; providing an
 35 effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
 38

39 Section 1. Paragraph (d) is added to subsection (1) of
 40 section 945.091, Florida Statutes, to read:

41 945.091 Extension of the limits of confinement; restitution
 42 by employed inmates.-

43 (1) The department may adopt rules permitting the extension
 44 of the limits of the place of confinement of an inmate as to
 45 whom there is reasonable cause to believe that the inmate will
 46 honor his or her trust by authorizing the inmate, under
 47 prescribed conditions and following investigation and approval
 48 by the secretary, or the secretary's designee, who shall
 49 maintain a written record of such action, to leave the confines
 50 of that place unaccompanied by a custodial agent for a
 51 prescribed period of time to:

52 (d) Participate in supervised community release as
 53 prescribed by the department by rule. The inmate's participation
 54 may begin 180 days before his or her provisional or tentative
 55 release date. Such supervised community release must include
 56 active electronic monitoring and community control as defined in
 57 s. 948.001. The department must administer a risk assessment
 58 instrument to appropriately determine an inmate's ability to be

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59 released pursuant to this paragraph.

60 1. If a participating inmate fails to comply with the
 61 conditions prescribed by the department by rule for supervised
 62 community release, the department may terminate the inmate's
 63 supervised community release and return him or her to the same
 64 or another institution designated by the department. A law
 65 enforcement officer or a probation officer may arrest the inmate
 66 without a warrant in accordance with s. 948.06, if there are
 67 reasonable grounds to believe he or she has violated the terms
 68 and conditions of supervised community release. The law
 69 enforcement officer or probation officer must report the
 70 inmate's alleged violations to a correctional officer for
 71 disposition of disciplinary charges as prescribed by the
 72 department by rule.

73 2. An inmate participating in supervised community release
 74 under this paragraph remains eligible to earn or lose gain-time
 75 in accordance with s. 944.275 and department rule, but may not
 76 receive gain-time or other sentence credit in an amount that
 77 would cause his or her sentence to expire, end, or terminate, or
 78 that would result in his or her release before serving a minimum
 79 of 85 percent of the sentence imposed. The inmate may not be
 80 counted in the population of the prison system, and the inmate's
 81 approved community-based housing location may not be counted in
 82 the capacity figures for the prison system.

83 Section 2. For the purpose of incorporating the amendment
 84 made by this act to section 945.091, Florida Statutes, in a
 85 reference thereto, subsection (2) of section 944.516, Florida
 86 Statutes, is reenacted to read:

87 944.516 Money or other property received for personal use

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24-00740A-19

2019338__

88 or benefit of inmate; deposit; disposition of unclaimed trust
 89 funds.—The Department of Corrections shall protect the financial
 90 interest of the state with respect to claims which the state may
 91 have against inmates in state institutions under its supervision
 92 and control and shall administer money and other property
 93 received for the personal benefit of such inmates. In carrying
 94 out the provisions of this section, the department may delegate
 95 any of its enumerated powers and duties affecting inmates of an
 96 institution to the warden or regional director who shall
 97 personally, or through designated employees of his or her
 98 personal staff under his or her direct supervision, exercise
 99 such powers or perform such duties.

100 (2) The department shall require documentation through an
 101 accounting of receipts for expenditures by inmates placed on
 102 extended limits of confinement pursuant to s. 945.091. However,
 103 the department may allow such inmates an amount up to \$25 per
 104 week which may not require documentation and which may be used
 105 for discretionary needs. The \$25 per week may be increased by \$5
 106 biennially, beginning in fiscal year 1985-1986, up to a total of
 107 \$50.

108 Section 3. For the purpose of incorporating the amendment
 109 made by this act to section 945.091, Florida Statutes, in a
 110 reference thereto, section 945.092, Florida Statutes, is
 111 reenacted to read:

112 945.092 Limits on work-release and minimum security custody
 113 for persons who have committed the crime of escape.—A person who
 114 has ever been convicted, regardless of adjudication, of the
 115 offense of escape, as prohibited by s. 944.40 or its successor,
 116 or as prohibited by a similar law of another state, is not

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117 eligible for any work-release program under s. 945.091 or for
118 confinement in minimum security conditions.

119 Section 4. For the purpose of incorporating the amendment
120 made by this act to section 945.091, Florida Statutes, in a
121 reference thereto, subsection (2) of section 946.503, Florida
122 Statutes, is reenacted to read:

123 946.503 Definitions to be used with respect to correctional
124 work programs.—As used in this part, the term:

125 (2) "Correctional work program" means any program presently
126 a part of the prison industries program operated by the
127 department or any other correctional work program carried on at
128 any state correctional facility presently or in the future, but
129 the term does not include any program authorized by s. 945.091
130 or s. 946.40.

131 Section 5. This act shall take effect October 1, 2019.

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 346

INTRODUCER: Senator Brandes

SUBJECT: Conditional Medical Release

DATE: February 1, 2019

REVISED: _____

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

I. Summary:

SB 346 amends the eligibility criteria of conditional medical release (CMR). The bill creates a new CMR designation entitled “inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

The bill also modifies the current designation of “terminally ill inmate” to apply to inmates whose death is expected within 12 months, rather than imminent.

The bill also amends s. 947.005, F.S., adding two new definitions, including “conditional medical release” and “electronic monitoring device” to ensure clarity for the chapter.

The bill reenacts a number of sections of law to incorporate changes made by the act.

The bill expands CMR by creating a new CMR designation and modifying a current designation, which will likely cause an increased number of inmates to be referred to the Florida Commission on Offender Review (FCOR) for CMR. This will likely result in a negative indeterminate fiscal impact (i.e., a decrease in prison beds) on the Department of Corrections (DOC). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

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 5 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

However, there are several exceptions provided in law that allow an inmate to be released from imprisonment prior to the service of 85 percent of his or her sentence, including, but not limited to, control release⁵ and conditional medical release.⁶

Conditional Medical Release

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,⁷ is a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.⁸ The Florida Commission on Offender Review (FCOR) reviews eligible inmates for release under the CMR program.⁹

Eligible inmates include inmates designated by the Department of Corrections (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.¹⁰

¹ 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.

² Section 921.0022, F.S.

³ Section 775.082, F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time and establishes the prohibition of serving less than 85 percent of one’s sentence.

⁵ Section 947.146, F.S., provides for the limited authority to release inmates to ensure that the prison bed capacity maintains between 99 and 100 percent of total capacity.

⁶ Section 947.149, F.S.

⁷ Chapter 92-310, L.O.F.

⁸ Florida Commission on Offender Review, *Release Types, Post Release*, <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited January 28, 2019).

⁹ Section 947.149(3), F.S.

¹⁰ Section 947.149(1), F.S.

However, inmates sentenced to death are ineligible for CMR.¹¹

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.¹²

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
- Her or his medical or physical condition improves to the point that the offender no longer meets the CMR criteria.¹³

Section 947.141, F.S., provides a hearing process for determining whether a CMR releasee must be recommitted to the DOC for a violation of release conditions or a change in medical status.

The FCOR has approved and released 62 inmates for CMR in the last three fiscal years, including:

- 21 in FY 2017-18;
- 14 in FY 2016-17; and
- 27 in FY 2015-16.¹⁴

The DOC has recommended 124 inmates for release in the past three fiscal years, including:

- 39 in FY 2017-18;
- 34 in FY 2016-17; and
- 51 in FY 2015-16.¹⁵

III. Effect of Proposed Changes:

The bill amends s. 947.149, F.S., creating a new CMR designation entitled "inmate with a debilitating illness." The designation "inmate with a debilitating illness" applies to an inmate who is determined to be suffering from a significant and permanent terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others.

Additionally, the current designation of "terminally ill inmate" is amended to apply to inmates whose death is expected within 12 months, rather than imminent. The current designation of permanently incapacitated inmate is not altered.

The bill also amends s. 947.005, F.S., defining two terms to ensure clarity in the chapter, including:

¹¹ Section 947.149(2), F.S.

¹² Section 947.149(4), F.S.

¹³ Section 947.149(5), F.S.

¹⁴ Email from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data (attachment on file with the Senate Committee on Criminal Justice) (December 15, 2017). *See also* FCOR Annual Report FY 2017-18, p. 8, <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited January 28, 2019).

¹⁵ *Id.*

- “Conditional medical release,” which is defined to mean the release from a state correctional institution or facility as provided in this chapter for a medical or physical condition pursuant to s. 947.149, F.S.
- “Electronic monitoring device,” which is defined to mean an active electronic or telecommunications device that is used to track and monitor the location of a person. Such devices include, but are not limited to, voice tracking systems, position tracking systems, position location systems, and biometric tracking systems.

The bill reenacts 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., incorporating changes made by the act.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill expands CMR by creating a new CMR designation and modifying a current designation, which will likely cause an increased number of inmates to be referred to the

FCOR for CMR. However, it is unknown how many additional inmates will be eligible for release under the new provisions of the bill. 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).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 947.005 and 947.149 of the Florida Statutes.

This bill reenacts 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 Changes:

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

None.

B. Amendments:

None.



283408

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with directory and title amendments)

Delete lines 32 - 51

and insert:

Section 2. Subsection (1) of section 947.149, Florida Statutes, is amended to read:

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



283408

11 conditional medical release program when the inmate, because of
12 an existing medical or physical condition, is determined by the
13 department to be within one of the following designations:

14 (a) "Inmate with a debilitating illness," which means an
15 inmate who is determined to be suffering from a significant
16 terminal or nonterminal condition, disease, or syndrome that has
17 rendered the inmate so physically or cognitively impaired,
18 debilitated, or incapacitated as to create a

19
20 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

21 And the directory clause is amended as follows:

22 Delete lines 22 - 25

23 and insert:

24 Section 1. Present subsections (4) through (15) of section
25 947.005, Florida Statutes, are redesignated as subsections (5)
26 through (16), respectively, and a new subsection (4) is added to
27 that section, to read:

28
29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete lines 4 - 5

32 and insert:

33 "conditional medical release"; amending s. 947.149,
34 F.S.;

By Senator Brandes

24-00738B-19

2019346__

1 A bill to be entitled
 2 An act relating to conditional medical release;
 3 amending s. 947.005, F.S.; defining the terms
 4 "conditional medical release" and "electronic
 5 monitoring device"; amending s. 947.149, F.S.;
 6 expanding eligibility for conditional medical release
 7 to include inmates with debilitating illnesses;
 8 defining the term "inmate with a debilitating
 9 illness"; redefining the term "terminally ill inmate";
 10 reenacting ss. 316.1935(6), 775.084(4)(k),
 11 775.087(2)(b) and (3)(b), 784.07(3), 790.235(1),
 12 794.0115(7), 893.135(1)(b), (c), and (g), and (3),
 13 921.0024(2), 944.605(7)(b), 944.70(1)(b),
 14 947.13(1)(h), and 947.141(1), (2), and (7), F.S., all
 15 relating to authorized conditional medical release
 16 granted under s. 947.149, F.S., to incorporate the
 17 amendment made to s. 947.149, F.S., in references
 18 thereto; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Present subsections (4), (5), and (6) through
 23 (15) of section 947.005, Florida Statutes, are redesignated as
 24 subsections (5), (6), and (8) through (17), respectively, and
 25 new subsections (4) and (7) are added to that section, to read:

26 947.005 Definitions.—As used in this chapter, unless the
 27 context clearly indicates otherwise:

28 (4) "Conditional medical release" means the release from a
 29 state correctional institution or facility as provided in this

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30 chapter for a medical or physical condition pursuant to s.
 31 947.149.

32 (7) "Electronic monitoring device" means an active
 33 electronic or telecommunications device that is used to track
 34 and monitor the location of a person. Such devices include, but
 35 are not limited to, voice tracking systems, position tracking
 36 systems, position location systems, and biometric tracking
 37 systems.

38 Section 2. Subsection (1) of section 947.149, Florida
 39 Statutes, is amended to read:

40 947.149 Conditional medical release.—

41 (1) The commission shall, in conjunction with the
 42 department, establish the conditional medical release program.
 43 An inmate is eligible for consideration for release under the
 44 conditional medical release program when the inmate, because of
 45 an existing medical or physical condition, is determined by the
 46 department to be within one of the following designations:

47 (a) "Inmate with a debilitating illness," which means an
 48 inmate who is determined to be suffering from a significant and
 49 permanent terminal or nonterminal condition, disease, or
 50 syndrome that has rendered the inmate so physically or
 51 cognitively debilitated or incapacitated as to create a
 52 reasonable probability that the inmate does not constitute a
 53 danger to herself or himself or to others.

54 (b)-(a) "Permanently incapacitated inmate," which means an
 55 inmate who has a condition caused by injury, disease, or illness
 56 which, to a reasonable degree of medical certainty, renders the
 57 inmate permanently and irreversibly physically incapacitated to
 58 the extent that the inmate does not constitute a danger to

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59 herself or himself or to others.

60 ~~(c)(b)~~ "Terminally ill inmate," which means an inmate who
61 has a condition caused by injury, disease, or illness that
62 ~~which~~, to a reasonable degree of medical certainty, renders the
63 inmate terminally ill to the extent that there can be no
64 recovery, and death is expected within 12 months is imminent,
65 ~~and so that~~ the inmate does not constitute a danger to herself
66 or himself or to others.

67 Section 3. For the purpose of incorporating the amendment
68 made by this act to section 947.149, Florida Statutes, in a
69 reference thereto, subsection (6) of section 316.1935, Florida
70 Statutes, is reenacted to read:

71 316.1935 Fleeing or attempting to elude a law enforcement
72 officer; aggravated fleeing or eluding.—

73 (6) Notwithstanding s. 948.01, no court may suspend, defer,
74 or withhold adjudication of guilt or imposition of sentence for
75 any violation of this section. A person convicted and sentenced
76 to a mandatory minimum term of incarceration under paragraph
77 (3) (b) or paragraph (4) (b) is not eligible for statutory gain-
78 time under s. 944.275 or any form of discretionary early
79 release, other than pardon or executive clemency or conditional
80 medical release under s. 947.149, prior to serving the mandatory
81 minimum sentence.

82 Section 4. For the purpose of incorporating the amendment
83 made by this act to section 947.149, Florida Statutes, in a
84 reference thereto, paragraph (k) of subsection (4) of section
85 775.084, Florida Statutes, is reenacted to read:

86 775.084 Violent career criminals; habitual felony offenders
87 and habitual violent felony offenders; three-time violent felony

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2019346__

88 offenders; definitions; procedure; enhanced penalties or
89 mandatory minimum prison terms.—

90 (4)

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

95 2. For an offense committed on or after October 1, 1995, a
96 defendant sentenced under this section as a violent career
97 criminal is not eligible for any form of discretionary early
98 release, other than pardon or executive clemency, or conditional
99 medical release granted pursuant to s. 947.149.

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

105 Section 5. For the purpose of incorporating the amendment
106 made by this act to section 947.149, Florida Statutes, in a
107 reference thereto, paragraph (b) of subsection (2) and paragraph
108 (b) of subsection (3) of section 775.087, Florida Statutes, are
109 reenacted to read:

110 775.087 Possession or use of weapon; aggravated battery;
111 felony reclassification; minimum sentence.—

112 (2)

113 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
114 (a)3. does not prevent a court from imposing a longer sentence
115 of incarceration as authorized by law in addition to the minimum
116 mandatory sentence, or from imposing a sentence of death

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117 pursuant to other applicable law. Subparagraph (a)1.,
 118 subparagraph (a)2., or subparagraph (a)3. does not authorize a
 119 court to impose a lesser sentence than otherwise required by
 120 law.

121
 122 Notwithstanding s. 948.01, adjudication of guilt or imposition
 123 of sentence shall not be suspended, deferred, or withheld, and
 124 the defendant is not eligible for statutory gain-time under s.
 125 944.275 or any form of discretionary early release, other than
 126 pardon or executive clemency, or conditional medical release
 127 under s. 947.149, prior to serving the minimum sentence.

(3)

128
 129 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
 130 (a)3. does not prevent a court from imposing a longer sentence
 131 of incarceration as authorized by law in addition to the minimum
 132 mandatory sentence, or from imposing a sentence of death
 133 pursuant to other applicable law. Subparagraph (a)1.,
 134 subparagraph (a)2., or subparagraph (a)3. does not authorize a
 135 court to impose a lesser sentence than otherwise required by
 136 law.

137
 138 Notwithstanding s. 948.01, adjudication of guilt or imposition
 139 of sentence shall not be suspended, deferred, or withheld, and
 140 the defendant is not eligible for statutory gain-time under s.
 141 944.275 or any form of discretionary early release, other than
 142 pardon or executive clemency, or conditional medical release
 143 under s. 947.149, prior to serving the minimum sentence.

144 Section 6. For the purpose of incorporating the amendment
 145 made by this act to section 947.149, Florida Statutes, in a

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146 reference thereto, subsection (3) of section 784.07, Florida
 147 Statutes, is reenacted to read:

148 784.07 Assault or battery of law enforcement officers,
 149 firefighters, emergency medical care providers, public transit
 150 employees or agents, or other specified officers;
 151 reclassification of offenses; minimum sentences.-

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

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

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

162
 163 Notwithstanding s. 948.01, adjudication of guilt or imposition
 164 of sentence shall not be suspended, deferred, or withheld, and
 165 the defendant is not eligible for statutory gain-time under s.
 166 944.275 or any form of discretionary early release, other than
 167 pardon or executive clemency, or conditional medical release
 168 under s. 947.149, prior to serving the minimum sentence.

169 Section 7. For the purpose of incorporating the amendment
 170 made by this act to section 947.149, Florida Statutes, in a
 171 reference thereto, subsection (1) of section 790.235, Florida
 172 Statutes, is reenacted to read:

173 790.235 Possession of firearm or ammunition by violent
 174 career criminal unlawful; penalty.-

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2019346__

175 (1) Any person who meets the violent career criminal
 176 criteria under s. 775.084(1)(d), regardless of whether such
 177 person is or has previously been sentenced as a violent career
 178 criminal, who owns or has in his or her care, custody,
 179 possession, or control any firearm, ammunition, or electric
 180 weapon or device, or carries a concealed weapon, including a
 181 tear gas gun or chemical weapon or device, commits a felony of
 182 the first degree, punishable as provided in s. 775.082, s.
 183 775.083, or s. 775.084. A person convicted of a violation of
 184 this section shall be sentenced to a mandatory minimum of 15
 185 years' imprisonment; however, if the person would be sentenced
 186 to a longer term of imprisonment under s. 775.084(4)(d), the
 187 person must be sentenced under that provision. A person
 188 convicted of a violation of this section is not eligible for any
 189 form of discretionary early release, other than pardon,
 190 executive clemency, or conditional medical release under s.
 191 947.149.

192 Section 8. For the purpose of incorporating the amendment
 193 made by this act to section 947.149, Florida Statutes, in a
 194 reference thereto, subsection (7) of section 794.0115, Florida
 195 Statutes, is reenacted to read:

196 794.0115 Dangerous sexual felony offender; mandatory
 197 sentencing.—

198 (7) A defendant sentenced to a mandatory minimum term of
 199 imprisonment under this section is not eligible for statutory
 200 gain-time under s. 944.275 or any form of discretionary early
 201 release, other than pardon or executive clemency, or conditional
 202 medical release under s. 947.149, before serving the minimum
 203 sentence.

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204 Section 9. For the purpose of incorporating the amendment
 205 made by this act to section 947.149, Florida Statutes, in a
 206 reference thereto, paragraphs (b), (c), and (g) of subsection
 207 (1) and subsection (3) of section 893.135, Florida Statutes, are
 208 reenacted to read:

209 893.135 Trafficking; mandatory sentences; suspension or
 210 reduction of sentences; conspiracy to engage in trafficking.—

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

213 (b)1. Any person who knowingly sells, purchases,
 214 manufactures, delivers, or brings into this state, or who is
 215 knowingly in actual or constructive possession of, 28 grams or
 216 more of cocaine, as described in s. 893.03(2)(a)4., or of any
 217 mixture containing cocaine, but less than 150 kilograms of
 218 cocaine or any such mixture, commits a felony of the first
 219 degree, which felony shall be known as "trafficking in cocaine,"
 220 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 221 If the quantity involved:

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

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

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

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233 2. Any person who knowingly sells, purchases, manufactures,
 234 delivers, or brings into this state, or who is knowingly in
 235 actual or constructive possession of, 150 kilograms or more of
 236 cocaine, as described in s. 893.03(2)(a)4., commits the first
 237 degree felony of trafficking in cocaine. A person who has been
 238 convicted of the first degree felony of trafficking in cocaine
 239 under this subparagraph shall be punished by life imprisonment
 240 and is ineligible for any form of discretionary early release
 241 except pardon or executive clemency or conditional medical
 242 release under s. 947.149. However, if the court determines that,
 243 in addition to committing any act specified in this paragraph:

244 a. The person intentionally killed an individual or
 245 counseled, commanded, induced, procured, or caused the
 246 intentional killing of an individual and such killing was the
 247 result; or

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

250
 251 such person commits the capital felony of trafficking in
 252 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
 253 person sentenced for a capital felony under this paragraph shall
 254 also be sentenced to pay the maximum fine provided under
 255 subparagraph 1.

256 3. Any person who knowingly brings into this state 300
 257 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
 258 and who knows that the probable result of such importation would
 259 be the death of any person, commits capital importation of
 260 cocaine, a capital felony punishable as provided in ss. 775.082
 261 and 921.142. Any person sentenced for a capital felony under

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262 this paragraph shall also be sentenced to pay the maximum fine
 263 provided under subparagraph 1.

264 (c)1. A person who knowingly sells, purchases,
 265 manufactures, delivers, or brings into this state, or who is
 266 knowingly in actual or constructive possession of, 4 grams or
 267 more of any morphine, opium, hydromorphone, or any salt,
 268 derivative, isomer, or salt of an isomer thereof, including
 269 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
 270 (3)(c)4., or 4 grams or more of any mixture containing any such
 271 substance, but less than 30 kilograms of such substance or
 272 mixture, commits a felony of the first degree, which felony
 273 shall be known as "trafficking in illegal drugs," punishable as
 274 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 275 quantity involved:

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

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

282 c. Is 28 grams or more, but less than 30 kilograms, such
 283 person shall be sentenced to a mandatory minimum term of
 284 imprisonment of 25 years and shall be ordered to pay a fine of
 285 \$500,000.

286 2. A person who knowingly sells, purchases, manufactures,
 287 delivers, or brings into this state, or who is knowingly in
 288 actual or constructive possession of, 14 grams or more of
 289 hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as
 290 described in s. 893.03(2)(a)1.g., or any salt thereof, or 14

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291 grams or more of any mixture containing any such substance,
 292 commits a felony of the first degree, which felony shall be
 293 known as "trafficking in hydrocodone," punishable as provided in
 294 s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

295 a. Is 14 grams or more, but less than 28 grams, such person
 296 shall be sentenced to a mandatory minimum term of imprisonment
 297 of 3 years and shall be ordered to pay a fine of \$50,000.

298 b. Is 28 grams or more, but less than 50 grams, such person
 299 shall be sentenced to a mandatory minimum term of imprisonment
 300 of 7 years and shall be ordered to pay a fine of \$100,000.

301 c. Is 50 grams or more, but less than 200 grams, such
 302 person shall be sentenced to a mandatory minimum term of
 303 imprisonment of 15 years and shall be ordered to pay a fine of
 304 \$500,000.

305 d. Is 200 grams or more, but less than 30 kilograms, such
 306 person shall be sentenced to a mandatory minimum term of
 307 imprisonment of 25 years and shall be ordered to pay a fine of
 308 \$750,000.

309 3. A person who knowingly sells, purchases, manufactures,
 310 delivers, or brings into this state, or who is knowingly in
 311 actual or constructive possession of, 7 grams or more of
 312 oxycodone, as described in s. 893.03(2)(a)1.q., or any salt
 313 thereof, or 7 grams or more of any mixture containing any such
 314 substance, commits a felony of the first degree, which felony
 315 shall be known as "trafficking in oxycodone," punishable as
 316 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 317 quantity involved:

318 a. Is 7 grams or more, but less than 14 grams, such person
 319 shall be sentenced to a mandatory minimum term of imprisonment

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320 of 3 years and shall be ordered to pay a fine of \$50,000.

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

324 c. Is 25 grams or more, but less than 100 grams, such
 325 person shall be sentenced to a mandatory minimum term of
 326 imprisonment of 15 years and shall be ordered to pay a fine of
 327 \$500,000.

328 d. Is 100 grams or more, but less than 30 kilograms, such
 329 person shall be sentenced to a mandatory minimum term of
 330 imprisonment of 25 years and shall be ordered to pay a fine of
 331 \$750,000.

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

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

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

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

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

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

340 893.03(1)(a)62.;

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

342 893.0356, of any substance described in sub-sub-subparagraphs

343 (I)-(V); or

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

346

347 commits a felony of the first degree, which felony shall be

348 known as "trafficking in fentanyl," punishable as provided in s.

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349 775.082, s. 775.083, or s. 775.084.

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

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

354 (II) Is 14 grams or more, but less than 28 grams, such
355 person shall be sentenced to a mandatory minimum term of
356 imprisonment of 15 years, and shall be ordered to pay a fine of
357 \$100,000.

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

361 5. A person who knowingly sells, purchases, manufactures,
362 delivers, or brings into this state, or who is knowingly in
363 actual or constructive possession of, 30 kilograms or more of
364 any morphine, opium, oxycodone, hydrocodone, codeine,
365 hydromorphone, or any salt, derivative, isomer, or salt of an
366 isomer thereof, including heroin, as described in s.
367 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
368 more of any mixture containing any such substance, commits the
369 first degree felony of trafficking in illegal drugs. A person
370 who has been convicted of the first degree felony of trafficking
371 in illegal drugs under this subparagraph shall be punished by
372 life imprisonment and is ineligible for any form of
373 discretionary early release except pardon or executive clemency
374 or conditional medical release under s. 947.149. However, if the
375 court determines that, in addition to committing any act
376 specified in this paragraph:

377 a. The person intentionally killed an individual or

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378 counseled, commanded, induced, procured, or caused the
379 intentional killing of an individual and such killing was the
380 result; or

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

383
384 such person commits the capital felony of trafficking in illegal
385 drugs, punishable as provided in ss. 775.082 and 921.142. A
386 person sentenced for a capital felony under this paragraph shall
387 also be sentenced to pay the maximum fine provided under
388 subparagraph 1.

389 6. A person who knowingly brings into this state 60
390 kilograms or more of any morphine, opium, oxycodone,
391 hydrocodone, codeine, hydromorphone, or any salt, derivative,
392 isomer, or salt of an isomer thereof, including heroin, as
393 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
394 60 kilograms or more of any mixture containing any such
395 substance, and who knows that the probable result of such
396 importation would be the death of a person, commits capital
397 importation of illegal drugs, a capital felony punishable as
398 provided in ss. 775.082 and 921.142. A person sentenced for a
399 capital felony under this paragraph shall also be sentenced to
400 pay the maximum fine provided under subparagraph 1.

401 (g)1. Any person who knowingly sells, purchases,
402 manufactures, delivers, or brings into this state, or who is
403 knowingly in actual or constructive possession of, 4 grams or
404 more of flunitrazepam or any mixture containing flunitrazepam as
405 described in s. 893.03(1)(a) commits a felony of the first
406 degree, which felony shall be known as "trafficking in

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407 flunitrazepam," punishable as provided in s. 775.082, s.
 408 775.083, or s. 775.084. If the quantity involved:
 409 a. Is 4 grams or more but less than 14 grams, such person
 410 shall be sentenced to a mandatory minimum term of imprisonment
 411 of 3 years, and the defendant shall be ordered to pay a fine of
 412 \$50,000.
 413 b. Is 14 grams or more but less than 28 grams, such person
 414 shall be sentenced to a mandatory minimum term of imprisonment
 415 of 7 years, and the defendant shall be ordered to pay a fine of
 416 \$100,000.
 417 c. Is 28 grams or more but less than 30 kilograms, such
 418 person shall be sentenced to a mandatory minimum term of
 419 imprisonment of 25 calendar years and pay a fine of \$500,000.
 420 2. Any person who knowingly sells, purchases, manufactures,
 421 delivers, or brings into this state or who is knowingly in
 422 actual or constructive possession of 30 kilograms or more of
 423 flunitrazepam or any mixture containing flunitrazepam as
 424 described in s. 893.03(1)(a) commits the first degree felony of
 425 trafficking in flunitrazepam. A person who has been convicted of
 426 the first degree felony of trafficking in flunitrazepam under
 427 this subparagraph shall be punished by life imprisonment and is
 428 ineligible for any form of discretionary early release except
 429 pardon or executive clemency or conditional medical release
 430 under s. 947.149. However, if the court determines that, in
 431 addition to committing any act specified in this paragraph:
 432 a. The person intentionally killed an individual or
 433 counseled, commanded, induced, procured, or caused the
 434 intentional killing of an individual and such killing was the
 435 result; or

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436 b. The person's conduct in committing that act led to a
 437 natural, though not inevitable, lethal result,
 438
 439 such person commits the capital felony of trafficking in
 440 flunitrazepam, punishable as provided in ss. 775.082 and
 441 921.142. Any person sentenced for a capital felony under this
 442 paragraph shall also be sentenced to pay the maximum fine
 443 provided under subparagraph 1.
 444 (3) Notwithstanding the provisions of s. 948.01, with
 445 respect to any person who is found to have violated this
 446 section, adjudication of guilt or imposition of sentence shall
 447 not be suspended, deferred, or withheld, nor shall such person
 448 be eligible for parole prior to serving the mandatory minimum
 449 term of imprisonment prescribed by this section. A person
 450 sentenced to a mandatory minimum term of imprisonment under this
 451 section is not eligible for any form of discretionary early
 452 release, except pardon or executive clemency or conditional
 453 medical release under s. 947.149, prior to serving the mandatory
 454 minimum term of imprisonment.
 455 Section 10. For the purpose of incorporating the amendment
 456 made by this act to section 947.149, Florida Statutes, in a
 457 reference thereto, subsection (2) of section 921.0024, Florida
 458 Statutes, is reenacted to read:
 459 921.0024 Criminal Punishment Code; worksheet computations;
 460 scoresheets.-
 461 (2) The lowest permissible sentence is the minimum sentence
 462 that may be imposed by the trial court, absent a valid reason
 463 for departure. The lowest permissible sentence is any nonstate
 464 prison sanction in which the total sentence points equals or is

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465 less than 44 points, unless the court determines within its
 466 discretion that a prison sentence, which may be up to the
 467 statutory maximums for the offenses committed, is appropriate.
 468 When the total sentence points exceeds 44 points, the lowest
 469 permissible sentence in prison months shall be calculated by
 470 subtracting 28 points from the total sentence points and
 471 decreasing the remaining total by 25 percent. The total sentence
 472 points shall be calculated only as a means of determining the
 473 lowest permissible sentence. The permissible range for
 474 sentencing shall be the lowest permissible sentence up to and
 475 including the statutory maximum, as defined in s. 775.082, for
 476 the primary offense and any additional offenses before the court
 477 for sentencing. The sentencing court may impose such sentences
 478 concurrently or consecutively. However, any sentence to state
 479 prison must exceed 1 year. If the lowest permissible sentence
 480 under the code exceeds the statutory maximum sentence as
 481 provided in s. 775.082, the sentence required by the code must
 482 be imposed. If the total sentence points are greater than or
 483 equal to 363, the court may sentence the offender to life
 484 imprisonment. An offender sentenced to life imprisonment under
 485 this section is not eligible for any form of discretionary early
 486 release, except executive clemency or conditional medical
 487 release under s. 947.149.

488 Section 11. For the purpose of incorporating the amendment
 489 made by this act to section 947.149, Florida Statutes, in a
 490 reference thereto, paragraph (b) of subsection (7) of section
 491 944.605, Florida Statutes, is reenacted to read:

492 944.605 Inmate release; notification; identification card.-
 493 (7)

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494 (b) Paragraph (a) does not apply to inmates who:
 495 1. The department determines have a valid driver license or
 496 state identification card, except that the department shall
 497 provide these inmates with a replacement state identification
 498 card or replacement driver license, if necessary.
 499 2. Have an active detainer, unless the department
 500 determines that cancellation of the detainer is likely or that
 501 the incarceration for which the detainer was issued will be less
 502 than 12 months in duration.
 503 3. Are released due to an emergency release or a
 504 conditional medical release under s. 947.149.
 505 4. Are not in the physical custody of the department at or
 506 within 180 days before release.
 507 5. Are subject to sex offender residency restrictions, and
 508 who, upon release under such restrictions, do not have a
 509 qualifying address.

510 Section 12. For the purpose of incorporating the amendment
 511 made by this act to section 947.149, Florida Statutes, in a
 512 reference thereto, paragraph (b) of subsection (1) of section
 513 944.70, Florida Statutes, is reenacted to read:
 514 944.70 Conditions for release from incarceration.-
 515 (1)
 516 (b) A person who is convicted of a crime committed on or
 517 after January 1, 1994, may be released from incarceration only:
 518 1. Upon expiration of the person's sentence;
 519 2. Upon expiration of the person's sentence as reduced by
 520 accumulated meritorious or incentive gain-time;
 521 3. As directed by an executive order granting clemency;
 522 4. Upon placement in a conditional release program pursuant

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523 to s. 947.1405 or a conditional medical release program pursuant
524 to s. 947.149; or

525 5. Upon the granting of control release, including
526 emergency control release, pursuant to s. 947.146.

527 Section 13. For the purpose of incorporating the amendment
528 made by this act to section 947.149, Florida Statutes, in a
529 reference thereto, paragraph (h) of subsection (1) of section
530 947.13, Florida Statutes, is reenacted to read:

531 947.13 Powers and duties of commission.—

532 (1) The commission shall have the powers and perform the
533 duties of:

534 (h) Determining what persons will be released on
535 conditional medical release under s. 947.149, establishing the
536 conditions of conditional medical release, and determining
537 whether a person has violated the conditions of conditional
538 medical release and taking action with respect to such a
539 violation.

540 Section 14. For the purpose of incorporating the amendment
541 made by this act to section 947.149, Florida Statutes, in a
542 reference thereto, subsections (1), (2), and (7) of section
543 947.141, Florida Statutes, are reenacted to read:

544 947.141 Violations of conditional release, control release,
545 or conditional medical release or addiction-recovery
546 supervision.—

547 (1) If a member of the commission or a duly authorized
548 representative of the commission has reasonable grounds to
549 believe that an offender who is on release supervision under s.
550 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
551 the terms and conditions of the release in a material respect,

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552 such member or representative may cause a warrant to be issued
553 for the arrest of the releasee; if the offender was found to be
554 a sexual predator, the warrant must be issued.

555 (2) Upon the arrest on a felony charge of an offender who
556 is on release supervision under s. 947.1405, s. 947.146, s.
557 947.149, or s. 944.4731, the offender must be detained without
558 bond until the initial appearance of the offender at which a
559 judicial determination of probable cause is made. If the trial
560 court judge determines that there was no probable cause for the
561 arrest, the offender may be released. If the trial court judge
562 determines that there was probable cause for the arrest, such
563 determination also constitutes reasonable grounds to believe
564 that the offender violated the conditions of the release. Within
565 24 hours after the trial court judge's finding of probable
566 cause, the detention facility administrator or designee shall
567 notify the commission and the department of the finding and
568 transmit to each a facsimile copy of the probable cause
569 affidavit or the sworn offense report upon which the trial court
570 judge's probable cause determination is based. The offender must
571 continue to be detained without bond for a period not exceeding
572 72 hours excluding weekends and holidays after the date of the
573 probable cause determination, pending a decision by the
574 commission whether to issue a warrant charging the offender with
575 violation of the conditions of release. Upon the issuance of the
576 commission's warrant, the offender must continue to be held in
577 custody pending a revocation hearing held in accordance with
578 this section.

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

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581 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
582 the terms and conditions of his or her release by committing a
583 felony offense, the officer shall arrest the offender without a
584 warrant, and a warrant need not be issued in the case.

585 Section 15. This act shall take effect October 1, 2019.

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 370

INTRODUCER: Senator Harrell

SUBJECT: Victims of Human Trafficking

DATE: February 1, 2019

REVISED: _____

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

I. Summary:

SB 370 provides that a person who solicits, induces, entices, or procures a victim of human trafficking to commit prostitution, lewdness, or assignation shall be sentenced to a minimum mandatory period of incarceration of 30 days, in addition to any other penalty imposed.

The bill requires the current 10-day minimum mandatory sentence for a second or subsequent violation in s. 796.07(2)(f), F.S., to be served consecutively to the 30-day minimum mandatory sentence established by the bill.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. The bill creates a new 30-day minimum mandatory period and requires the current 10-day minimum mandatory period to be served consecutively to that sentence, if applicable. This will likely result in a positive indeterminate fiscal impact to county jails (i.e. an increase in jail beds).

The bill is effective October 1, 2019.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Young children, teenagers, and adults are all victims of human trafficking, who are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ Human trafficking is the third-largest international crime

¹ Section 787.06(1)(a), F.S.

industry, generating a profit of an estimated \$32 billion every year.² In 2016, there were an estimated 40.3 million victims of human trafficking.³

From 2007-2017, there were 40,987 human trafficking cases reported to the National Human Trafficking Hotline (Hotline). In 2017, the Hotline and BeFree Textline recorded a total of 8,759 human trafficking cases in the U.S. alone, which represented a 13 percent jump in the number of identified human trafficking cases from the year prior.⁴ The Hotline receives an average of 150 calls per day.⁵

Forced labor and sex trafficking are the most common types of human trafficking. Labor trafficking is “all work or service which is extracted from any person under the threat of penalty and for which the person has not offered himself or herself voluntarily.”⁶ Sex trafficking “occurs when someone uses force, fraud or coercion to cause a commercial sex act with an adult or causes a minor to commit a commercial sex act.”⁷ Sex trafficking accounted for 6,244 of the reported cases of human trafficking in 2017.⁸

Traffickers coerce victims into sex trafficking in numerous ways. Some victims may be forced into prostitution by an intimate partner while others may be recruited with a false job offer. Fake massage businesses, truck stops, and hotels and motels are all venues used in sex trafficking operations.⁹

In an effort to combat human trafficking in the U.S., the Trafficking Victims Protection Act (Act) was passed in 2000 and established several methods of prosecuting traffickers, preventing human trafficking, and protecting victims and survivors of trafficking. The Act contained severe penalties and mandated restitution for victims of human trafficking.¹⁰

Human Trafficking in Florida

Florida ranks third in the nation for reported cases of human trafficking.¹¹ From January through June of 2018, the Hotline had 367 human trafficking cases reported in Florida.¹² Children are

² DoSomething.org, *11 Facts About Human Trafficking*, available at <https://www.dosomething.org/us/facts/11-facts-about-human-trafficking> (last visited January 28, 2019).

³ International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited January 28, 2019).

⁴ Polaris, *Growing Awareness. Growing Impact. 2017 Statistics from the National Human Trafficking Hotline and BeFree Textline*, available at <http://polarisproject.org/sites/default/files/2017NHHTStats%20%281%29.pdf> (last visited January 28, 2019).

⁵ Polaris, *The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited January 28, 2019).

⁶ Polaris, *What is forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> (last visited January 31, 2019).

⁷ Sharedhope International, *What is Sex Trafficking*, available at <https://sharedhope.org/the-problem/what-is-sex-trafficking/> (last visited January 31, 2019).

⁸ See generally n. 4.

⁹ Polaris, *Sex Trafficking*, available at <https://polarisproject.org/human-trafficking/sex-trafficking> (last visited January 29, 2019).

¹⁰ Pub. L. No. 106-386 (2000).

¹¹ National Human Trafficking Hotline, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited January 28, 2019).

¹² National Human Trafficking Hotline, *Florida: Statistics*, available at <https://humantraffickinghotline.org/state/florida> (last visited January 28, 2019).

often those targeted in trafficking operations, with 12-14 being the average age that a trafficked victim is first used for commercial sex.¹³

Florida law defines “human trafficking” to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.¹⁴ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking commits the crime of human trafficking.¹⁵ Such an offense is punishable as a first degree felony,¹⁶ unless the person being sex trafficked is a child under the age of 18, mentally defective, or mentally incapacitated, then such an offense is punishable as a life felony.¹⁷

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking due to the fact that many traffickers are prosecuted for other crimes.¹⁸ Additionally, prosecutors often have difficulty proving the relationship at issue is that of human trafficking or when dealing with a victim who might be unwilling to testify against his or her trafficker in court.¹⁹

Human trafficking cases are often hidden operations that require law enforcement agencies engage in intricate investigations. In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.²⁰ Similarly, in January 2019, a two month-long investigation lead to the arrest of a 36-year-old male in Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.²¹

Prostitution and Other Prohibited Acts

Prostitution is prohibited in Florida and is defined as the giving or receiving of the body for sexual activity for hire.²² Prostitution rings are often covert operations. As a result, police

¹³ Statewide Council on Human Trafficking, *Statewide Council on Human Trafficking Annual Reports*, available at <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited January 28, 2019).

¹⁴ Section 787.06(2)(d), F.S.

¹⁵ Section 787.06(3), F.S.

¹⁶ A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁷ Section 787.06(3)(a)-(g), F.S. A life felony is punishable by a state prison term for life, by a term of imprisonment not exceeding 40 years, a fine not exceeding \$15,000, or both. Sections 775.082 and 775.083, F.S.

¹⁸ Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, (June 27, 2018) available at <https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-human-trafficking-alive-and-well-big-bend/2648630002/> (last visited January 28, 2019).

¹⁹ *Id.*

²⁰ Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, (December 3, 2018) available at <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting> (last visited January 28, 2019).

²¹ WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, (January 26, 2019) available at http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html (last visited January 28, 2019).

²² This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.

officers go undercover in an effort to conduct prostitution stings. In Cocoa, six suspects were arrested in January 2019 after an undercover police officer who was posing as a prostitute was approached by the individuals who subsequently agreed to pay the officer for the services of a prostitute.²³

Another tool commonly used by law enforcement agencies to crack down on prostitution activity is the Internet. In January 2019, four people were arrested in Tallahassee in conjunction with an undercover prostitution operation that was aimed at reducing street level prostitution in the capital city. After an undercover police officer contacted the suspects through an online advertisement that had indicators of being associated with prostitution activity and met with each suspect individually at an undisclosed hotel, the officer placed each of them under arrest.²⁴

Section 796.07(2)(f), F.S., prohibits the solicitation, inducement, enticement, or procurement of another to commit prostitution, lewdness, or assignation.²⁵ Those terms are defined in the following ways:

- “Lewdness” means any indecent or obscene act; and
- “Assignation” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.²⁶

A person who violates s. 796.07(2)(f), F.S., commits:

- A misdemeanor of the first degree²⁷ for a first violation;
- A felony of the third degree²⁸ for a second violation; and
- A felony of the second degree²⁹ for a third or subsequent violation.³⁰

A person who commits a second or subsequent violation of s. 796.07(2)(f), F.S., must be sentenced to a minimum mandatory³¹ period of 10 days incarceration.³²

²³ Caryn Shaffer, *Six arrested in Cocoa police operation targeting prostitution*, Florida Today, (January 28, 2019) available at <https://www.floridatoday.com/story/news/crime/2019/01/28/six-arrested-cocoa-after-soliciting-undercover-cop-disguised-prostitute/2706115002/> (last visited January 29, 2019).

²⁴ WTXL, *Four arrested in undercover prostitution sting in Tallahassee*, (January 14, 2019) available at http://www.wtxl.com/news/four-arrested-in-undercover-prostitution-sting-in-tallahassee/article_47c5602a-182e-11e9-aa98-0bf1f95703cb.html (last visited January 29, 2019).

²⁵ Section 796.07(2)(f), F.S.

²⁶ Section 796.07(1)(b) and (c), F.S.

²⁷ A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

²⁸ A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

²⁹ A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

³⁰ Section 796.07(5)(a)1.-3., F.S.

³¹ Florida law imposes minimum mandatory sentences for certain offenses, which limit judicial discretion in sentencing. “Mandatory minimum sentences are those for which a minimum period of incarceration is specified by statute.”

MANDATORY MINIMUM SENTENCES Are They Being Imposed and Who Is Receiving Them? Report to the Chairman, Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, House of Representatives, United States General Accounting Office, GAO/GGD-94-13 (Nov. 1993), p. 1, n. 1, available at <http://www.gao.gov/assets/220/218742.pdf> (last visited January 31, 2019).

³² Section 796.07(5)(c), F.S.

III. Effect of Proposed Changes:

The bill provides that a person who solicits, induces, entices, or procures a *victim of human trafficking* to commit prostitution, lewdness, or assignation shall be sentenced to a minimum mandatory period of incarceration of 30 days, in addition to any other penalty imposed.

The bill requires the 10-day minimum mandatory sentence for a second or subsequent violation of s. 796.07(2)(f), F.S., to be served consecutively to the 30-day minimum mandatory sentence established by the bill.

The bill also provides that “human trafficking” has the same meaning as defined in s. 787.06(2)(d), F.S.

The bill is effective October 1, 2019.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. The bill creates a new 30-day minimum mandatory period and requires the current 10-day minimum mandatory period to be served consecutively to that sentence, if applicable. This will likely result in a positive indeterminate fiscal impact to county jails (i.e. an increase in jail beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 796.07 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.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete line 40

and insert:

person shall be sentenced by the court to a period of

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

And the title is amended as follows:

Delete line 4

and insert:



672736

11

providing construction; requiring a minimum

By Senator Harrell

25-00839-19

2019370__

1 A bill to be entitled
 2 An act relating to victims of human trafficking;
 3 amending s. 796.07, F.S.; providing a definition;
 4 providing construction; requiring a mandatory minimum
 5 term of incarceration for solicitation of prostitution
 6 offenses involving victims of human trafficking;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Paragraph (c) of subsection (5) of section
 11 796.07, Florida Statutes, is amended, paragraph (e) is added to
 12 subsection (1) and paragraph (e) is added to subsection (5) of
 13 that section, and paragraph (f) of subsection (2) and paragraph
 14 (a) of subsection (5) of that section are republished, to read:

15 796.07 Prohibiting prostitution and related acts.—

16 (1) As used in this section:

17 (e) "Human trafficking" has the same meaning as provided in
 18 s. 787.06.

19 (2) It is unlawful:

20 (f) To solicit, induce, entice, or procure another to
 21 commit prostitution, lewdness, or assignation.

22 (5) (a) A person who violates paragraph (2) (f) commits:

23 1. A misdemeanor of the first degree for a first violation,
 24 punishable as provided in s. 775.082 or s. 775.083.

25 2. A felony of the third degree for a second violation,
 26 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

27 3. A felony of the second degree for a third or subsequent
 28 violation, punishable as provided in s. 775.082, s. 775.083, or
 29

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

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30 s. 775.084.

31 (c) In addition to any other penalty imposed, the court
 32 shall sentence a person convicted of a second or subsequent
 33 violation of paragraph (2) (f) to a minimum mandatory period of
 34 incarceration of 10 days. This sentence shall be served
 35 consecutively to any period of incarceration imposed under
 36 paragraph (e).

37 (e) If a person violates paragraph (2) (f) and the person
 38 solicited, induced, enticed, or procured is a victim of human
 39 trafficking, in addition to any other penalty imposed, the
 40 person shall be sentenced to a mandatory minimum period of
 41 incarceration of 30 days.

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

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