

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

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Perry, Chair**  
**Senator Brandes, Vice Chair**

**MEETING DATE:** Tuesday, November 12, 2019

**TIME:** 10:30 a.m.—12:00 noon

**PLACE:** Mallory Horne Committee Room, 37 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 346</b> Bradley (Compare H 259, S 468)	Controlled Substances; Prohibiting the purchase or possession of less than a certain amount of specified substances; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; requiring that a custodial interrogation conducted at a place of detention in connection with certain offenses be electronically recorded in its entirety; providing exceptions to the electronic recording requirement; revising the circumstances under which a wrongfully incarcerated person is eligible for compensation, etc.  CJ 11/12/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
2	<b>SB 436</b> Montford (Identical H 347, Compare H 165, S 228, S 762)	Youth in Confinement; Prohibiting a youth from being placed in disciplinary confinement; authorizing a youth to be placed in emergency confinement if certain conditions are met; limiting the allowable length of time for emergency confinement; authorizing a youth to be placed in medical confinement under certain circumstances; requiring sheriffs and chief correctional officers to adopt model standards relating to youth, etc.  CJ 11/12/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 0
3	<b>SB 464</b> Wright (Similar H 293)	Certain Defendants With Mental Illness; Exempting certain fiscally constrained counties from local match requirements for specified grants; encouraging communities to apply for specified grants to establish misdemeanor mental health jail diversion programs; authorizing the court to refer a misdemeanor defendant charged with a misdemeanor crime for certain evaluation or assessment if a party or the court raises a concern regarding the misdemeanor defendant's competency to proceed due to a mental disorder, etc.  CJ 11/12/2019 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

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

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

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

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

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

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 346

INTRODUCER: Criminal Justice Committee and Senator Bradley and others

SUBJECT: Criminal Justice

DATE: November 13, 2019      REVISED: \_\_\_\_\_

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

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

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

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

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

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

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

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

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

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

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

## **II. Present Situation:**

### **Florida’s Controlled Substance Schedules**

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

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

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

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

### **Purchase or Possession of a Controlled Substance**

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

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

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

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

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

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

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

<sup>6</sup> Section 893.13(2)(a), F.S.

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

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

Possession with intent to sell, manufacture, or deliver a controlled substance is generally punishable as a first degree misdemeanor, third degree felony, or second degree felony, depending upon the schedule of the controlled substance possessed.<sup>13</sup> However, punishment is enhanced when the possession occurs within 1,000 feet of certain locations or facilities.<sup>14</sup> For example, possession with intent to sell cannabis is generally a third degree felony<sup>15</sup> but a second degree felony when the possession occurs within 1,000 feet of the real property of a K-12 school.<sup>16</sup>

### **Drug Trafficking**

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies and are subject to a mandatory minimum term of imprisonment and a mandatory fine,<sup>17</sup> which is determined by the weight or quantity of the substance.<sup>18</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>19</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>20</sup>

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

<sup>9</sup> Section 893.13(6)(a), F.S.

<sup>10</sup> Section 893.13(6)(b), F.S.

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

<sup>12</sup> Section 893.13(6)(c), F.S.

<sup>13</sup> Section 893.13(1)(a), F.S.

<sup>14</sup> Section 893.13(1)(c)-(f) and (h), F.S.

<sup>15</sup> Section 893.13(1)(a)2., F.S.

<sup>16</sup> Section 893.13(1)(c)2., F.S.

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

<sup>18</sup> *See* s. 893.135, F.S.

<sup>19</sup> Section 893.135(1)(b)1.a., F.S.

<sup>20</sup> Section 893.135(1)(b)1.b., F.S.

## **Criminal Punishment Code**

The Criminal Punishment Code<sup>21</sup> (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).<sup>22</sup> Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>23</sup> Absent mitigation,<sup>24</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>25</sup>

## **Mandatory Minimum Sentences**

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply."<sup>26</sup> As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

With few exceptions (e.g., youthful offender sentencing<sup>27</sup> or a reduced or suspended sentence for substantial assistance rendered<sup>28</sup>), courts must impose the mandatory minimum term of imprisonment applicable to the drug trafficking offense committed.<sup>29</sup>

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<sup>21</sup> 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.

<sup>22</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

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

<sup>24</sup> The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

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

<sup>26</sup> Fla. R. Crim. P. 3.704(d)(26).

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

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

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

## **State Prison Sentence**

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

## **Custodial Interrogation**

### ***Constitutional Protections and Court Decisions Interpreting and Applying Those Protections***

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

### ***Custodial Interrogation Legal Requirements***

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

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

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.”<sup>37</sup>

### ***Waiver of the Right to Remain Silent***

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

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<sup>30</sup> Section 921.0024(2), F.S.

<sup>31</sup> Section 944.17(3)(a), F.S.

<sup>32</sup> U.S. Const. amend. V.

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

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

<sup>35</sup> 596 So.2d 957, 965-966 (Fla. 1992).

<sup>36</sup> *Id.* at 966 n. 16.

<sup>37</sup> *Id.* at 966 n. 17.

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

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

### ***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.<sup>40</sup> 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.<sup>41</sup>

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

As previously discussed, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup>

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.

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

<sup>40</sup> *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

<sup>41</sup> *Supra* n. 39 at 667.

<sup>42</sup> *Supra* n. 36.

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

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

<sup>45</sup> *Supra* n. 36 at 668.

### ***Interrogation Recording in Florida***

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

### **Wrongful Incarceration Compensation Eligibility**

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.<sup>49</sup> The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.<sup>50</sup> The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.<sup>51</sup> To date, four persons have been compensated under the Act for a total of \$4,276,901.<sup>52</sup>

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

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

<sup>48</sup> *Supra* n. 46 at pp. 40-41.

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

<sup>50</sup> Section 961.05, F.S.

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

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



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

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

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

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

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

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<sup>53</sup> Section 961.04, F.S.

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

<sup>55</sup> Section 961.06(2), F.S.

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

### **III. Effect of Proposed Changes:**

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

#### **Purchase or Possession of a Controlled Substance (Section 1)**

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

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

<sup>57</sup> See ss. 921.0024(2), and 944.17(3)(a), F.S.

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

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

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

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

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

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

### **Custodial Interrogation (Section 3)**

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

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

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

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<sup>58</sup> Section 921.0024, F.S.

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

<sup>60</sup> Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>61</sup> See s. 961.06(2), F.S.

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

**Effective Date (Section 8)**

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

**IV. Constitutional Issues:**

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

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

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

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

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

C. Government Sector Impact:

**Local Government Impact**

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

**State Government Impact**

***Prison Bed Impact***

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

***Compensation for Wrongful Incarceration***

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

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<sup>62</sup> Section 961.06(1), F.S.

<sup>63</sup> Section 961.06(4), F.S.

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

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

This bill creates section 900.06 of the Florida Statutes.

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

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

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

The Committee Substitute:

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

**B. Amendments:**

None.





196590

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 46 - 49  
and insert:  
other law relating to the punishment for possessing, purchasing,  
or possessing with the intent to purchase a controlled  
substance, a person who possesses, purchases, or possesses with  
the intent to purchase less than 2 grams of a controlled  
substance, other than fentanyl or any substance or mixture  
described in s. 893.135(1)(c)4.a.(I)-(VII), may not be



196590

imprisoned for a term longer than 12

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

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



527338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 181 and 182  
insert:

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

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

(1)

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



527338

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

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

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

And the title is amended as follows:

Delete line 30  
and insert:

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

By Senator Bradley

5-00220B-20

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1 A bill to be entitled  
 2 An act relating to controlled substances; amending s.  
 3 893.13, F.S.; prohibiting the purchase or possession  
 4 of less than a certain amount of specified substances;  
 5 providing criminal penalties; amending s. 893.135,  
 6 F.S.; authorizing a court to impose a sentence other  
 7 than a mandatory minimum term of imprisonment and  
 8 mandatory fine for a person convicted of trafficking  
 9 if the court makes certain findings on the record;  
 10 creating s. 900.06, F.S.; defining terms and  
 11 specifying covered offenses; requiring that a  
 12 custodial interrogation conducted at a place of  
 13 detention in connection with certain offenses be  
 14 electronically recorded in its entirety; requiring law  
 15 enforcement officers who do not comply with the  
 16 electronic recording requirement or who conduct  
 17 custodial interrogations at a location other than a  
 18 place of detention to prepare a specified report;  
 19 providing exceptions to the electronic recording  
 20 requirement; requiring a court to consider a law  
 21 enforcement officer's failure to comply with the  
 22 electronic recording requirement in determining the  
 23 admissibility of a statement, unless an exception  
 24 applies; requiring a court, upon the request of a  
 25 defendant, to give certain cautionary instructions to  
 26 a jury under certain circumstances; providing immunity  
 27 from civil liability to law enforcement agencies that  
 28 enforce certain rules; providing that a cause of  
 29 action is not created against a law enforcement

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

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30 officer; amending s. 961.04, F.S.; revising the  
 31 circumstances under which a wrongfully incarcerated  
 32 person is eligible for compensation; amending s.  
 33 893.03, F.S.; conforming a cross-reference; reenacting  
 34 ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4),  
 35 F.S., all relating to eligibility for compensation for  
 36 wrongfully incarcerated persons; providing an  
 37 effective date.

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

40  
 41 Section 1. Present subsection (10) of section 893.13,  
 42 Florida Statutes, is redesignated as subsection (11), and a new  
 43 subsection (10) is added to that section, to read:

44 893.13 Prohibited acts; penalties.—  
 45 (10) Notwithstanding any provision of this section or any  
 46 other law relating to the punishment for purchasing or  
 47 possessing a controlled substance, a person who purchases or  
 48 possesses less than 2 grams of a controlled substance, other  
 49 than fentanyl, may not be imprisoned for a term longer than 12  
 50 months.

51 Section 2. Present subsections (6) and (7) of section  
 52 893.135, Florida Statutes, are redesignated as subsections (7)  
 53 and (8), respectively, and a new subsection (6) is added to that  
 54 section, to read:

55 893.135 Trafficking; mandatory sentences; suspension or  
 56 reduction of sentences; conspiracy to engage in trafficking.—

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

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

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

(a) The defendant has no prior conviction for a forcible felony as defined in s. 776.08.

(b) The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.

(c) The offense did not result in the death of or serious bodily injury to any person.

(d) The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20.

(e) At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

(f) The defendant has not previously benefited from the application of this subsection.

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

Section 3. Section 900.06, Florida Statutes, is created to read:

900.06 Recording of custodial interrogations for certain offenses.

5-00220B-20

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which 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.

(b) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation.

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or disabled adult.

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

10. Aggravated manslaughter of an elderly person or disabled adult.

11. Aggravated manslaughter of a child.

12. The unlawful throwing, placing, or discharging of a destructive device or bomb.

13. Armed burglary.

14. Aggravated battery.

15. Aggravated stalking.

16. Home-invasion robbery.

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17. Carjacking.

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

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

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

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

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

(d) Paragraph (a) does not apply:

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

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

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recorded;

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

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

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

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

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

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

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

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failure to comply with that requirement.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(4) "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

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

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

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

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(1) (a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the

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provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2) (a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4) (a) If the prosecuting authority responds as set forth in paragraph (2) (b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2) (b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/12/2019

*Meeting Date*

SB 346

*Bill Number (if applicable)*

Topic Substances

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/12/19  
Meeting Date

346  
Bill Number (if applicable)

Topic Controlled Substances

~~91054547334~~  
Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St Ste 401  
Street  
Tallahassee FL 32301  
City State Zip

Phone (850) 606-1000

Email andy.thomas@flpd2.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/12/2019

Meeting Date

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

SB 346

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

FL.

City

State

Zip

Email cgrojaless@be/ibre.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing THE LIBRE INITIATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19  
Meeting Date

346  
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street  
Street

Phone 850-425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/12

Meeting Date

SB 346

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Exec. Director

Address 1100 E. Park Avenue  
Street

Phone 850-561-6761

Tallahassee FL 32301  
City State Zip

Email smiller@floridaproject.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Project of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

November 12, 2019

*Meeting Date*

346

*Bill Number (if applicable)*

Topic Controlled Substances

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

346

Bill Number (if applicable)

Topic Controlled substances

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

City Tallahassee, FL State FL Zip 32301

Email jorge@flapartner.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FACDL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11-12-19

Meeting Date

346

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Florida Director

Address \_\_\_\_\_

Street

Phone 954.557.0016

City

State

Zip

Email cmurphy@rightoncrime.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11-12-19  
Meeting Date

346  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Florida Director

Address Po Box 142933  
Street

Phone 352.682.2542

Gainesville FL 32614  
City State Zip

Email gnewburn@famm.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/12/19

Meeting Date

346

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

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

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

11/12/2019

*Meeting Date*

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

SB 346

*Bill Number (if applicable)*

Topic Controlled Substances

*Amendment Barcode (if applicable)*

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

*Street*

Tallahassee

FL

32317

Email garywhester@gmail.com

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**APPEARANCE RECORD**

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

10/12/14

Meeting Date

SB 346

Bill Number (if applicable)

527338

Amendment Barcode (if applicable)

Topic Controlled SubstancesName Seth MillerJob Title Executive DirectorAddress 1100 E. Park Ave  
StreetPhone 850-361-6767Tallahassee FL 32301  
City State ZipEmail smiller@innocenceproject.orgSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Innocence Project of FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/13/19

Meeting Date

346

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address P.O. Box 11854

Phone (850) 354-8424

Street

Tallahassee

City

FL

State

32302

Zip

Email NORML.Tallahassee@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing NORML Tallahassee

Appearing at request of Chair: ☐ Yes ☐ No

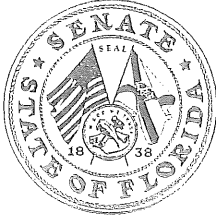
Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR ROB BRADLEY**

5th District

October 15, 2019

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

Dear Mr. Chairman:

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

Thank you for your kind consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to be "Rob Bradley", written over a horizontal line.

Rob Bradley

**REPLY TO:**

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

## Cellon, Connie

---

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

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

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

Your convenience.

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

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

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

Hey, Miss Carolyn, hope all is well with you! It's time for 2020 Session Committee meetings. I have a bill on wrongful incarceration compensation.

I need to know how who, if anyone, has successfully applied for and been awarded wrongful incarceration compensation since James Richardson in 2015 – if there is anyone, any additional information you can provide would be helpful – especially the amount awarded.

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

Connie Cellon  
Senate Criminal Justice  
850-487-5192

## **Wrongful Incarceration Claims (961.03, F.S.)**

### **Successful Claims**

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

### **Denied Claims**

- (1) Jarvis McBride (2012)

### **Ineligible/Incomplete Applications**

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

## **SB 346 – Controlled Substances**

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

### **EDR PROPOSED ESTIMATE: Negative Significant**

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

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

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

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

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

**EDR PROPOSED ESTIMATE: Negative Indeterminate**

**EDR PROPOSED ESTIMATE FOR ENTIRE BILL: Negative Significant**

**Requested by: Senate**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 436

INTRODUCER: Senator Montford

SUBJECT: Youth in Confinement

DATE: November 8, 2019

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

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

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**I. Summary:**

SB 436 creates s. 945.425, F.S., which prohibits a youth in the custody of the Department of Corrections (DOC) from being placed in disciplinary confinement and limits the circumstances for placing a youth into emergency or medical confinement. Additionally, the bill amends s. 951.23, F.S., requiring a new model rule to be included in the Model Jail Standards that ensures compliance with the standards for placing a youth in confinement established in the newly created s. 945.425, F.S., and requiring each sheriff and chief correctional officer to adopt such model rule. The Model Jail Standards apply to county detention facilities.

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

The bill requires that all less restrictive means for resolving the issues requiring the youth to be placed in confinement must be exhausted prior to placing the youth into emergency or medical confinement. Additionally, the bill requires that any placement of a youth in confinement in accordance with the bill must be documented and specific guidelines for monitoring a youth that is placed in either type of confinement are established. The bill specifically prohibits the use of emergency or medical confinement for the purposes of punishment or discipline.

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

The bill will likely have an indeterminate positive fiscal impact (i.e. an unquantifiable increase in costs to the entity) to the DOC and local counties due to the increased workload and need to hire

staff to fulfill the requirement to conduct periodic evaluations of youth placed in confinement. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## II. Present Situation:

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

### Federal First Step Act

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).<sup>3</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, imposing a prohibition on placing youth in solitary confinement. A “juvenile” is defined in federal law to mean a person who is less than 18 years of age.<sup>4</sup>

The First Step Act specifically provides that a covered juvenile<sup>5</sup> may not be placed on room confinement<sup>6</sup> at a juvenile facility<sup>7</sup> for discipline, punishment, retaliation, or any reason other than as a temporary response to a covered juvenile’s behavior that poses a serious and immediate risk of physical harm to any individual, including the covered juvenile.<sup>8</sup>

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<sup>1</sup> The National Conference of State Legislatures, Anne Tiegen, *States that Limit or Prohibit Juvenile Shackling and Solitary Confinement*, August 16, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx> (hereinafter cited as “The NCSL State Data”); See also USA Today, Jessica Feerman and Jenny Lutz, *Placing juvenile in solitary confinement doesn’t fix them. In fact, it makes them worse*, January 11, 2019, available at <https://www.usatoday.com/story/opinion/policing/2019/01/11/policing-usa-juvenile-detention-solitary-confinement-mental-illness/2505702002/> (all cites last visited November 4, 2019).

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

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

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

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

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

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

<sup>8</sup> *Supra*, n. 3.

Additionally, the First Step Act requires a staff member to attempt to use less restrictive techniques<sup>9</sup> prior to placing a covered juvenile in room confinement. If, after attempting to use less restrictive techniques, a staff member of a juvenile facility decides to place a covered juvenile in room confinement, the staff member is required to explain to the covered juvenile the reasons for the room confinement and inform the covered juvenile of the conditions that will lead to the release from room confinement.<sup>10</sup>

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

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

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

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

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

The BOP reports that there are nine inmates under the age of 18 years and 1,992 inmates between the ages of 18 years and 21 years imprisoned in its facilities.<sup>14</sup>

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

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.*

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

<sup>14</sup> The BOP, *Statistics, Inmate Age*, available at [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp) (last visited November 4, 2019).



## Youth in Confinement in Florida's Correctional Facilities

### *Department of Corrections*

#### Confinement - General

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

All inmates, regardless of age, are subject to the same consideration for placement in administrative or disciplinary confinement.<sup>18</sup> These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.<sup>19</sup> For protective management, the Rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.<sup>20</sup> However, if a youth is housed in a protective management unit they may be subject to more restrictions than a non-youth inmate for their safety and security.<sup>21</sup>

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<sup>15</sup> Fla. Admin. Code R. 33-602.220(1)(a).

<sup>16</sup> Fla. Admin. Code R. 33-602.222(1)(f).

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

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

<sup>19</sup> The DOC, *SB 624 Agency Analysis (2019)*, p. 3 and 5. *See also* Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

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

<sup>21</sup> The DOC SB 624 Agency Analysis (2019), p. 5.

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

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

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

- Exercise, which occurs either in the inmate's cell if confined on a 24-hour basis or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum out of doors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.<sup>25</sup>
- The same clothing and clothing exchange as is provided to the general inmate population.<sup>26</sup>
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities which are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.<sup>27</sup>
- Legal materials in the same manner as in general population as long as security concerns permit.<sup>28, 29</sup>

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

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

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

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

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

<sup>27</sup> The warden or his or her designee must approve all legal visits in advance.

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

<sup>29</sup> The DOC SB 624 Agency Analysis (2019), p. 3-5; Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

### Administrative Confinement

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

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

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

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

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

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

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<sup>30</sup> The DOC SB 624 Agency Analysis (2019), p. 3; Fla. Admin. Code R. 33-602.220(3).

<sup>31</sup> Fla. Admin. Code R. 33-602.220(4).

<sup>32</sup> Fla. Admin. Code R. 33-602.220(8)(a).

<sup>33</sup> Fla. Admin. Code R. 33-602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.<sup>34</sup>

### Disciplinary Confinement

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

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

### *County Detention Facilities*

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS Committee is required to develop and continually enforce model standards adopted by the group.<sup>36</sup>

The FMJS defines terms such as administrative confinement and disciplinary confinement, but does not include policies specific to youth regarding such types of confinement. "Administrative confinement" is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.<sup>37</sup> "Disciplinary confinement" is defined to mean the segregation of an inmate for disciplinary reasons.<sup>38</sup>

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate's file.<sup>39</sup>

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to

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

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

<sup>36</sup> The Florida Sheriff's Association (FSA), *Florida Model Jail Standards as of 1/1/2019, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited November 4, 2019) (hereinafter cited as "FMJS Rule").

<sup>37</sup> The FMJS Rule 1.2.

<sup>38</sup> The FMJS Rule 1.17.

<sup>39</sup> The FMJS Rule 13.13.

the general population except as justified by his or her classification status or special needs inmate status.<sup>40, 41</sup> Further, special needs inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.<sup>42</sup> The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate's general condition and attitude at each visit.<sup>43</sup>

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

- Finds that the inmate presents a serious risk to himself or others; or
- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.<sup>44</sup>

While the FMJS has some policies related to confinement as described above, the only portion that is specific to youth provides that a youth may not be confined in isolation for medical purposes unless the order is made by a medical professional and approved by a medical doctor. In addition, the model rule provides that such youth should be examined by a physician or designee within 8-12 hours of his or her confinement.<sup>45</sup>

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

### **III. Effect of Proposed Changes:**

The bill creates s. 945.425, F.S., prohibiting youth in the custody of DOC from being placed in isolation except in certain circumstances. Additionally, the bill amends s. 951.23, F.S., creating an additional rule for the Model Jail Standards that addresses confinement of prisoners by classification on the basis of age and which includes a strict prohibition on the use of solitary confinement for prisoners under the age of 19 years. The bill requires each sheriff and chief correctional officer to adopt the model rule to be in compliance with s. 945.425, F.S., which is created in this bill. The Model Jail Standards apply to county detention facilities.

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

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<sup>40</sup> *Id.*

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

<sup>42</sup> *Supra*, n. 39.

<sup>43</sup> The FMJS Rule 13.14.

<sup>44</sup> The FMJS Rule 7.23.

<sup>45</sup> The FMJS Rule 21.11(e).

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

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

### **Definitions**

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

- “Youth,” which means a person in the custody of the DOC who is under the age of 19 years.
- “Disciplinary confinement,” which means the involuntary placement of a youth in an isolated room to separate them from the general inmate population as a disciplinary action for violating DOC rules.
- “Emergency confinement,” which means the involuntary placement of a youth in an isolated room to separate him or her from the general inmate population and to remove him or her from a situation in which he or she presents an immediate and serious danger to the security or safety of himself or herself or others.
- “Medical confinement,” which means the involuntary placement of a youth in an isolated room to separate that youth from the general inmate population to allow him or her to recover from an illness or to prevent the spread of a communicable disease.
- “Mental health clinician,” which means a licensed psychiatrist, psychologist, social worker, mental health counselor, nurse practitioner, or physician assistant.

### **Emergency Confinement**

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

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

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

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

The bill prohibits a youth from being placed in emergency confinement for more than 24 hours unless an extension is sought and obtained by a mental health clinician. A one-time extension of 24 hours for continued placement may be granted if a mental health clinician determines that release of the youth would imminently threaten the safety of the youth, or others. However, if, at the conclusion of the 48-hour window, a mental health clinician determines that it is not safe for the youth to be released from emergency confinement, the facility staff must prepare to transfer the youth to a facility that is able to provide specialized treatment to address his or her needs. The bill requires a youth placed in emergency confinement to have access to the same meals and drinking water, clothing, medical treatment, contact with parents and legal guardians, and legal assistance as provided to him or her in other custody status placements.

### **Medical Confinement**

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

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

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

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

### **Implementation**

The bill requires the DOC to review its policies and procedures relating to youth in confinement to determine whether such policies and procedures comply with the bill. Further, the DOC is required to certify compliance with the provisions of this bill in a report that must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021.

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

The bill is effective October 1, 2020.

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

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

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

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



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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 945.425 of the Florida Statutes.

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

This bill reenacts section 944.279 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>46</sup> The DOC SB 624 Agency Analysis (2019), p. 9.

By Senator Montford

3-00110A-20

2020436\_\_

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

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

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

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

42  
 43 Section 1. Section 945.425, Florida Statutes, is created to  
 44 read:

45 945.425 Youth in confinement.—

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

47 (a) "Disciplinary confinement" means the involuntary  
 48 placement of a youth in an isolated room to separate the youth  
 49 from the general inmate population as a disciplinary action for  
 50 violating department rules.

51 (b) "Emergency confinement" means the involuntary placement  
 52 of a youth in an isolated room to separate that youth from the  
 53 general inmate population and to remove that youth from a  
 54 situation in which he or she presents an immediate and serious  
 55 danger to the security or safety of himself or herself or  
 56 others.

57 (c) "Medical confinement" means the involuntary placement  
 58 of a youth in an isolated room to separate that youth from the

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general inmate population to allow him or her to recover from an illness or to prevent the spread of a communicable disease.

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

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

(2) PROHIBITION ON THE USE OF CONFINEMENT.—

(a) A youth may not be placed in disciplinary confinement.

(b) A youth may be placed in emergency confinement pending a disciplinary hearing only if such confinement complies with this section.

(c) This section does not prohibit the department from applying less restrictive penalties to a youth who is found in a disciplinary hearing to have committed a rule violation.

(3) PROTECTING YOUTH IN EMERGENCY CONFINEMENT.—

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

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

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

3. All less-restrictive means have been exhausted.

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

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the less-restrictive options that the facility staff exercised before the youth was so placed.

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

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

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

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

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

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population.

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

(4) PROTECTING YOUTH IN MEDICAL CONFINEMENT.—

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

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

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

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

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

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

(5) IMPLEMENTATION.—

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

(b) The department shall certify compliance with this section in a report that the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021.

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

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

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

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

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

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

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

b. The cleanliness and sanitation of county and municipal detention facilities; the number of county and municipal

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

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

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

3. The confinement of prisoners by classification on the

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

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

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

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

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

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

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

436

Bill Number (if applicable)

Topic Youth in Confinement

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St., Ste. 401

Phone (850) 4606-1000

Street

Tallahassee

FL

32301

City

State

Zip

Email andy.thomas@fipdz.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19  
Meeting Date

436  
Bill Number (if applicable)

Topic Youth in Confinement

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street  
Street

Phone 858-425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19  
Meeting Date

436  
Bill Number (if applicable)

Topic Youth in solitary confinement

Amendment Barcode (if applicable)

Name Alison Marshall

Job Title Student Intern

Address 425 W. Jefferson St.  
Street

Phone (850) 645-7900

City

State

Zip

Email am12n@my.fsu.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FSU public interest law center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**APPEARANCE RECORD**

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

11/12/19  
Meeting Date436  
Bill Number (if applicable)Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Caitlyn KioJob Title Graduate FellowAddress 425 W. Jefferson St.Phone (850)645-7900

Street

TallahasseeFL32306

City

State

Zip

Email ckio@law.fsu.eduSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing FSU Public Interest Law CenterAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/12/19

Meeting Date

436

Bill Number (if applicable)

Topic Youth in solitary confinement

Amendment Barcode (if applicable)

Name Karina Flores

Job Title student intern

Address 425 W. Jefferson St  
Street

Phone 850-645-7900

Tallahassee  
City

FL  
State

32300  
Zip

Email kmt17@my.fsu.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FSU public interest law center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11-12-19

Meeting Date

436

Bill Number (if applicable)

Topic Youth in Solitary Confinement

Amendment Barcode (if applicable)

Name Alex Lavelle

Job Title Student Intern

Address 425 W Jefferson  
Street

Phone 440-829-4158

Tallahassee  
City

FL  
State

32306  
Zip

Email AL17M@my.fsu.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FSU Public Interest Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11-12-19  
Meeting Date

0436  
Bill Number (if applicable)

Topic Youth In Confinement

Amendment Barcode (if applicable)

Name Ken Kneipmann

Job Title Associate

Address 201 W Park

Phone 850-<sup>510</sup>~~54~~-0552

Tallahassee

Email \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

November 12, 2019

*Meeting Date*

436

*Bill Number (if applicable)*

Topic Youth in Coonfinement

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

11/12/19

Meeting Date

SB 436

Bill Number (if applicable)

Topic Youth in Confinement

Amendment Barcode (if applicable)

Name Olivia Babis

Job Title Public Policy Analyst

Address 2473 Carr Dr. Ste 200

Street

Phone 850-617-9718

Tallahassee FL 32308

City

State

Zip

Email oliviab@disabilityrightsflorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Disability Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Environment and Natural Resources, *Chair*  
Education, *Vice Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Education  
Rules

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

### SENATOR BILL MONTFORD

*Minority Leader Pro Tempore*  
3rd District

October 21, 2019

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

Dear Chair Perry,

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

SB 436 – A bill relating to Youth in Confinement.

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William J. Montford III

WJM:rm

### REPLY TO:

- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore





# 2019 AGENCY LEGISLATIVE BILL ANALYSIS

## AGENCY: Department of Corrections

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

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

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

<b><u>CURRENT COMMITTEE</u></b>

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

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

<b>Is this bill part of an agency package?</b>
No.

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

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

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

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

##### **Youthful Offenders**

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

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

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

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

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

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

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

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

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

## Administrative Confinement

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

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

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

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

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

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

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

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

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

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

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

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

### Disciplinary Confinement

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

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

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

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

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

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

### Protective Management

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

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

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

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

### **Solitary Confinement**

The Department does not have solitary confinement.

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

## **2. EFFECT OF THE BILL:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Many aspects of the department's daily operations would be negatively impacted from a cost and staffing standpoint in implementing this bill. The bill essentially creates a new classification and confinement system for "youth prisoners," who would be exempted in many ways from the department's current confinement and special housing rules.

(3) Lines 127 through 172 - Protecting Youth in Emergency Confinement. The department currently exercises the proposed, with the exception of the face-to-face visit by a mental health professional at least one hour after placement and every two hours thereafter. This would require additional mental health staff, including after-hours mental health staff. It is indeterminate as to the required number of staff; a comprehensive workload study would be required to determine staff impact. Additionally, the department has specific procedures in place to address mental health emergencies. However, the department does have various facilities that are equipped with the necessary resources to address mental health emergencies or crises.

Neither "youth" nor "adult" inmates are put in administrative or protective management status unless warranted. All placements are justified and reviewed by more than one staff entity, and all attempts are made for less restrictive options before such placement. Additionally, all staff is trained to closely observe inmate behavior for signs indicating that medical and/or mental health care is needed. Moreover, all inmates are repeatedly informed that they may request such aid at any time. Once a youthful offender is placed in protective management, the inmate's youthful offender status is removed; however, inmates 17 years of age and younger are not placed in protective management.

(4) Lines 173 through 198 - Protecting Youth in Medical Confinement. Medical confinement is not a housing status in which the department places inmates. The bill requires a medical professional to check up on youth at least once every 12 hours. Under current department procedures, when an inmate needs to be isolated from other inmates for medical reasons, he or she is housed in a medical isolation cell within the infirmary area of institution. This is not considered solitary confinement. As indicated in the department's Health Services Bulletin 15.03.26, the infirmary will be staffed twenty-four (24) hours per day by health care personnel; all infirmary inmates must be within sight or sound of staff; and, staff shall make rounds at least every two (2) hours for all patients in the infirmary.

(5) Lines 199 through 210 require the department to review its policies and procedures relating to youth in solitary confinement to determine if they comply with the bill. Generally, the proposed language conflicts with the department's current rules. More specifically, the restriction of certain management tools serves to provide no incentive for the youth to follow rules and regulations, effectively undermining the department's ability to ensure the safety of staff and inmates, the security of the facility, and more specifically, the safety and well-being of the very population this proposed bill seeks to protect.

This section also requires the department to certify compliance via a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2020.

2. Lines 211 through 260: Amend Section 951.23, Florida Statutes. This section pertains to the Department of Juvenile Justice, detention facilities, and has no impact on the FDC.

3. Lines 261 through 371: Create Section 985.28, Florida Statutes. This section pertains to the Department of Juvenile Justice, detention facilities, and has no impact on the FDC.

4. Lines 372 through 479: Create Section 985.4415, Florida Statutes. This section pertains to the Department of Juvenile Justice, detention facilities, and has no impact on the FDC.

5. Lines 480 through 488: provide the department with authority to adopt rules regarding youth in solitary confinement. In addition to promulgating new rules, compliance with this bill will also require the department to substantially revise Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties for youthful offenders.

6. Lines 489 through 511: Amend Section 985.601, Florida Statutes. This section has no impact on the Florida Department of Corrections.

7. Lines 512 through 534: Reenacts subsection (1) of Section 944.279, Florida Statutes. This section has no impact on the Florida Department of Corrections.

8. Line 535: Establishes the effective date of the bill as July 1, 2019. Department compliance with this bill would require: (1) Substantial revisions and additions to Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties for youthful offenders; (2) Additional correctional and mental health staffing and training; (3) Program changes to the department's Offender Based Information System (OBIS), as well as sufficient fiscal appropriation; and, (4) Additional housing.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?** Y ☐ N ☒

If yes, explain:

Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**Y ☒ N ☐

If yes, provide a description:	Certified compliance report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
Date Due:	January 1, 2020
Bill Section Number(s):	Section 1, Lines 203 through 206

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?**Y ☐ N ☒

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

## FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote	



prior to implementation of the tax or fee increase?	
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**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**Y ☐ N ☐

Revenues:	Unknown
Expenditures:	<p>The overall impact to the department is indeterminate, but likely significant.</p> <p>The department cannot estimate the number of inmates that will be placed into confinement and exactly when they will be released from such. Although the department is unable to determine additional mental health and correctional staff necessary to perform the increased volume of checks necessitated by this bill, it would be anticipated to be significant.</p>
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**Y ☐ N ☐

If yes, explain impact.	
Bill Section Number:	

### TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There will likely be a significant technology impact. There would be a need for the creation of additional systems to comply with the proposed bill, such as new codes within the Department's Offender Based Information System (OBIS) reporting mechanisms, etc.
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### FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	Unknown
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### ADDITIONAL COMMENTS

N/A

### LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	SB 624 (version 3-01084-19) would appear to have legal implications insofar as the bill requirements may conflict with existing FDC rules (see, e.g., rr. 33-602.220-.222, FAC) and policies relating to secure housing, inmate discipline and mental health housing assignments as discussed above.
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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 464

INTRODUCER: Criminal Justice Committee and Senator Wright

SUBJECT: Certain Defendants With Mental Illness

DATE: November 12, 2019

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

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

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

This bill is effective July 1, 2020.

## II. Present Situation:

### Mental Health Needs in the Criminal Justice System

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

### Legislative Intent

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

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

### Grant Program

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

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

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

<sup>3</sup> Section 916.105(1), F.S.

<sup>4</sup> Section 916.105(2), F.S.

<sup>5</sup> Section 916.105(3), F.S.

<sup>6</sup> Section 916.105(4), F.S.

<sup>7</sup> Chapter 2007-200 L.O.F.

<sup>8</sup> Section 394.656(1), F.S.

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

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

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

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

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

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

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

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

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<sup>9</sup> Section 394.656(3), F.S.

<sup>10</sup> Section 394.658(1), F.S.

<sup>11</sup> Section 394.658(1)(c), F.S.

<sup>12</sup> Section 394.658(1)(a), F.S.

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

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

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

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

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

### **Baker Act**

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

A person may be involuntary examined to determine whether a person qualifies for involuntary services.<sup>19</sup> Involuntary services include court-ordered outpatient services or inpatient placement for mental health treatment.<sup>20</sup> A person may be taken to a receiving facility for an involuntarily examination if there is reason to believe that the person has a mental illness<sup>21</sup> and because of his or her mental illness:

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

<sup>16</sup> Section 394.658(1)(b), F.S.

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

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

<sup>19</sup> Section 394.455(22), F.S.

<sup>20</sup> Section 394.455(23), F.S.

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

Section 394.455(28), F.S.

<sup>22</sup> Section 394.463(1), F.S.

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

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

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a professional certificate<sup>25</sup> stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based.<sup>26</sup>

A person cannot be held in a receiving facility<sup>27</sup> for involuntary examination for more than 72 hours.<sup>28</sup> Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must occur:

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

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

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

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<sup>23</sup> Section 394.463(2)(a)1., F.S.

<sup>24</sup> Section 394.463(2)(a)2., F.S.

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

<sup>26</sup> Section 394.463(2)(a)3., F.S.

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

<sup>28</sup> Section 394.463(2)(g), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Section 394.467(4) and (6), F.S.

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

### **Competency to Proceed**

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

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

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

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

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

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

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

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

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<sup>31</sup> Section 394.467(1), F.S.

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

<sup>33</sup> Sections 916.12 and 916.3012, F.S.

<sup>34</sup> Section 916.115(1), F.S.

<sup>35</sup> Section 916.12(1), F.S.

<sup>36</sup> Section 916.12(2), F.S.

<sup>37</sup> Section 916.12(4), F.S.



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

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

### **Mental Health Court**

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

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

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

## **III. Effect of Proposed Changes:**

### **Legislative Intent**

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

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

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<sup>38</sup> Section 916.17, F.S.

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

<sup>40</sup> Section 394.47892(2) and (3), F.S.

<sup>41</sup> Section 394.47892(4)(a), F.S.

### **Misdemeanor Mental Health Diversion and Competency Program**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This bill is effective July 1, 2020.

## **IV. Constitutional Issues:**

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

It is possible that the bill related to certain defendants with mental illness may result in local fund expenditures for housing, transporting, or evaluating offenders in county jail. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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

None.

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

None.

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

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**State Government**

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

**Local Government**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

This bill creates section 916.135 of the Florida Statutes.

**IX. Additional Information:**

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

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

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

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
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The Committee on Criminal Justice (Wright) recommended the following:

**Senate Amendment**

Delete lines 255 - 256  
and insert:

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

By Senator Wright

14-00444B-20

2020464\_\_

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

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

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

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

916.105 Legislative intent.—

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

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

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

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

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read:

916.135 Misdemeanor mental health diversion and competency program.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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to, significant property damage.

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

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

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

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advised in the order that failure to comply with the order may result in the issuance of a warrant revoking the misdemeanor defendant's pretrial release and directing the sheriff to arrest and return the misdemeanor defendant to the jail.

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

November 12, 2019

Meeting Date

464

Bill Number (if applicable)

Topic Certain Defendants with Mental Illness

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Street

Phone 850.510.9922

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

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

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR TOM A. WRIGHT**

14th District

October 15, 2019

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

Re: Senate Bill 464 – Certain Defendants with Mental Illness

Dear Chair Perry:

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

Thank you for your consideration.

Sincerely,

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

Tom A. Wright, District 14

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

### REPLY TO:

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 470

INTRODUCER: Criminal Justice Committee and Senators Brandes and Bracy

SUBJECT: Searches of Cellular Phones and Other Electronic Devices

DATE: November 12, 2019

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

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

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

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

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

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

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

The bill is effective July 1, 2020.

## II. Present Situation:

The Fourth Amendment of the United States Constitution guarantees:

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

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

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

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

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<sup>1</sup> U.S. CONST. AMEND. IV.

<sup>2</sup> *Katz v. United States*, 389 U.S. 347 (1967).

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

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

<sup>5</sup> FLA. CONST. art. I, s. 12.

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

<sup>7</sup> *Id.* and *supra*, n. 1.



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

### **Chapter 933, F.S., Search Warrants**

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

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

The grounds for the issuance of a search warrant include:

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

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

<sup>9</sup> Sections 933.01- 933.19, F.S.

<sup>10</sup> Section 933.06, F.S.

<sup>11</sup> Section 933.04, F.S.

<sup>12</sup> Section 933.07, F.S.

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

A search warrant may also be issued for the search for and seizure of “any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.”<sup>14</sup>

Section 933.18, F.S., limits the grounds for the issuance of a search warrant for a private dwelling to particular circumstances. No search warrant may be issued for a private dwelling under ch. 933, F.S., or any other law of the state unless:

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

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

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<sup>13</sup> Section 933.02(1)-(5), F.S.

<sup>14</sup> Section 933.02, F.S.

<sup>15</sup> Section 933.18, F.S.

<sup>16</sup> Section 933.07(1), F.S.

<sup>17</sup> Section 933.11, F.S.

<sup>18</sup> Section 933.12, F.S.

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

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

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

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

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

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<sup>19</sup> Section 934.02(3), F.S.

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

<sup>21</sup> Section 934.03(2)(a)2., F.S.

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

<sup>23</sup> Section 934.07(1), F.S.

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

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

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

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

### **Advancing Technology - Location Tracking**

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

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device<sup>27</sup> can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.<sup>28</sup>

### **Mobile Tracking Devices**

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

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

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<sup>25</sup> Section 934.09(3), F.S.

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

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

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

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

<sup>30</sup> Section 934.42(6), F.S.

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

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

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

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

### ***Cellular-Site Location Data***

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

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

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<sup>31</sup> Section 934.42(1)-(2), F.S.

<sup>32</sup> Section 934.42(3), F.S.

<sup>33</sup> Section 934.42(2), F.S.

<sup>34</sup> Section 934.42(3) and (4), F.S.

<sup>35</sup> Section 934.42(5), F.S.

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

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

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

<sup>41</sup> *Id.*

### ***GPS Location Data***

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

### **Microphone-Enabled Household Devices**

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Home<sup>45</sup> or Amazon Echo,<sup>46</sup> are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.<sup>47</sup>

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

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

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

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

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<sup>42</sup> *Id.*

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

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

<sup>45</sup> *Google Home*, Google Store, available at [https://store.google.com/product/google\\_home](https://store.google.com/product/google_home) (last viewed November 4, 2019).

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

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

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

<sup>49</sup> Section 934.02(7), F.S.

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

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

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<sup>50</sup> Section 934.02(12), F.S.

<sup>51</sup> Section 934.02(15), F.S.

<sup>52</sup> Section 934.02(14), F.S.

<sup>53</sup> Section 934.02(4), F.S.

<sup>54</sup> Section 934.02(17), F.S.

<sup>55</sup> Section 934.02(3), F.S.

<sup>56</sup> Section 934.02(6), F.S.

<sup>57</sup> Section 934.02(2), F.S.

<sup>58</sup> Section 934.02(19), F.S.

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

### **Prohibited Access to Stored Communications**

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

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

The penalties for this offense vary based on the specific intent and the number of offenses.<sup>61</sup> It is a first degree misdemeanor<sup>62</sup> if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.<sup>63</sup> Any subsequent offense with this intent is a third degree felony.<sup>64</sup> If the person did not have the above-described intent then the above-described offense is a second degree misdemeanor.<sup>65</sup>

## **III. Effect of Proposed Changes:**

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

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

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

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<sup>59</sup> Section 934.02(1), F.S.

<sup>60</sup> Section 934.21(1), F.S.

<sup>61</sup> See s. 934.21(2), F.S.

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

<sup>63</sup> Section 934.21(2), F.S.

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

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



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

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

The bill also creates new legislative findings:

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

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

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

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

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

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

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

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

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

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

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

### **Penalties for Accessing Stored Communications (Section 10)**

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

- By the provider<sup>66</sup> or user<sup>67</sup> of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- In ss. 934.09, 934.23, or 934.24, F.S.;
- Under ch. 933, F.S.;<sup>68</sup> or
- For legitimate business purposes that do not identify the user.

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<sup>66</sup> Section 934.21(3)(a), F.S.

<sup>67</sup> Section 934.21(3)(b), F.S.

<sup>68</sup> Chapter 933, F.S., authorizes search and inspection warrants.

### **Location Tracking (Section 11)**

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

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

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

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

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

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

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

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

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

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

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

The bill is effective July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

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

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

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

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

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

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

**B. Amendments:**

None.

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

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



158654

LEGISLATIVE ACTION

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

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

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

Between lines 256 and 257  
insert:

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



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11 (a) Any wire or oral communication;  
12 (b) Any communication made through a tone-only paging  
13 device; or  
14 ~~(c) Any communication from an electronic or mechanical~~  
15 ~~device which permits the tracking of the movement of a person or~~  
16 ~~an object; or~~  
17 (c)-(d) Electronic funds transfer information stored by a  
18 financial institution in a communications system used for the  
19 electronic storage and transfer of funds.  
20  
21 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====  
22 And the directory clause is amended as follows:  
23 Delete line 246  
24 and insert:  
25 Section 4. Subsections (2) and (12) of section 934.02,  
26 Florida  
27  
28 ===== T I T L E A M E N D M E N T =====  
29 And the title is amended as follows:  
30 Delete line 15  
31 and insert:  
32 terms "oral communication" and "electronic  
33 communication"; defining the terms

By Senator Brandes

24-00120-20

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1 A bill to be entitled  
 2 An act relating to searches of cellular phones and  
 3 other electronic devices; amending s. 933.02, F.S.;  
 4 expanding the grounds for issuance of a search warrant  
 5 to include content held within a cellular phone,  
 6 portable electronic communication device, or  
 7 microphone-enabled household device when such content  
 8 constitutes evidence relevant to proving that a felony  
 9 has been committed; amending s. 933.04, F.S.; adopting  
 10 the constitutional protection against unreasonable  
 11 interception of private communications by any means  
 12 for purposes of obtaining a search warrant; amending  
 13 s. 934.01, F.S.; revising and providing legislative  
 14 findings; amending s. 934.02, F.S.; redefining the  
 15 term "oral communication"; defining the terms  
 16 "microphone-enabled household device" and "portable  
 17 electronic communication device"; amending s. 934.03,  
 18 F.S.; authorizing specified persons to provide  
 19 information, facilities, or technical assistance to a  
 20 person authorized by law to intercept wire, oral, or  
 21 electronic communications if such person has been  
 22 provided with a search warrant issued by a court of  
 23 competent jurisdiction; prohibiting specified persons  
 24 from disclosing the existence of any interception of a  
 25 wire, oral, or electronic communication with respect  
 26 to which the person has been served with a search  
 27 warrant, rather than a court order; amending s.  
 28 934.06, F.S.; prohibiting the use of certain  
 29 communication content in any trial, hearing or other

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

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

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59 provisions constitutes a complete defense against  
 60 specified actions; amending s. 934.21, F.S.; revising  
 61 the exceptions to conduct that constitutes unlawful  
 62 access to stored communications; conforming a  
 63 provision to changes made by the act; amending s.  
 64 934.42, F.S.; defining the terms "mobile tracking  
 65 device," "real-time location tracking," and  
 66 "historical location data"; authorizing an  
 67 investigative or law enforcement officer to apply to a  
 68 judge of competent jurisdiction for a search warrant,  
 69 rather than an order, authorizing real-time location  
 70 tracking or acquisition of historical location data;  
 71 requiring an application for a search warrant to  
 72 include a statement setting forth a reasonable period  
 73 of time the mobile tracking device may be used or the  
 74 location data may be obtained in real time, not to  
 75 exceed a specified limit; authorizing a court to grant  
 76 extensions, for good cause, that do not individually  
 77 exceed a specified limit; requiring an applicant  
 78 seeking historical location data to specify a date  
 79 range for the data sought; deleting a provision  
 80 requiring a certification to be included in the  
 81 application; requiring the court, if it finds probable  
 82 cause and that the application contains the required  
 83 statements, to grant a search warrant; specifying that  
 84 the search warrant may authorize real-time location  
 85 tracking or acquisition of historical location data;  
 86 providing that the search warrant may authorize the  
 87 tracking as specified; requiring the search warrant to

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88 command the investigative or law enforcement officer  
 89 to complete any initiation of the location tracking or  
 90 execution of the search warrant for historical  
 91 location data authorized by the search warrant within  
 92 a certain timeframe; providing requirements for the  
 93 return of the search warrant to the judge and for  
 94 service of a copy of the search warrant on the person  
 95 who was tracked or whose property was tracked;  
 96 providing requirements for returning and serving a  
 97 search warrant authorizing the acquisition of  
 98 historical location data; authorizing a court, for  
 99 good cause, to postpone the notice requirement for a  
 100 specified time period; requiring that the standards  
 101 established by Florida courts for the installation,  
 102 use, or monitoring of mobile tracking devices and the  
 103 acquisition of location data apply to the  
 104 installation, use, or monitoring of any devices and  
 105 the acquisition of location data as authorized by  
 106 certain provisions; deleting the definition of  
 107 "tracking device"; authorizing any investigative or  
 108 law enforcement officer who is specially designated by  
 109 certain persons and who makes specified determinations  
 110 to engage in real-time location tracking if a search  
 111 warrant is obtained, as specified, after the tracking  
 112 has occurred or begins to occur; providing  
 113 requirements for engaging in real-time location  
 114 tracking; specifying when real-time location tracking  
 115 must terminate; reenacting s. 934.22(2)(b), F.S.,  
 116 relating to voluntary disclosure of customer

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

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

134

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

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

140 (1) When the property shall have been stolen or embezzled  
 141 in violation of law;~~†~~

142 (2) When any property shall have been used:

143 (a) As a means to commit any crime;

144 (b) In connection with gambling, gambling implements and  
 145 appliances; or

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146 (c) In violation of s. 847.011 or other laws in reference  
 147 to obscene prints and literature.~~†~~

148 (3) When any property, or when content held within a  
 149 cellular phone, a portable electronic communication device as  
 150 defined in s. 934.02, or a microphone-enabled household device  
 151 as defined in s. 934.02, constitutes evidence relevant to  
 152 proving that a felony has been committed.~~†~~

153 (4) When any property is being held or possessed:

154 (a) In violation of any of the laws prohibiting the  
 155 manufacture, sale, and transportation of intoxicating liquors;

156 (b) In violation of the fish and game laws;

157 (c) In violation of the laws relative to food and drug; or

158 (d) In violation of the laws relative to citrus disease  
 159 pursuant to s. 581.184.~~†~~~~—or~~

160 (5) When the laws in relation to cruelty to animals, as  
 161 provided in chapter 828, have been or are violated in any  
 162 particular building or place.

163

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

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

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

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place to be searched and the person and thing to be seized.

Section 3. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, ~~and oral, and electronic~~ communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, ~~and oral, and electronic~~ communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, ~~and oral, and electronic~~ communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire, ~~or~~ oral, or electronic communications when none of the parties to the communication has consented to the

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interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire, ~~and oral, and electronic~~ communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes the subjective expectation of privacy in real-time cell-site location data, real-time precise global positioning system location data, and historical precise global positioning system location data which society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a search warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication

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device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes the use of household electronic devices, including microphone-enabled household devices, is growing rapidly. These devices often contain microphones that listen for and respond to environmental cues. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in the device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in their own homes.

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

934.02 Definitions.—As used in this chapter:

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

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

(a) Is capable of connecting to the Internet, directly or indirectly, or to another connected device;

(b) Is capable of creating, receiving, accessing,

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processing, or storing electronic data or communications;

(c) Communicates with, by any means, another entity or individual; and

(d) Contains a microphone designed to listen for and respond to environmental cues.

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

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

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

(2)(a)1. It is lawful under this section and ss. 934.04-934.09 for an operator of a switchboard, or an officer,

employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

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

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

a. ~~A court order directing such assistance signed by the authorizing judge, or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The central abuse hotline operated pursuant to s. 39.201

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the

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

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

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

2. To intercept any radio communication which is transmitted:

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

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

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

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

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

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

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

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

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

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

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

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

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

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1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

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

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

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

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

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

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

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

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

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

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

934.07 Authorization for interception of wire, oral, or

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electronic communications.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the failure to obtain such results.

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

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

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

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

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

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

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

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

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

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

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

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

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

655  
656 A search warrant ~~An order~~ authorizing the interception of a  
657 wire, oral, or electronic communication shall, upon the request  
658 of the applicant, direct that a provider of wire or electronic  
659 communication service, landlord, custodian, or other person  
660 shall furnish the applicant forthwith all information,  
661 facilities, and technical assistance necessary to accomplish the  
662 interception unobtrusively and with a minimum of interference  
663 with the services that such service provider, landlord,  
664 custodian, or person is according the person whose  
665 communications are to be intercepted. The obligation of a  
666 provider of wire, oral, or electronic communication service  
667 under such a search warrant ~~an order~~ may include, but is not

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

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

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

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

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

718 (a) An emergency exists that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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not be prejudiced by the delay in receiving such information.

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

1. The communication was unlawfully intercepted;
2. The search warrant order of authorization or approval under which it was intercepted is insufficient on its face; or
3. The interception was not made in conformity with the search warrant order of authorization or approval.

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

1. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion.
2. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 934.03-934.09 and are not admissible as evidence.
3. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

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

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

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

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

(a) In the case of an application with respect to the interception of an oral communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.

3. The judge finds that such specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney

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General, the statewide prosecutor, or a state attorney.

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility or that the person whose communications are to be intercepted has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

3. The judge finds that such showing has been adequately made.

4. The search warrant order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

~~Consistent with this paragraph, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the order is being sought.~~

(12) If an interception of a communication is to be carried out pursuant to subsection (11), such interception may not begin

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until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception search warrant order. A provider of wire or electronic communications service that has received a search warrant ~~an order~~ as provided under paragraph (11)(b) may petition the court to modify or quash the search warrant order on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

(13) Consistent with this section, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the search warrant is being sought.

Section 9. Subsection (2) of section 934.10, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

934.10 Civil remedies.—

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such

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communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate, including:

(a) Preliminary or equitable or declaratory relief as may be appropriate;

(b) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(c) Punitive damages; and

(d) A reasonable attorney's fee and other litigation costs reasonably incurred.

(2) A good faith reliance on any of the following constitutes a complete defense to any civil, criminal, or administrative action arising out of such conduct under the laws of this state:

(a) A search warrant court order, subpoena, or legislative authorization as provided for in ss. 934.03-934.09;;

(b) A request of an investigative or law enforcement officer under s. 934.09(7); or

(c) A good faith determination that Florida or federal law, other than 18 U.S.C. s. 2511(2) (d), authorized ~~permitted~~ the conduct complained of

~~shall constitute a complete defense to any civil or criminal, or administrative action arising out of such conduct under the laws of this state.~~

Section 10. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications;

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penalties.-

(1) Except as provided in subsection (3), whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (2).

(2) The punishment for an offense under subsection (1) is as follows:

(a) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:

1. In the case of a first offense under this subsection, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, commits ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Subsection (1) does not apply with respect to conduct authorized:



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(a) By the person or entity providing a wire, oral, or electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices;

(b) By a user of a wire, oral, or electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09, s. 934.23, or s. 934.24;

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

Section 11. Section 934.42, Florida Statutes, is amended to read:

934.42 Mobile tracking device and location tracking authorization.—

(1) As used in this section, the term:

(a) "Mobile tracking device" means an electronic or mechanical device that tracks the movement of a person or an object.

(b) "Real-time location tracking" means the:

1. Installation and use of a mobile tracking device on the object to be tracked;

2. Acquisition of real-time cell-site location data; or

3. Acquisition of real-time precise global positioning system location data.

(c) "Historical location data" means historical precise

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global positioning system location data in the possession of a provider.

~~(2)(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a search warrant ~~an order~~ authorizing or approving real-time location tracking or the acquisition of historical location data in the possession of the provider ~~the installation and use of a mobile tracking device~~.

~~(3)(2)~~ An application under subsection (2) ~~(1)~~ of this section must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time the mobile tracking device may be used or the location data may be obtained in real time, not to exceed 45 days from the date on which the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each. When seeking historical location data, the applicant must specify a date range for the data sought ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.~~

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement as to whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

~~(4)(3)~~ Upon application made as provided under subsection

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(3) ~~(2)~~, the court, if it finds probable cause that the  
~~certification~~ and finds that the statements required by  
 subsection (3) ~~(2)~~ have been made in the application, must grant  
a search warrant shall enter an ex parte order authorizing real-  
time location tracking or the acquisition of historical location  
data the installation and use of a mobile tracking device. Such  
search warrant order may authorize the location tracking use of  
~~the device~~ within the jurisdiction of the court and outside that  
 jurisdiction but within the State of Florida if the location  
tracking device is initiated installed within the jurisdiction  
 of the court. The search warrant must command the investigative  
or law enforcement officer to complete any initiation of the  
location tracking or execution of the search warrant for  
historical location data authorized by the search warrant within  
a specified period of time not to exceed 10 calendar days.

(5) (4) A court may not require greater specificity or  
 additional information beyond that which is required by law and  
 this section as a requisite for issuing a search warrant an  
~~order~~.

(6) Within 10 days after the time period specified in  
paragraph (3) (b) has ended, the investigative or law enforcement  
officer executing a search warrant must return the search  
warrant to the issuing judge. When the search warrant is  
authorizing the acquisition of historical location data, the  
investigative or law enforcement officer executing the search  
warrant must return the search warrant to the issuing judge  
within 10 days after receipt of the records. The investigative  
or law enforcement officer may do so by reliable electronic  
means.

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(7) Within 10 days after the time period specified in  
paragraph (3) (b) has ended, the investigative or law enforcement  
officer executing a search warrant must serve a copy of the  
search warrant on the person who, or whose property, was  
tracked. When the search warrant is authorizing the acquisition  
of historical location data, the investigative or law  
enforcement officer executing the search warrant must serve a  
copy of the search warrant on the person whose data was obtained  
within 10 days after receipt of the records. Service may be  
accomplished by delivering a copy to the person who, or whose  
property, was tracked or whose data was obtained or by leaving a  
copy at the person's residence or usual place of abode with an  
individual of suitable age and discretion who resides at that  
location and by mailing a copy to the person's last known  
address. Upon a showing of good cause to a court of competent  
jurisdiction, the court may grant one or more postponements of  
this notice for a period of 90 days each.

(8) (5) The standards established by Florida courts and the  
United States Supreme Court for the installation, use, or and  
monitoring of mobile tracking devices and the acquisition of  
location data shall apply to the installation, use, or  
monitoring and use of any device and the acquisition of location  
data as authorized by this section.

~~(6) As used in this section, a "tracking device" means an~~  
~~electronic or mechanical device which permits the tracking of~~  
~~the movement of a person or object.~~

(9) (a) Notwithstanding any other provision of this chapter,  
any investigative or law enforcement officer specially  
designated by the Governor, the Attorney General, the statewide

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1103 prosecutor, or a state attorney acting pursuant to this chapter  
 1104 who reasonably determines that:  
 1105 1. An emergency exists which:  
 1106 a. Involves immediate danger of death or serious physical  
 1107 injury to any person or the danger of escape of a prisoner; and  
 1108 b. Requires real-time location tracking before a search  
 1109 warrant authorizing such tracking can, with due diligence, be  
 1110 obtained; and  
 1111 2. There are grounds upon which a search warrant could be  
 1112 issued under this chapter to authorize such tracking,  
 1113  
 1114 may engage in real-time location tracking if, within 48 hours  
 1115 after the tracking has occurred or begins to occur, a search  
 1116 warrant approving the tracking is issued in accordance with this  
 1117 section.  
 1118 (b) In the absence of an authorizing search warrant, such  
 1119 tracking must immediately terminate when the information sought  
 1120 is obtained, when the application for the search warrant is  
 1121 denied, or when 48 hours have lapsed since the tracking began,  
 1122 whichever is earlier.  
 1123 Section 12. For the purpose of incorporating the amendments  
 1124 made by this act to sections 934.03 and 934.07, Florida  
 1125 Statutes, in a reference thereto, paragraph (b) of subsection  
 1126 (2) of section 934.22, Florida Statutes, is reenacted to read:  
 1127 934.22 Voluntary disclosure of customer communications or  
 1128 records.—  
 1129 (2) A provider described in subsection (1) may divulge the  
 1130 contents of a communication:  
 1131 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1132 or s. 934.23.  
 1133 Section 13. For the purpose of incorporating the amendments  
 1134 made by this act to sections 934.09 and 934.21, Florida  
 1135 Statutes, in references thereto, subsections (1) and (4) of  
 1136 section 934.27, Florida Statutes, are reenacted to read:  
 1137 934.27 Civil action: relief; damages; defenses.—  
 1138 (1) Except as provided in s. 934.23(5), any provider of  
 1139 electronic communication service, or subscriber or customer  
 1140 thereof, aggrieved by any violation of ss. 934.21-934.28 in  
 1141 which the conduct constituting the violation is engaged in with  
 1142 a knowing or intentional state of mind may, in a civil action,  
 1143 recover from the person or entity which engaged in that  
 1144 violation such relief as is appropriate.  
 1145 (4) A good faith reliance on any of the following is a  
 1146 complete defense to any civil or criminal action brought under  
 1147 ss. 934.21-934.28:  
 1148 (a) A court warrant or order, a subpoena, or a statutory  
 1149 authorization, including, but not limited to, a request of an  
 1150 investigative or law enforcement officer to preserve records or  
 1151 other evidence, as provided in s. 934.23(7).  
 1152 (b) A request of an investigative or law enforcement  
 1153 officer under s. 934.09(7).  
 1154 (c) A good faith determination that s. 934.03(3) permitted  
 1155 the conduct complained of.  
 1156 Section 14. For the purpose of incorporating the amendment  
 1157 made by this act to section 934.21, Florida Statutes, in a  
 1158 reference thereto, subsection (6) of section 934.23, Florida  
 1159 Statutes, is reenacted to read:  
 1160 934.23 Required disclosure of customer communications or

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1161 records.-

1162 (6) No cause of action shall lie in any court against any  
 1163 provider of wire or electronic communication service, its  
 1164 officers, employees, agents, or other specified persons for  
 1165 providing information, facilities, or assistance in accordance  
 1166 with the terms of a court order, warrant, subpoena, or  
 1167 certification under ss. 934.21-934.28.

1168 Section 15. For the purpose of incorporating the amendment  
 1169 made by this act to section 934.21, Florida Statutes, in  
 1170 references thereto, subsections (6) and (7) of section 934.24,  
 1171 Florida Statutes, are reenacted to read:

1172 934.24 Backup preservation; customer notification;  
 1173 challenges by customer.-

1174 (6) Within 14 days after notice by the investigative or law  
 1175 enforcement officer to the subscriber or customer under  
 1176 subsection (2), the subscriber or customer may file a motion to  
 1177 quash the subpoena or vacate the court order seeking contents of  
 1178 electronic communications, with copies served upon the  
 1179 investigative or law enforcement officer and with written notice  
 1180 of such challenge to the service provider. A motion to vacate a  
 1181 court order must be filed in the court which issued the order. A  
 1182 motion to quash a subpoena must be filed in the circuit court in  
 1183 the circuit from which the subpoena issued. Such motion or  
 1184 application must contain an affidavit or sworn statement:

1185 (a) Stating that the applicant is a subscriber or customer  
 1186 of the service from which the contents of electronic

1187 communications maintained for her or him have been sought, and

1188 (b) Stating the applicant's reasons for believing that the  
 1189 records sought are not relevant to a legitimate law enforcement

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1190 inquiry or that there has not been substantial compliance with  
 1191 the provisions of ss. 934.21-934.28 in some other respect.

1192 (7) Except as otherwise obtained under paragraph (3)(a),  
 1193 service must be made under this section upon an investigative or  
 1194 law enforcement officer by delivering or mailing by registered  
 1195 or certified mail a copy of the papers to the person, office, or  
 1196 department specified in the notice which the subscriber or  
 1197 customer has received pursuant to ss. 934.21-934.28. For the  
 1198 purposes of this subsection, the term "delivering" shall be  
 1199 construed in accordance with the definition of "delivery" as  
 1200 provided in Rule 1.080, Florida Rules of Civil Procedure.

1201 Section 16. For the purpose of incorporating the amendment  
 1202 made by this act to section 934.21, Florida Statutes, in a  
 1203 reference thereto, subsection (5) of section 934.25, Florida  
 1204 Statutes, is reenacted to read:

1205 934.25 Delayed notice.-

1206 (5) Upon the expiration of the period of delay of  
 1207 notification under subsection (1) or subsection (4), the  
 1208 investigative or law enforcement officer must serve upon or  
 1209 deliver by registered or first-class mail to the subscriber or  
 1210 customer a copy of the process or request together with notice  
 1211 which:

1212 (a) States with reasonable specificity the nature of the  
 1213 law enforcement inquiry, and

1214 (b) Informs the subscriber or customer:

1215 1. That information maintained for such subscriber or  
 1216 customer by the service provider named in the process or request  
 1217 was supplied to or requested by the investigative or law  
 1218 enforcement officer and the date on which such information was

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1219 so supplied or requested.

1220 2. That notification of such subscriber or customer was  
1221 delayed.

1222 3. What investigative or law enforcement officer or what  
1223 court made the certification or determination pursuant to which  
1224 that delay was made.

1225 4. Which provision of ss. 934.21-934.28 allowed such delay.

1226 Section 17. For the purpose of incorporating the amendment  
1227 made by this act to section 934.21, Florida Statutes, in a  
1228 reference thereto, section 934.28, Florida Statutes, is  
1229 reenacted to read:

1230 934.28 Exclusivity of remedies and sanctions.—The remedies  
1231 and sanctions described in ss. 934.21-934.27 are the only  
1232 judicial remedies and sanctions for violation of those sections.

1233 Section 18. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19  
Meeting Date

470  
Bill Number (if applicable)

Topic Searches of Cellular Phones ...

158654  
Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 307 S. Monroe St. Ste 401

Phone (850) 606-1000

Tallahassee FL 32301  
City State Zip

Email andy.thomas@fipd2.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 12, 2019

*Meeting Date*

470

*Bill Number (if applicable)*

Topic Searches of Cellular Phones

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19

Meeting Date

470

Bill Number (if applicable)

Topic Searches of Cellular Phones and Other Electronic Devices

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

*Meeting Date*

SB 470

*Bill Number (if applicable)*

Topic Searches of Cellular Phones and other Electronic Devices

*Amendment Barcode (if applicable)*

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

*Street*

Tallahassee

FL

32317

*City*

*State*

*Zip*

Email garywhester@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

Meeting Date

470

Bill Number (if applicable)

Topic Searches

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Street

City

State

Zip

Tallahassee, FL 32301

Phone (850) 681-0029

Email jorge@flapamuse.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FACDL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

---

I respectfully request that **Senate Bill #470**, relating to **Searches of Cellular Phones and Other Electronic Devices**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24



# 2020 FDLE LEGISLATIVE BILL ANALYSIS



## BILL INFORMATION

<b>BILL NUMBER:</b>	SB 470
<b>BILL TITLE:</b>	Searches of Cellular Phones and Other Electronic Devices
<b>BILL SPONSOR:</b>	Senator Brandes
<b>EFFECTIVE DATE:</b>	July 1, 2020

## COMMITTEES OF REFERENCE

1) Criminal Justice
2) Judiciary
3) Rules
4)
5)

## PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	SB210
<b>SPONSOR:</b>	Brandes
<b>YEAR:</b>	2019
<b>LAST ACTION:</b>	Died in committee

## CURRENT COMMITTEE

Criminal Justice

## SIMILAR BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

## IDENTICAL BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

## Is this bill part of an agency package?

No

## BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	October 10, 2019
<b>LEAD AGENCY ANALYST:</b>	Lori Mizell
<b>ADDITIONAL ANALYST(S):</b>	Will Bullough, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jeff Dambly, Jason Jones
<b>FISCAL ANALYST:</b>	Cynthia Barr

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; prohibiting the use of certain communication content in any trial, hearing or other proceeding which was obtained without a specified warrant, etc.

### 2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Currently by statute, law enforcement may apply for an order authorizing the interception of wire, oral, or electronic communication but a warrant is required by case law. Law enforcement may also apply for an order authorizing the installation of a mobile tracking device. Law enforcement is not required to provide notification to the subject of a criminal investigation when an order to install a mobile tracking device has been obtained.
2. **EFFECT OF THE BILL:** Requires law enforcement to obtain a warrant instead of an order to intercept wire, oral or electronic communication. The bill changes the substantive requirements to obtain the courts' authorization and raises the burden of proof to the level of probable cause. Adds several new requirements when law enforcement seeks authorization to install a mobile tracking device or obtain location information:
  - A mobile tracking device may not be used for more than 45 days without an extension by the court.
  - A mobile tracking device must be installed by law enforcement within a specified timeframe after issuance of a warrant, not to exceed 10 calendar days.
  - Within 10 days after the use of the tracking device has ended, law enforcement must return the warrant to the issuing judge and serve a copy of the warrant to the tracked subject. The court may delay this notice for 90 days.
  - There are also provisions which allow the installation of a mobile tracking device in emergencies for 48 hours prior to an authorizing warrant.
  - Lines 1003 – 1017 expand the definitions found in s. 934.42, FS. The definitions are more inclusive and now require a warrant for information such as historical data that is currently available by subpoena.

Provides criminal penalties if a person intentionally and unlawfully accesses stored communications date or location information without authorization.

### 3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☒

If yes, explain:	
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

### 4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

### 5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	
Date Due:	

Bill Section Number:	
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**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒**

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

### FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒**

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☒**

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☒**

Revenues:	
Expenditures:	

Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☒**

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

### TECHNOLOGY IMPACT

**1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒**

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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### FEDERAL IMPACT

**1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒**

If yes, describe the anticipated impact including any fiscal impact.	
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### LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	<ul style="list-style-type: none"> <li>The use of the word "search warrant" in the bill may be problematic without adding a specific definition for the term. In the absence of a "specialized" definition of the term "search warrant" for purposes of Chapter 934, FS, it would likely be argued that provisions of Chapter 933, FS, Florida's primary law dealing with search warrants, also apply on top of the rigorous order process already provided by Chapter 934, FS. FDLE respectfully suggests returning the term "order" to section where no change has been made to the requirements to obtain an order. The order requirements in Chapter 934, FS, are already extensive to include probable cause and exhaustion of remedies. Changing the terminology to "search warrant" does not add any additional burden of proof to law enforcement, but instead adds additional procedural hurdles in cases where law enforcement has already met the appropriate burden of proof.</li> <li>Lines 1074-1088 require law enforcement to serve a copy of the search warrant to the person whose property was tracked. In doing so, this also has the likelihood of compromising an ongoing investigation through early disclosure. While lines 1088-1090 provide for a potential postponement of notification through court order, these requirements still create the possibility of damaging notification where it does not otherwise currently exist. Additionally, depending on the length of the investigation, this may become a cumbersome process to seek continuous renewals. Providing notification to a subject of a criminal</li> </ul>
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	<p>investigation when using technical surveillance against them can cause investigative limitations, specifically regarding long-term investigations. Additionally, criminals would be informed of law enforcement investigative techniques used to apprehend and convict them and may begin using alternative methods to perform crimes. This concern also exists with the return of the warrant to the issuing judge. There is no mechanism to delay return of the warrant so the warrant is on file in the clerk's office</p>
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### ADDITIONAL COMMENTS

- The bill eliminates law enforcement's ability to obtain content older than 180 days via a subpoena or court order. By eliminating the ability to seek content older than 180 days via a subpoena or court order, the bill removes a tool currently available to law enforcement at the beginning of an investigation when the evidence may not yet reach the level of probable cause required to obtain a search warrant. Access to content older than 180 days may help law enforcement obtain enough information to establish probable cause and obtain a search warrant for newer content.

While FDLE does not support this change, the department requests if it were to stay in the bill in its current form, certain crimes would still allow for the use of a subpoena or court order for content older than 180 days. This section of the bill would need to be offense-specific, rather than for exigent circumstances due to the fact the exigent circumstance exceptions make the assumption that there is probable cause, but that there is not enough time to obtain the required warrant. In creating the list of offenses below, FDLE attempted to limit it to crimes that involve threats of future violence:

- 775.30. Terrorism; defined; penalties;
- 775.32. Use of military-type training provided by a designated foreign terrorist organization;
- 775.33. Providing material support or resources for terrorism or to terrorist organizations;
- 775.34. Membership in a designated foreign terrorist organization;
- 775.35. Aggroterrorism; penalties;
- 784.048. Stalking; definitions; penalties (mostly concerned with Aggravated Stalking and Cyberstalking);
- 790.163. False report concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner; penalty;
- 836.05. Threats; extortion;
- 836.10. Written threats to kill or do bodily injury; punishment; and
- 836.12. Threats.
- All electronics and app providers, email services and essentially anything with an electronic presence falls under this bill. If it connects to the Internet or to a cell service, it tracks and collects data on users, including most vehicles beginning in 2008, newer Xbox devices, PlayStations, children's toys, Fitbits, etc. This will have a large impact on future legal process. Bill definitions are very expansive and may have some unintended consequences.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 510

INTRODUCER: Senator Wright

SUBJECT: Bail Pending Appellate Review

DATE: November 8, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	<b>Favorable</b>
2. _____	_____	JU	_____
3. _____	_____	RC	_____

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## **I. Summary:**

SB 510 amends s. 903.133, F.S., to prohibit bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

Section 903.133, F.S., prohibits bail on appeal for any person adjudicated guilty of a first degree felony under ss. 782.04(2) or (3), 787.01, 794.011(4), 806.01, 893.13, and 893.135, F.S.

This bill is effective October 1, 2020.

## **II. Present Situation:**

Bail includes any form of pretrial release, but frequently requires a monetary or cash component.<sup>1</sup> Bail on appeal may be set post-conviction if a defendant appeals the conviction. Bail is set by the court to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.<sup>2</sup>

### **Bail on Appeal**

Bail on appeal is a separate undertaking than the original bail issued pre-trial. If a defendant is convicted and the case is appealed, the court may issue bail on appeal, because bail issued at first appearance may not be continued for appeal. A new bail is considered to reflect the increased risk and longer time considerations.<sup>3</sup> A defendant may be granted bail on appeal at the discretion of the trial court.<sup>4</sup> However, defendants who are convicted of capital felony offenses are not

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<sup>1</sup> Section 903.11, F.S.

<sup>2</sup> Section 903.046(1), F.S.

<sup>3</sup> Section 903.132(3), F.S.

<sup>4</sup> *Greene v. State*, 238 So. 2d 296, 298 (Fla. 1970).

eligible for bail on appeal.<sup>5</sup> If a defendant is denied bail on appeal, he or she has a right to appeal the denial.<sup>6</sup>

The Legislature has prohibited certain crimes from being eligible to receive bail on appeal. Section 903.132, F.S., provides that a defendant may be granted bail on appeal from a conviction of a felony only if the defendant establishes that the appeal is in good faith, is fairly debatable, and not frivolous.

A defendant may not receive bail on appeal if probable cause has been found for another pending felony, or if the defendant has a previous felony conviction, and:

- The commission of the previous conviction occurred before the crime that is being appealed; and
- The defendant's civil rights have not been restored.<sup>7</sup>

Section 903.133, F.S., prohibits bail on appeal for defendants convicted of specified crimes. Any defendant adjudicated guilty of a first degree felony of:

- Second degree murder or felony murder (s. 782.04(2) or (3), F.S.).
- Kidnapping (s. 787.01, F.S.).
- Sexual battery (s. 794.011(4), F.S.).
- Arson (s. 806.01, F.S.).
- Sale, manufacture, deliver or possess with intent to sell a controlled substance (s. 893.13, F.S.).
- Drug trafficking (s. 893.135, F.S.).

If a defendant commits and is convicted of a separate felony offense while free on bail on appeal, that bail must be revoked.<sup>8</sup>

### **Florida's Sexual Predator and Sexual Offender Registration Laws**

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.<sup>9</sup> The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,<sup>10</sup> and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

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<sup>5</sup> *Rowe v. State*, 417 So. 2d 981, 983 (Fla. 1982), (holding that Fla. R. Crim. Pro. 3.961 prohibits the granting of bail on appeal for a defendant convicted of a capital offense and sentenced to life in prison).

<sup>6</sup> Section 903.132(2), F.S.

<sup>7</sup> Section 903.132(1), F.S.

<sup>8</sup> Section 903.131, F.S.

<sup>9</sup> Sections 775.21 and 943.0435, F.S.

<sup>10</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;<sup>11</sup>
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.<sup>12</sup>

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.<sup>13</sup>

Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);<sup>14</sup>
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the Internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the Internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);

<sup>11</sup> Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

<sup>12</sup> Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

<sup>13</sup> Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

<sup>14</sup> However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor.

- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.<sup>15</sup> Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

### **III. Effect of Proposed Changes:**

The bill amends s. 903.133, F.S., to prohibit bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

This bill is effective October 1, 2020.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None identified.

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<sup>15</sup> The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Nov. 5, 2019). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Nov. 5, 2019).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Corrections may see a positive indeterminate prison bed impact due to defendants' ineligibility to receive bail on appeal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 903.133, F.S.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Wright

14-00828-20

2020510\_\_

A bill to be entitled

An act relating to bail pending appellate review;  
amending s. 903.133, F.S.; prohibiting a court from  
granting bail to specified offenders pending review  
following a conviction for an offense requiring sexual  
offender or sexual predator registration if the victim  
was a minor; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 903.133, Florida Statutes, is amended to  
read:

903.133 Bail on appeal; prohibited for certain felony  
convictions.—Notwithstanding the provisions of s. 903.132, no  
person shall be admitted to bail pending review either by  
posttrial motion or appeal if he or she was adjudged guilty of:

(1) A felony of the first degree for a violation of s.  
782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s.  
893.13, or s. 893.135; ~~or adjudged guilty of~~

(2) A violation of s. 794.011(2) or (3); or

(3) Any other offense requiring sexual offender  
registration under s. 943.0435(1)(h) or sexual predator  
registration under s. 775.21(4) when, at the time of the  
offense, the offender was 18 years of age or older and the  
victim was a minor, shall be admitted to bail pending review  
either by posttrial motion or appeal.

Section 2. This act shall take effect October 1, 2020.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 12, 2019

*Meeting Date*

510

*Bill Number (if applicable)*

Topic Bail Pending Appellate Review

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs and Space, *Chair*  
Children, Families, and Elder Affairs  
Commerce and Tourism  
Environment and Natural Resources

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR TOM A. WRIGHT**  
14th District

November 1, 2019

The Honorable Keith Perry  
316, Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 510 – Bail Pending Appellate Review

Dear Chair Perry:

Senate Bill 510, relating to Bail Pending Appellate Review has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 510 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Lauren Jones, Staff Director of the Committee on Criminal Justice  
Sue Arnold, Administrative Assistant of the Committee on Criminal Justice

### REPLY TO:

□ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630  
□ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 520

INTRODUCER: Senator Gruters

SUBJECT: Drones

DATE: November 8, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Favorable</b>
2.			IS	
3.			RC	

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## **I. Summary:**

SB 520 expands the possibilities for drone use by law enforcement agencies, fire departments, state agencies, and political subdivisions.

The bill creates additional exceptions for law enforcement agency drone use found in s. 934.50(4), F.S. The new exceptions will allow law enforcement agencies to use drones to:

- Gain an aerial perspective of a crowd of 50 or more persons.
- Assist with traffic management, except that the agency may not issue a traffic infraction based on images or video captured by a drone.
- Facilitate evidence collection at a crime scene or traffic crash scene.

Under the provisions of the bill, state agencies and political subdivisions are authorized to use drones for damage assessment due to a flood, wildfire, or natural disaster, or for vegetation and wildlife management purposes on publicly owned land or water. The bill also allows certified fire department personnel to use drones to perform tasks within the scope of their certification.

The bill is effective July 1, 2020.

## **II. Present Situation:**

A drone, also called Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and

- Can carry a lethal or nonlethal payload.<sup>1</sup>

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.<sup>2</sup> They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.<sup>3</sup> Drones can be equipped with infrared cameras,<sup>4</sup> and "LADAR" (laser radar).<sup>5</sup> In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.<sup>6</sup>

### Federal Aviation Authority

In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.<sup>7</sup> The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.<sup>8</sup>

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.<sup>9</sup> The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver

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<sup>1</sup> Section 934.50(2), F.S.

<sup>2</sup> 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

<sup>3</sup> *Id.*

<sup>4</sup> Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf) (last viewed November 6, 2019). Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. *Best Infrared Drones (Buying Guide)*, Spire Drones, available at <https://buythebestdrone.com/best-infrared-drones/> (last viewed November 6, 2019).

<sup>5</sup> The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-lidar*, available at <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last viewed November 6, 2019).

<sup>6</sup> Popular Science, Clay Dillow, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, available at [pops.ci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind](http://pops.ci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind) (last viewed November 6, 2019). See also PoliceOne.com, 2017 Guide to Emerging Technologies, Val Van Brocklin, *Facial recognition technology and a 'reasonable expectation of privacy'*, May 16, 2017, available at <https://www.policeone.com/emerging-tech-guide/articles/facial-recognition-technology-and-a-reasonable-expectation-of-privacy-cxdrWsBRCu8Dieb/> (last viewed November 6, 2019).

<sup>7</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf) (last viewed November 6, 2019).

<sup>8</sup> 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

<sup>9</sup> *Id.*

mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.<sup>10</sup>

### ***FAA Drone Airspace Restrictions***

The FAA has designated generally restricted airspace including drone flight around and over sports stadiums and wildfires at specified times or under specified conditions. Drone operators must educate themselves on these restrictions prior to flying.<sup>11</sup>

### ***FAA Drone Operational Restrictions***

The following are among the operational restrictions in the 2016 FAA regulation:

- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle;<sup>12</sup>
- Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure; and
- Daylight-only operations or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.<sup>13</sup>

Both the Lakeland Police Department and the Polk County Sheriff's Office have obtained waivers of the daylight-only operational restriction from the FAA, as has St. Johns County Fire Rescue.<sup>14</sup>

### ***Proposed Rule***

The FAA announced a new proposed regulation for the use of drones on January 18, 2019.<sup>15</sup> The proposal appears to provide avenues that would allow drone operators to routinely fly over people and fly at night.<sup>16</sup>

The proposed regulation creates a risk-assessment model based upon the weight of the drone, and the design of the drone, with an eye toward any mitigation the drone design presents to

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<sup>10</sup> *Id.*

<sup>11</sup> It is a federal crime, punishable by up to 12 months in prison, to interfere with firefighting efforts on public lands. Congress has authorized the FAA to impose a civil penalty of up to \$20,000 against any drone pilot who interferes with wildfire suppression, law enforcement or emergency response operations. FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, available at [https://www.faa.gov/uas/where\\_to\\_fly/airspace\\_restrictions/#wildfires](https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires) (last viewed November 6, 2019).

<sup>12</sup> The term "over" refers to the flight of the small unmanned aircraft directly over any part of a person. For example, a small UAS that hovers directly over a person's head, shoulders, or extended arms or legs would be an operation over people. Similarly, if a person is lying down, for example at a beach, an operation over that person's torso or toes would also constitute an operation over people. An operation during which a small UAS flies over any part of any person, regardless of the dwell time, if any, over the person, would be an operation over people. 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

<sup>13</sup> *Id.*

<sup>14</sup> Certificates of Waiver 107W-2018-16741 (dated November 28, 2018), 107W-2018-16274 (dated November 6, 2018); and 107W-2019-03646 (dated August 8, 2019), FAA, Unmanned Aircraft Systems, *Part 107 Waivers Issued*, available at [https://www.faa.gov/uas/commercial\\_operators/part\\_107\\_waivers/waivers\\_issued/](https://www.faa.gov/uas/commercial_operators/part_107_waivers/waivers_issued/) (last viewed November 6, 2019).

<sup>15</sup> Department of Transportation, Office of the Secretary, FAA, 14 CFR Part 107, Notice of Proposed Rulemaking, *Operation of Small Unmanned Aircraft Systems over People*, Comments due on or before April 15, 2019, Federal Register, Vol 84, 3732, February 13, 2019.

<sup>16</sup> *Id.*

prohibit serious injury or property damage should the drone make contact with a person or property on the ground.<sup>17</sup> The process of the FAA accepting public comment on the proposal, and then drafting a final regulation began on February 13, 2019, and is not yet complete.<sup>18</sup>

### **Law Enforcement Use of Drones in Florida – Section 934.50, F.S.**

A law enforcement agency is defined in s. 934.50, F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.<sup>19</sup>

The Florida Sheriff's Association estimates that 12 sheriff's offices have drones.<sup>20</sup> Of the 139 police departments that responded to the question regarding whether their department has at least one drone, 32 said they do have a drone and 10 responded that they plan to obtain a drone.<sup>21</sup>

Section 934.50(3)(b), F.S., provides that a real property owner, tenant, occupant, invitee, or licensee of the property is presumed to have a reasonable expectation of privacy from drone surveillance<sup>22</sup> of the property or the owner, tenant, occupant, invitee, or licensee by another person, state agency,<sup>23</sup> or political subdivision,<sup>24</sup> if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.<sup>25</sup>

Section 934.50, F.S., prohibits law enforcement agencies from using a drone to gather evidence or other information, with certain exceptions.<sup>26</sup> Evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in this state unless it is permitted under one of the statute's exceptions.<sup>27</sup> An aggrieved party may

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Section 934.50(2)(d), F.S.

<sup>20</sup> E-mail from Florida Sheriff's Association Deputy Executive Director of Operations dated January 28, 2019 (on file with the Senate Committee on Criminal Justice).

<sup>21</sup> E-mail from Florida Police Chiefs Association Executive Director dated January 29, 2019 (on file with the Senate Committee on Criminal Justice).

<sup>22</sup> Surveillance is defined in s. 934.50(2)(e), F.S.: With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or with respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

<sup>23</sup> A state agency, as defined in s. 11.45, F.S., is a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

<sup>24</sup> A political subdivision is defined in s. 11.45, F.S., as a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

<sup>25</sup> Section 934.50(3)(b), F.S. *See also* s. 934.50(5)(b)-(d) F.S., providing for compensatory damages, injunctive relief, attorney fees, and punitive damages for a violation of s. 934.50(3)(b), F.S.

<sup>26</sup> Section 934.50(3)(a), F.S.

<sup>27</sup> Section 934.50(6), F.S.

initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.<sup>28</sup>

The exceptions in s. 934.50(4), F.S., for law enforcement agencies using drones to gather evidence and other information are as follows:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization and the drone is used to counter the risk;
- The law enforcement agency first obtains a search warrant authorizing the use of a drone; or
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.<sup>29</sup>

### **Weaponized Drones Prohibited in Florida**

In Florida, s. 330.411, F.S., prohibits a person from possessing or operating an unmanned aircraft or unmanned aircraft system as defined in s. 330.41, F.S., with an attached weapon, firearm, explosive, destructive device, or ammunition as defined in s. 790.001, F.S.<sup>30</sup> North Dakota is the only state that allows law enforcement agencies to utilize weaponized drones. The weapons are limited to the non-lethal variety such as tear gas, rubber bullets, beanbags, pepper spray, and tasers.<sup>31</sup>

### **Use of Drones for Law Enforcement Investigations**

Several jurisdictions outside Florida, including the Massachusetts State Police and the Lake County Police in Illinois, are reported to be using drones to assist in more efficient and timely traffic crash investigations.<sup>32</sup> The North Carolina Department of Transportation and North Carolina State Highway Patrol demonstrated in a research project that some advantages to using drones in traffic crash investigations include faster processing and clearing of the scene and opening the road to traffic flow more quickly than traditional evidence-gathering methods.<sup>33</sup>

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<sup>28</sup> Section 934.50(5)(a), F.S.

<sup>29</sup> Section 934.50(4)(a)-(c), F.S. There are additional exceptions to the prohibition on the use of drones that are not law enforcement agency related. These exceptions can be found in s. 934.50(4)(d)-(j), F.S.

<sup>30</sup> Section 330.41(2)(c), F.S., defines an unmanned aircraft system as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently. Section 330.41(2)(b), F.S., specifies that drone has the same meaning as s. 934.50(2), F.S.

<sup>31</sup> North Dakota House Bill 1328 (2015), available at <https://www.legis.nd.gov/assembly/64-2015/documents/15-0259-05000.pdf?20150501154934> (last viewed November 6, 2019).

<sup>32</sup> *How drones help Lake County police investigate crashes, get roads open faster*, Daily Herald, May 7, 2017, available at <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster> (last viewed November 6, 2019).

<sup>33</sup> “Research shows that documenting a collision scene using photogrammetry and UAS can be advantageous, especially in terms of speed and cost. With a combination of advanced imaging software and the latest UAS technology, we find that the North Carolina State Highway Patrol (NCSHP) can rapidly map collision scenes and simultaneously gather more information than legacy technologies. Indeed, large scenes can be documented in less than 30 minutes.” *Collision Scene Reconstruction & Investigation Using Unmanned Aircraft Systems*, Division of Aviation, UAS Program Office, N.C. Department of Transportation, August 2017, available at <https://www.ncdot.gov/divisions/aviation/Documents/ncshp-uas-mapping-study.pdf> (last viewed November 6, 2019).

In addition to quickly and efficiently clearing traffic crash scenes, drone technology has enhanced crime scene documentation using a process called orthomosaic photography that can recreate a crime scene in 3-D.<sup>34</sup>

Drones can also be used by law enforcement to more efficiently do jobs such as searching for evidence. For example, the San Bernardino Police Department used a drone to successfully search a large field for a gun thrown by a suspect who was being pursued.<sup>35</sup> The San Bernardino police chief emphasized the cost benefit in deploying a drone versus assembling a team to look for the gun in that situation.<sup>36</sup>

### **Tactical Uses for Drones**

Some have suggested that drones could be used to gain a tactical advantage in active shooter situations like that which occurred in Las Vegas in 2017 at the outdoor music festival at which 58 people were killed and more than 500 injured.<sup>37</sup> For example, Brian Levin, director of The Center for the Study of Hate and Extremism at California State University-San Bernardino opines that a “drone could have provided real-time intelligence and surveillance to what’s going on” during the Las Vegas incident.<sup>38</sup> In an article written for the International Journal of Aviation, Aeronautics, and Aerospace, Ryan Wallace and Jon Loffi, analyzed the law enforcement response to the Las Vegas shooting, concluding that had a drone been accessible to the Las Vegas Police it may have provided life-saving reconnaissance and shooter distraction.<sup>39</sup>

### **Crowd Control and Monitoring for Public Safety**

According to a December 2017 news article, the Las Vegas Police Department planned to use drones to monitor New Year’s Eve revelers on the Strip on December 31, 2017. The department decided to use drones to monitor crowds from an aerial view, which would help police better position barricades and other pedestrian control devices. Additionally, the department intended to use the drones to identify suspicious packages, track any unusual activity, and check hotel

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<sup>34</sup> Mesa County, Colorado, Sheriff’s Office unmanned aircraft program director, Ben Miller, envisions the 3-D crime scene preservation technique as a real aid in cold cases. The Huffington Post, Michelle Fredrickson, *Drones Add a New Dimension to Crime Scene Investigations*, October 24, 2014 (updated December 6, 2017), available at [https://www.huffingtonpost.com/pro-journal/drones-add-a-new-dimensio\\_b\\_6033392.html](https://www.huffingtonpost.com/pro-journal/drones-add-a-new-dimensio_b_6033392.html) (last viewed November 6, 2019).

<sup>35</sup> National Police Foundation, Jarrod Burguan, San Bernardino Police Chief, *Drones help augment a police department’s capabilities to fight crime*, available at <https://www.policefoundation.org/drones-help-augment-a-police-departments-capabilities-to-fight-crime/> (last viewed November 6, 2019).

<sup>36</sup> *Id.*

<sup>37</sup> Las Vegas Review-Journal, Nicole Raz, *Las Vegas police drones will monitor New Year’s Eve crowds*, December 27, 2017, available at <https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/las-vegas-police-drones-will-monitor-new-years-eve-crowds/> (last viewed November 6, 2019).

<sup>38</sup> *Id.* See also Wallace, Ryan and Loffi, Jon, *How Law Enforcement Unmanned Aircraft Systems (UAS) Could Improve Tactical Response to Active Shooter Situations: The Case of the 2017 Las Vegas Shooting*, Vol. 4, Article 7, International Journal of Aviation, Aeronautics, and Aerospace, October 9, 2017, available at <https://commons.erau.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1198&context=ijaa> (last viewed November 6, 2019).

<sup>39</sup> *Id.*

windows to try to detect anyone who might try to recreate the mass shooting incident that occurred in the city just a few months earlier.<sup>40</sup>

Likewise, New York City had planned to have a camera-equipped drone in the sky during the 2018 New Year's Eve celebration, but "relegated to a cordoned-off area and tethered to a building" to prevent injury should the drone fall. Inclement weather prevented the drone operation.<sup>41</sup>

As stated above, the FAA, which regulates the use of drones and other aircraft in the national airspace, has restricted drone flight over persons, however at least one local governmental authority has recently had that restriction waived by the FAA.<sup>42</sup> The same model drone (Vantage Robotics Snap) was used by CNN to obtain a waiver from the FAA due to the safety features of the drone, which has the ability to break apart upon impact.<sup>43</sup>

### Fire Department Use of Drones

According to an October 2018 news article, fire departments use UAVs for reconnaissance of wildfires and motor vehicle accident scenes, hazmat incidents, and hot spot identification at structure fires. In addition to the reconnaissance function and hot spot identification, additional uses for UAVs include:

- Search and rescue, even in urban settings;
- Preplanning with aerial photos and video identifying water supply sources, utility shutoffs, and apparatus location planning;
- Winter and ice rescue; and
- Disaster assessment and post-disaster reconnaissance after weather events such as floods or tornados.<sup>44</sup>

The Mesa Fire and Medical Department in Mesa, Arizona, has also used drones in a variety of capacities, including:

- Gaining a 360-degree perspective on damaged structures;
- Surveying buildings to provide hazard assessments for property owners;
- Water rescue operations and flood damage assessment;

<sup>40</sup> Las Vegas Review-Journal, Nicole Raz, *Las Vegas police drones will monitor New Year's Eve crowds*, December 27, 2017, available at <https://www.reviewjournal.com/entertainment/new-years-eve-in-vegas/las-vegas-police-drones-will-monitor-new-years-eve-crowds/> (last viewed November 6, 2019).

<sup>41</sup> The Washington Post, Peter Holley, *The NYPD planned to use drones during Times Square New Year's Eve celebration. Then it started raining*, December 31, 2018, available at [https://www.washingtonpost.com/technology/2018/12/31/nypds-latest-tool-keeping-times-square-revelers-safe-remote-controlled-drone/?utm\\_term=.1a63123ba637](https://www.washingtonpost.com/technology/2018/12/31/nypds-latest-tool-keeping-times-square-revelers-safe-remote-controlled-drone/?utm_term=.1a63123ba637) (last viewed November 6, 2019).

<sup>42</sup> See the section of the Bill Analysis on the FAA above; see also Vantage Robotics News, *Snap Gets FAA Waiver with Rutherford County, Tennessee*, November 19, 2018, available at <https://vantagerobotics.com/news/snap-gets-faa-waiver-rutherford-county-tennessee> (last viewed November 6, 2019).

<sup>43</sup> IEEE Spectrum, David Schneider, *CNN Uses Vantage Robotics' Snap Drone to Win FAA Fly-Over-People Waiver*, October 19, 2018, available at <https://spectrum.ieee.org/automaton/robotics/drones/cnn-uses-vantage-robotics-snap-drone-to-win-faa-fly-over-people-waiver> (last viewed November 6, 2019).

<sup>44</sup> Fire Apparatus & Emergency Equipment, Alan M. Petrillo, *Fire Department Drones Serve a Variety of Needs on Incident Scenes*, October 1, 2018, available at <https://www.fireapparatusmagazine.com/articles/print/volume-23/issue-10/features/fire-department-drones-serve-a-variety-of-needs-on-incident-scenes.html> (last viewed November 6, 2019).



- Assisting with a search for a missing kindergarten teacher; and
- Demonstrating how drones outfitted with special meters and cameras to identify lethal chemicals in hazmat situations can help keep first responders safe.<sup>45</sup>

In Brevard County, Fire Rescue personnel have been trained to test for the FAA drone pilot certification<sup>46</sup> so they can conduct search-and-rescue operations, ocean rescue, map brush fires, and examine burning buildings to identify safe entry points for firefighters using drones.<sup>47</sup>

### **Other Governmental Functions for Drones**

Drones are becoming useful for governmental functions outside policing. For example, the Daytona Beach Police Department utilized its drones to document the state of the city's infrastructure immediately before and after Hurricane Irma came through in September 2017 to provide the Federal Emergency Management Agency with the proof necessary to obtain funding for rebuilding. Additionally, the department was able to aid first responders in navigating the fastest and safest routes to those in need of aid by providing a birds-eye view to downed power lines, unstable infrastructure, and blocked roads in the wake of the storm.<sup>48</sup>

### **III. Effect of Proposed Changes:**

The bill adds three exceptions in s. 934.50(4), F.S., which will allow law enforcement agencies to use drones to:

- Assist in crowd control involving a group of 50 people or more.
- Assist with traffic management, except that the agency may not issue a traffic infraction based on images or video captured by a drone.
- Facilitate the collection of evidence at a crime scene or traffic crash scene.

Additionally, the bill provides that s. 934.50, F.S., authorizes the use of a drone by:

- A state agency or political subdivision for:
  - The assessment of damage due to a flood, wildfire, or natural disaster; or
  - Vegetation or wildlife management on publicly owned land or water.<sup>49</sup>

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<sup>45</sup> East Valley Tribune, Wayne Schutsky, *Ariz. Fire, EMS Leads the Way with Drone Use*, December 20, 2017, available at <https://www.ems1.com/ems-products/technology/articles/370989048-Ariz-fire-EMS-leads-the-way-with-drone-use/> (last viewed November 6, 2019).

<sup>46</sup> Federal Aviation Administration, *Become a Drone Pilot*, August 20, 2019, available at [https://www.faa.gov/uas/commercial\\_operators/become\\_a\\_drone\\_pilot/](https://www.faa.gov/uas/commercial_operators/become_a_drone_pilot/) (last viewed November 6, 2019).

<sup>47</sup> Florida Today, Rick Neale, *Florida Tech drone training takes flight for Brevard County firefighters, lifeguards*, November 30, 2018, available at <https://www.floridatoday.com/story/news/2018/11/30/florida-tech-drone-training-takes-flight-brevard-firefighters/2140086002/> (last viewed November 6, 2019).

<sup>48</sup> PoliceOne.com, Jinnie Chua, *Why drones should be part of every PD's disaster response plan*, February 22, 2018, available at <https://www.policeone.com/2018-guide-drones/articles/471474006-Why-drones-should-be-part-of-every-PDs-disaster-response-plan/> (last viewed November 6, 2019).

<sup>49</sup> There does not seem to be a singular definition in the Florida Statutes for the term publicly owned land. For example, in s. 317.0003(8), F.S., public lands is defined as lands within the state that are available for public use and that are owned, operated, or managed by a federal, state, county, or municipal government entity. In s. 375.312(2), F.S., public lands means any lands in the state which are owned by, leased by, or otherwise assigned to the state or any of its agencies and which are used by the general public for recreational purposes. There is no definition of public waters appearing in the Florida Statutes although there is a detailed definition of "waters" found in s. 403.031(13), F.S.



- Certified fire department personnel to perform tasks within the scope and practice authorized under their certifications.<sup>50</sup>

The terms law enforcement agency, state agency, and political subdivision as used in s. 934.50, F.S., are currently defined in s. 934.50(2)(d), F.S., and s. 934.50(3)(b), F.S., (by cross-reference to s. 11.45, F.S.).

The bill is effective July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

##### **Privacy**

Although it is generally understood that a person does not currently have a reasonable expectation of privacy under the circumstances set forth in the bill, with the evolution of technology as it relates to intrusion into a person's privacy interests, the law applying the Fourth Amendment to the U.S. Constitution, too, may evolve.<sup>51</sup>

<sup>50</sup> There does not seem to be a definition for the scope and practice authorized for fire department personnel under their certification in the Florida Statutes. However, s. 633.408, F.S., contains firefighter and volunteer firefighter training certification requirements, and R. 69A-37.055, F.A.C., contains curriculum requirements for training firefighter recruits or firefighters.

<sup>51</sup> The Fourth Amendment to the U.S. Constitution protects persons from unreasonable searches and seizures by the government. U.S. Const. amend. IV. *See Katz v. United States*, 389 U.S. 347 (1967) finding there is no reasonable expectation of privacy in the public view. *See also Carpenter v. United States*, 138 S.Ct. 2206 (2018) a recent Fourth Amendment case finding a reasonable expectation of privacy in historical cell phone location records.

## **Preemption**

The regulation of the national airspace and the aircraft that occupy it is a federal matter.<sup>52</sup> The FAA Chief Counsel issued a document in 2015 about state and local regulation of drones in which he said that state and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework in order to “ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions.”<sup>53</sup> However, given the Chief Counsel’s acknowledgement that “laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation”<sup>54</sup> it appears that the bill would not be an encroachment into an area exclusively regulated by the federal government.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

The bill allows for new uses for drones by government agencies under certain circumstances which could result in a cost savings for such agencies. However, nothing in the bill requires law enforcement agencies, fire departments, state agencies, or political subdivisions to spend resources to acquire drones or train personnel to use them.

The Florida Department of Agriculture and Consumer Services and the Florida Department of Law Enforcement do not anticipate a fiscal impact related to this bill.<sup>55</sup>

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

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<sup>52</sup> Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. ss. 40103, 44502, and 44701-44735.

<sup>53</sup> FAA, Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, December 17, 2015, available at [https://www.faa.gov/uas/resources/policy\\_library/media/UAS\\_Fact\\_Sheet\\_Final.pdf](https://www.faa.gov/uas/resources/policy_library/media/UAS_Fact_Sheet_Final.pdf) (last viewed February 4, 2019).

<sup>54</sup> *Id.*, citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

<sup>55</sup> Florida Department of Agriculture and Consumer Services, 2020 Agency Bill Analysis, October 23, 2019; Florida Department of Law Enforcement, 2020 Agency Bill Analysis, October 2019 (on file with the Senate Committee on Criminal Justice).

**VIII. Statutes Affected:**

This bill substantially amends section 934.50 of the Florida Statutes.

**IX. Additional Information:.****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Gruters

23-00189-20

2020520\_\_

1 A bill to be entitled  
 2 An act relating to drones; amending s. 934.50, F.S.;  
 3 expanding the authorized uses of drones by law  
 4 enforcement agencies and other specified entities for  
 5 specified purposes; providing an effective date.  
 6  
 7 Be It Enacted by the Legislature of the State of Florida:  
 8  
 9 Section 1. Present paragraphs (d) through (j) of subsection  
 10 (4) of section 934.50, Florida Statutes, are redesignated as  
 11 paragraphs (i) through (o), respectively, paragraph (a) of  
 12 subsection (3) of that section is amended, and new paragraphs  
 13 (d) through (h) are added to subsection (4) of that section, to  
 14 read:  
 15 934.50 Searches and seizure using a drone.—  
 16 (3) PROHIBITED USE OF DRONES.—  
 17 (a) A law enforcement agency may not use a drone to gather  
 18 evidence or other information, except as provided in subsection  
 19 (4).  
 20 (4) EXCEPTIONS.—This section does not prohibit the use of a  
 21 drone:  
 22 (d) To provide a law enforcement agency with an aerial  
 23 perspective of a crowd of 50 people or more.  
 24 (e) To assist a law enforcement agency with traffic  
 25 management; however, a law enforcement agency acting under this  
 26 paragraph may not issue a traffic infraction citation based on  
 27 images or video captured by a drone.  
 28 (f) To facilitate a law enforcement agency's collection of  
 29 evidence at a crime scene or traffic crash scene.

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

23-00189-20

2020520\_\_

30 (g) By a state agency or political subdivision for the  
 31 assessment of damage due to a flood, wildfire, or natural  
 32 disaster or for vegetation or wildlife management on publicly  
 33 owned land or water.  
 34 (h) By certified fire department personnel to perform tasks  
 35 within the scope and practice authorized under their  
 36 certifications.  
 37 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 12, 2019

*Meeting Date*

520

*Bill Number (if applicable)*

Topic Drones

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19  
Meeting Date

520  
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing ACLU of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

11/12/2019

*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

520

*Bill Number (if applicable)*

Topic Drones

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

*Meeting Date*

SB 520

*Bill Number (if applicable)*

Topic Drones

*Amendment Barcode (if applicable)*

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

*Street*

Tallahassee

FL

32317

Email garywhester@gmail.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19

Meeting Date

SB 520

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing MIAMI-DADE COUNTY / MIAMI-DADE POLICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19

Meeting Date

SB520

Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR

Street

Phone 321-436-4447

ORLANDO,

City

FL

State

32802

Zip

Email MICHAEL.CRABB@OCFL.NET

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

## Arnold, Sue

---

**From:** Cellon, Connie  
**Sent:** Thursday, February 21, 2019 1:45 PM  
**To:** Arnold, Sue  
**Subject:** for SB 766...

---

**From:** Matt Dunagan <[mdunagan@flsheriffs.org](mailto:mdunagan@flsheriffs.org)>  
**Sent:** Monday, January 28, 2019 4:11 PM  
**To:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Subject:** RE: today's seemingly random question is...

Firm...might be off one or two.

*Matt Dunagan, Deputy Executive Director of Operations*  
(850) 877-2165 x. 212 (office)  
(850) 274-3599 (cell)  
**FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.**

---

**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Sent:** Monday, January 28, 2019 2:55 PM  
**To:** Matt Dunagan <[mdunagan@flsheriffs.org](mailto:mdunagan@flsheriffs.org)>  
**Subject:** RE: today's seemingly random question is...

Estimate or firm-ish?

---

**From:** Matt Dunagan <[mdunagan@flsheriffs.org](mailto:mdunagan@flsheriffs.org)>  
**Sent:** Monday, January 28, 2019 2:54 PM  
**To:** Amy Mercer <[amercer@fpca.com](mailto:amercer@fpca.com)>; Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Subject:** RE: today's seemingly random question is...

I would say about a dozen sheriffs offices.

*Matt Dunagan, Deputy Executive Director of Operations*

(850) 877-2165 x. 212 (office)

(850) 274-3599 (cell)

**FLORIDA SHERIFFS ASSOCIATION** | Protecting, Leading & Uniting Since 1893.

---

**From:** Amy Mercer <[amercer@fpca.com](mailto:amercer@fpca.com)>

**Sent:** Friday, January 25, 2019 11:50 AM

**To:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>; Matt Dunagan <[mdunagan@flsheriffs.org](mailto:mdunagan@flsheriffs.org)>

**Subject:** RE: today's seemingly random question is...

No but let me see what I can find out!

Amy Mercer

Executive Director

The Florida Police Chiefs Association, FPCA

850-219-3631

[www.fpca.com](http://www.fpca.com)

[amercer@fpca.com](mailto:amercer@fpca.com)

*Faithfully serving Florida Police Chiefs*

---

**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>

**Sent:** Friday, January 25, 2019 11:38 AM

**To:** Amy Mercer <[amercer@fpca.com](mailto:amercer@fpca.com)>; Matt Dunagan <[mdunagan@flsheriffs.org](mailto:mdunagan@flsheriffs.org)>

**Subject:** today's seemingly random question is...

Any idea how many departments have drones?

Connie Cellon

Senate Criminal Justice

850-487-5192

## Arnold, Sue

---

**From:** Cellon, Connie  
**Sent:** Thursday, February 21, 2019 1:44 PM  
**To:** Arnold, Sue  
**Subject:** FW: Drones List SB 766  
**Attachments:** Drones PD Feedback.xlsx

---

**From:** Amy Mercer <amercer@fpca.com>  
**Sent:** Tuesday, January 29, 2019 3:00 PM  
**To:** Cellon, Connie <CELLON.CONNIE@flsenate.gov>; Matt Dunagan <mdunagan@flsheriffs.org>  
**Subject:** FW: Drones List

Hi Connie, please see attached list. These are the agencies that responded to our inquiry. Hope this helps! Amy

Amy Mercer  
Executive Director  
The Florida Police Chiefs Association, FPCA  
850-219-3631  
[www.fpca.com](http://www.fpca.com)  
[amercer@fpca.com](mailto:amercer@fpca.com)  
*Faithfully serving Florida Police Chiefs*

---

**From:** Kendra Oates <[KBriscoe@fpca.com](mailto:KBriscoe@fpca.com)>  
**Sent:** Tuesday, January 29, 2019 2:56 PM  
**To:** Amy Mercer <[amercer@fpca.com](mailto:amercer@fpca.com)>  
**Subject:** Drones List

<b>Agency</b>	<b>Drones?</b>
CSX Railroad PD	Yes
Clearwater PD	Yes
Aventura PD	Yes
Medley PD	Yes
St. Petersburg PD	Yes
Lakeland PD	Yes
Naples PD	Yes
St. Cloud PD	Yes
FHP	Yes
Mount Dora PD	Yes
Winter Springs PD	Yes
Panama City Beach PD	Yes
Fort Lauderdale PD	Yes
Daytona Beach PD	Yes
Melbourne Beach PD	Yes
Miami Shores PD	Yes
Winter Park PD	Yes
Margate PD	Yes
Groveland PD	Yes
Palm Beach Gardens PD	Yes
Lake Wales PD	Yes
Boca Raton PD	Yes
Miami Beach PD	Yes
Panama City PD	Yes
Key West PD	Yes
Winter Haven PD	Yes
West Palm Beach PD	Yes
Daytona Beach Shores PD	Yes
Melbourne PD	Yes
Crestview PD	Yes
Treasure Island	Yes
Coral Springs PD	Yes
Miami-Dade PD	Will be using soon
	Will be
Coconut Creek PD	purchasing soon
	Will be
Orange Park PD	purchasing soon
	Will be
Holly Hill PD	purchasing soon
	Will be
Bay Harbor Islands PD	purchasing soon
	Will be
Auburndale PD	purchasing soon
	Will be
USF PD	purchasing soon

	Will be
Bradenton PD	purchasing soon
	Will be
Lawtey PD	purchasing soon
	Will be
North Port PD	purchasing soon
New College of Florida PD	No
Milton PD	No
Eustis PD	No
Edgewood PD	No
Sanford Airport PD	No
Marianna PD	No
Satellite Beach PD	No
North Palm Beach PD	No
Casselberry PD	No
TLH Community College PD	No
Vero Beach PD	No
Bunnell PD	No
Tampa PD	No
Clermont PD	No
Belle Air PD	No
University of North Florida PD	No
Palm Springs PD	No
Cape Coral PD	No
FL East Coast Railway	No
Lake City PD	No
Fernandina Beach PD	No
Capitol Police	No
FL Southwestern State College	No
West Miami PD	No
West Melbourne PD	No
Punta Gorda PD	No
Orange City PD	No
Florida State University PD	No
Howey In the Hills PD	No
Sewalls Point PD	No
Seminole PD	No
Perry PD	No
Longwood PD	No
Pembroke Pines PD	No
Lake Mary PD	No
FL Gulf Coast University PD	No
Sanibel PD	No
FL Atlantic University PD	No
South Miami PD	No
Cocoa Beach PD	No
South Daytona PD	No

Lake Placid PD	No
Division of Alcoholic Bev. And Tobacco	No
Welaka PD	No
Lake Alfred PD	No
Lee County Port Authority PD	No
Winter Garden PD	No
Hillsboro Beach PD	No
Melbourne Airport PD	No
Ponce Inlet PD	No
Fellsmere PD	No
Temple Terrace PD	No
Windermere PD	No
Ocoee PD	No
Bal Harbour PD	No
Plantation PD	No
Sanford PD	No
Leesburg PD	No
Biscayne Park PD	No
University of Central FL PD	No
Fort Pierce PD	No
Santa Fe College PD	No
Sarasota County Schools PD	No
NW FL Beaches Airport PD	No
Boynton Beach PD	No
Sarasota PD	No
Ocean Ridge PD	No
Alachua PD	No
Cedar Key PD	No
Jennings PD	No
Lake Hamilton PD	No
Largo PD	No
Surfside PD	No
Kenneth City PD	No
FL Supreme Court	No
Ormond Beach PD	No
Pinellas Park PD	No
Pinecrest PD	No
DeFuniak Springs PD	No
Oviedo PD	No
Indian Shores PD	No
Dade City PD	No
Valparaiso PD	No
Jacksonville Airport PD	No
Maitland PD	No
Flagler Beach PD	No
FL International University PD	No



Umatilla PD	No
Mexico Beach PD	No
Tallahassee PD	No
Jupiter PD	No
Clewiston PD	No
Sneads PD	No
St. Augustine PD	No
Citrus County School Board PD	No
Palatka PD	No



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER NICOLE "NIKKI" FRIED

---

October 23, 2019

**Agency Affected:** Dept. of Agriculture and Consumer Services

**Telephone:** 850-617-7000

**Agency Contact:** Emily Buckley, Legislative Affairs Director

**Telephone:** 850-617-7700

---

**Senate Bill Number:** SB 520

**Senate Bill Sponsor:** Sen. Joe Gruters

**Bill Title:** Drones

**Effective Date:** July 1, 2020

**Similar Bill(s):** Yes ☐ No ☒

**Similar Bill(s):**

**Identical Bill:** Yes ☐ No ☒

**Identical Bill:**

---

**1. SUMMARY**

Senate Bill 520 provides exceptions, allowing law enforcement agencies to use drones to gather evidence or other information under certain conditions:

- To obtain aerial perspective of a crowd of 50 people or more;
- To assist with traffic management, but not to issue traffic citations based on those images;
- And to assist in evidence collection at a crime scene or traffic crash.

This bill also provides exceptions for State agencies, political subdivisions and fire department personnel to use drones to perform certain tasks.

**2. PRESENT SITUATION**

Currently a law enforcement agency may not use drones to gather evidence or other information except when the law enforcement agency obtains a search warrant signed by a judge, or in certain circumstances where there is reasonable suspicion and immediate action is needed to prevent loss of life or serious damage to property.

In addition, state agencies are very limited regarding the use of drone equipment with imaging capability. Drones may not be used for the sole purpose of assessing property to determine property taxes.

Chapter 934.50, Florida Statutes, provides safeguards against unwarranted surveillance invasion of privacy.

### 3. EFFECT OF PROPOSED CHANGES

Expands the use of drones within the FDACS FFS for flood, wildfire, or natural disaster assessment as well as with vegetation or wildlife management on public land or water. Additionally, allows fire department personnel the use of drones to perform tasks within the scope and practice of their certifications.

### 4. FISCAL IMPACT

	(FY 20-21) Amount/ FTE	(FY 21-22) Amount/ FTE	(FY 22-23) Amount/ FTE
<b>A. Revenues</b>			
Recurring	0.00	0.00	0.00
Non-Recurring	0.00	0.00	0.00
<b>TOTAL REVENUES</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>B. Expenditures</b>			
Recurring	0.00	0.00	0.00
Non-Recurring	0.00	0.00	0.00
<b>TOTAL EXPENDITURES</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>C. NET TOTAL</b>			
<b>COMMENTS:</b>			

### 5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?

Unknown.

**6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?**

Unknown.

**7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL?** (If yes, please explain the impact in A and/or B below)

No.

**A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.**

No.

**B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.**

No.

**C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?**

a. Yes: ☐ No: ☒

b. If yes please explain:

**8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?**

a. Yes: ☐ No: ☒

b. If yes please explain:

**9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?**

a. Yes: ☐ No: ☒

b. If yes please explain:

**LEGAL ISSUES**

**10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations? No.**

**11. Does the proposed bill raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts) that impacts the department? No.**

**12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties? No.**



## 2020 FDLE LEGISLATIVE BILL ANALYSIS



### BILL INFORMATION

BILL NUMBER:	SB 520
BILL TITLE:	Drones
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	July 1, 2020

### COMMITTEES OF REFERENCE

1)
2)
3)
4)
5)

### PREVIOUS LEGISLATION

BILL NUMBER:	SB766/HB75
SPONSOR:	Gruters/Yarborough
YEAR:	2019/2019
LAST ACTION:	Died in Rules/Died in Criminal Justice

### CURRENT COMMITTEE

--

### SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

### IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

### Is this bill part of an agency package?

No

### BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	October 2019
LEAD AGENCY ANALYST:	Lori Mizell
ADDITIONAL ANALYST(S):	Grant Geyer, Becky Bezemek
LEGAL ANALYST:	Jeff Dambly, Jason Jones
FISCAL ANALYST:	Cynthia Barr

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Amending Section 934.50 F.S.; expanding the authorized uses of drones by law enforcement agencies and other specified entities for specified purposes

### 2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Section 934.50, F.S., prohibits the use of drones by law enforcement agencies to gather evidence or other information unless specified exceptions are met; a person, a state agency, or a political subdivision as defined may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.
2. **EFFECT OF THE BILL:** Amends Section 934.50(3), F.S., prohibiting a law enforcement agency's use of a drone to gather evidence or other information, except as provided in subsection (4). Amends Section 934.50(4), F.S.:
  - To provide a law enforcement agency with an aerial perspective of a crowd of 50 people or more.
  - To assist a law enforcement agency with traffic management; however, a law enforcement agency acting under this paragraph may not issue a traffic infraction citation based on images or video captured by a drone.
  - To facilitate a law enforcement agency's collection of evidence at a crime scene or traffic crash scene.
  - By a state agency or political subdivision for the assessment of damage due to a flood, wildfire, or natural disaster or for vegetation or wildlife management on publicly owned land or water.
  - By certified fire department personnel to perform tasks within the scope and practice authorized under their certifications.

3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y ☐ N ☒

If yes, explain:	
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. **WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. **ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number:	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒**

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒**

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☒**

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☒**

Revenues:	
Expenditures:	
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☒**

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

**TECHNOLOGY IMPACT****1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒**

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

**FEDERAL IMPACT****1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒**

If yes, describe the anticipated impact including any fiscal impact.	
--	--

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments and recommended action:	No additional issues, concerns or comments
--	--

**ADDITIONAL COMMENTS**

Of note, the number of people in a crowd does not determine the hostility of the crowd. Respectfully request amending lines 22-23: "To provide a law enforcement agency with an aerial perspective of a crowd of 50 people or more."



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Criminal Justice

---

BILL: CS/SB 556

INTRODUCER: Criminal Justice Committee and Senator Brandes and others

SUBJECT: Inmate Conditional Medical Release

DATE: November 12, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 556 repeals s. 947.149, F.S., which establishes the conditional medical release (CMR) program within the Florida Commission on Offender Review (FCOR) and creates s. 945.0911, F.S., to establish a CMR program within the Department of Corrections (DOC) with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings.

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an:

- “Inmate with a debilitating illness,” which is defined to mean an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.
- “Permanently incapacitated inmate,” which is defined to mean an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.
- “Terminally ill inmate,” which is defined to mean an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate

terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

As with current law, the bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information. However, rather than referring the case to the FCOR upon identification, the bill requires the DOC to conduct the entire determination process by referring the inmate to a three-member panel established in the new program for review and determination of release.

As is required in current law, the bill requires notice to be provided to certain victims immediately upon identification of the inmate as potentially eligible for release on CMR and the inmate's referral to the panel.

The bill requires the director of inmate health services to review specified evidence and provide a recommendation to the three-member panel, who must conduct a hearing within 45 days of the referral to determine whether CMR is appropriate for the inmate. A majority of the panel members must agree that release on CMR is appropriate for the inmate. An inmate who is approved for release on CMR must be released by the DOC to the community within a reasonable amount of time and is considered to be a medical releasee upon release to the community.

The bill creates a process for an inmate who is denied CMR by the three-member panel to have the decision reviewed. The secretary has the final decision about the appropriateness of the release on CMR. Additionally, an inmate who is denied CMR may be subsequently reconsidered for such release in a manner prescribed by rule.

The bill requires that an inmate granted release on CMR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted and the medical releasee is required to comply with all reasonable conditions of release the DOC imposes.

The bill provides that a medical releasee is considered to be in the care, custody, supervision, and control of the DOC and remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the medical releasee may not be counted in the prison system population and the medical releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

The bill establishes a specific process for the revocation of CMR which closely parallels the current process provided for in s. 947.141, F.S., and provides that revocation may be based on certain circumstances. The bill authorizes a medical releasee whose release is revoked to have the revocation decision reviewed and sets forth a specified process for such review.

The bill also requires the DOC to notify the family of an inmate who is diagnosed with a terminal condition within 72 hours and allow the family to visit the inmate within 7 days of such diagnosis.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, in part, the bill expands CMR by creating a new CMR designation and modifying a current designation. To the extent that the bill increases the number of inmates released on CMR, the bill will likely result in a negative indeterminate prison bed impact (i.e., an unquantifiable decrease in prison beds) and a reduction in the associated inmate healthcare costs.

The bill removes certain functions related to CMR from the FCOR and reestablishes the comparable duties within the DOC. As a result, the bill will likely result in a workload and cost shift from the FCOR to the DOC. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## **II. Present Situation:**

### **Conditional Medical Release**

Conditional Medical Release (CMR), which was created by the Florida Legislature in 1992,<sup>1</sup> is a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.<sup>2</sup> The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.<sup>3</sup> In part, s. 947.13, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

#### ***Eligibility Criteria***

Eligible inmates include inmates designated by the DOC as a:

- “Permanently incapacitated inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- “Terminally ill inmate,” which is an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.<sup>4</sup>

Inmates sentenced to death are ineligible for CMR.<sup>5</sup>

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<sup>1</sup> Chapter 92-310, L.O.F.

<sup>2</sup> The FCOR, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited November 6, 2019).

<sup>3</sup> Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

<sup>4</sup> Section 947.149(1), F.S.

<sup>5</sup> Section 947.149(2), F.S.

***Referral Process for Eligible Inmates***

The DOC is required to identify inmates who may be eligible for CMR in accordance with the above-mentioned designations. The DOC uses available medical information as a basis for identifying eligible inmates and refers such inmates to the FCOR for consideration. In considering an inmate, the FCOR may require that additional medical evidence be produced or that additional medical examinations be conducted and may require other investigations to be made as it deems necessary.<sup>6</sup>

An inmate does not have a right to CMR or to a medical evaluation to determine eligibility for such release.<sup>7</sup> Additionally, the authority and whether or not to grant CMR and establish additional conditions of release rests solely within the discretion of the FCOR, together with the authority to approve the release plan to include necessary medical care and attention.<sup>8</sup>

Certain information must be provided to the FCOR from the DOC to be considered a referral, including:

- Clinical Report, including complete medical information justifying classification of the inmate as “permanently incapacitated” or “terminally ill;” and
- Verifiable release plan, to include necessary medical care and attention.<sup>9</sup>

The referral must be directed to the Office of the Commission Clerk who may docket the case before the FCOR. A decision will be made by a majority of the quorum present and voting.<sup>10</sup> The FCOR is required to approve or disapprove CMR based upon information submitted in support of the recommendation and review of the DOC file. If additional information is needed, the FCOR must continue the case for verification of the release plan, additional medical examinations, and other investigations as directed. The FCOR is required to instruct staff to conduct the appropriate investigation, which must include a written statement setting forth the specific information being requested.<sup>11</sup>

***Victim Input***

If a victim or his or her personal representative requests to be notified, the FCOR must provide victim notification of any hearing where the release of the inmate on CMR is considered prior to the inmate’s release.<sup>12</sup> Additionally, Rule 23-24.025 of the Florida Administrative Code provides that a victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative or victim advocate must receive advance notification any time a CMR case is placed on the docket for determination by the FCOR. Notification must be made to the address found in the police report or other criminal report or at a more current address if such has been provided to the FCOR.<sup>13</sup>

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<sup>6</sup> Section 947.149(3), F.S.

<sup>7</sup> Section 947.149(2), F.S.

<sup>8</sup> Section 947.149(3), F.S.

<sup>9</sup> Rule 23-24.020(1), F.A.C.

<sup>10</sup> Rule 23-24.020(2), F.A.C.

<sup>11</sup> Rule 23-24.020(3), F.A.C.

<sup>12</sup> Rule 23-24.020(4), F.A.C., further qualifies that this notification occurs when the name and address of such victim or representative of the victim is known by the FCOR.

<sup>13</sup> Rule 23-24.025(1), F.A.C.

A victim of the crime committed by the inmate, or a victim's representative, must be permitted a reasonable time to make an oral statement or submit a written statement regarding whether the victim supports the granting, denying, or revoking of CMR.<sup>14</sup> Additionally, other interested parties may also speak on behalf of victims since the FCOR meetings are public meetings.<sup>15</sup> A victim can also request that the FCOR provide notification of the action taken if he or she does not choose to appear at meetings or make a written statement.<sup>16</sup>

In 2018, the Florida voters approved Amendment 6 on the ballot, which provided certain rights to victims in the Florida Constitution. In part, Art. 1, s. 16, of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.<sup>17</sup>

### ***Release Conditions***

The release of an inmate on CMR is for the remainder of the inmate's sentence and requires periodic medical evaluations at intervals determined by the FCOR at the time of release.<sup>18</sup> An inmate who has been approved for release on CMR is considered a medical releasee when released.

The DOC supervises medical releasee's who are granted CMR.<sup>19</sup> Each medical releasee must be placed on CMR supervision and is subject to the standard conditions of CMR, which include:

- Promptly proceeding to the residence upon being released and immediately reporting by mail, telephone, or personal visit as instructed by the CMR officer or within 72 hours of release if no specific report date and time are given.
- Securing the permission of the CMR officer before:

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<sup>14</sup> Rule 23-24.025(2) and (3), F.A.C. See Rule 23-24.025(4), F.A.C., regarding specifics about what is allowed to be submitted or utilized during oral testimony. Rule 23-24.025(7), F.A.C., provides that victims who appear and speak must be advised that any information submitted at FCOR meetings becomes public record.

<sup>15</sup> Rule 23-24.025(3), F.A.C.

<sup>16</sup> Rule 23-24.025(5), F.A.C.

<sup>17</sup> Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

<sup>18</sup> Section 947.149(4), F.S.

<sup>19</sup> The FCOR, *SB 556 Draft Agency Analysis*, at p. 2 (October 24, 2019) (on file with the Senate Criminal Justice Committee) (hereinafter cited as "FCOR SB 556 Draft Agency Analysis").

- Changing residences;
- Leaving the county or the state; and
- Posting bail or accepting pretrial release if arrested for a felony.
- Submitting a full and truthful report to the CMR officer each month in writing and as directed by the CMR supervisor.
- Refraining from:
  - Owning, carrying, possessing, or having in his or her constructive possession a firearm or ammunition;
  - Using or possessing alcohol or intoxicants of any kind;
  - Using or possessing narcotics, drugs, or marijuana unless prescribed by a physician;
  - Entering any business establishment whose primary purpose is the sale or consumption of alcoholic beverages; and
  - Knowingly associating with any person engaging in criminal activity, a criminal gang member, or person associated with criminal gang members.
- Securing the permission of the CMR officer before owning, carrying, or having in his or her constructive possession a knife or any other weapon.
- Obeying all laws, ordinances, and statutory conditions of CMR.
- Submitting to a reasonable search of the medical releasee's person, residence, or automobile by a CMR officer.
- Waiving extradition back to Florida if the medical releasee is alleged to have violated CMR.
- Permitting the CMR officer to visit the medical releasee's residence, employment, or elsewhere.
- Promptly and truthfully answering all questions and following all instructions asked or given by the CMR officer or the FCOR.
- Remaining on CMR for the remainder of the sentence without diminution of such sentence for good behavior.
- Agreeing to submit to random drug or alcohol testing, to be paid for and submitted by the medical releasee, as directed by the CMR officer or the professional staff of any treatment center where treatment is being received.
- Executing and providing authorizations to release records to the CMR supervisor and the FCOR for the purpose of monitoring and documenting the medical releasee's progress.
- Agreeing that, in the event there is an improvement in the medical releasee's medical condition to the extent that he or she is no longer "permanently incapacitated," or "terminally ill," that he or she will, if directed to do so, report for a CMR revocation hearing.<sup>20</sup>

Additionally, the FCOR can impose special conditions of conditional medical release.<sup>21</sup>

### ***Revocation and Recommitment***

In part, s. 947.141, F.S., provides for the revocation and recommitment of a medical releasee who appears to be subject to CMR revocation proceedings, including establishing a hearing process and determining whether a medical releasee must be recommitted to the DOC. CMR supervision can be revoked and the offender returned to prison if the FCOR determines:

- That a violation of any condition of the release has occurred; or

<sup>20</sup> Rule 23-24.030(1), F.A.C.

<sup>21</sup> Rule 23-24.030(2), F.A.C.

- His or her medical or physical condition improves to the point that the offender no longer meets the CMR criteria.<sup>22</sup>

#### Revocation Due to Improved Medical or Physical Condition

If it is discovered during the CMR release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for such release, the FCOR may order that the medical releasee be returned to the custody of the DOC for a revocation hearing, in accordance with s. 947.141, F.S. A medical releasee who has his or her CMR revoked due to improvement in medical or physical condition must serve the balance of the sentence with credit for the time served on CMR, but does not forfeit any gain-time accrued prior to release on CMR.<sup>23</sup>

#### Revocation Due to Violation of CMR Conditions

When there are reasonable grounds to believe that a medical releasee who is on CMR has violated the conditions of the release in a material respect the FCOR is authorized to have a warrant issued for the arrest of the medical releasee. A warrant must be issued if the medical releasee was found to be a sexual predator.<sup>24</sup> Further, if a law enforcement officer has probable cause to believe that a medical release who is on CMR supervision has violated the terms and conditions of his or her release by committing a felony offense then the officer must arrest the medical releasee without a warrant and a warrant need not be issued in the case.<sup>25</sup>

A medical releasee who is arrested for a felony must be detained without bond until the initial appearance of the medical releasee at which a judicial determination of probable cause is made. The medical releasee may be released if the trial court judge does not find probable cause existed for the arrest. However, if the court makes a finding of probable cause, such determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release and the chief county correctional officer must notify the FCOR and the DOC of the finding within 24 hours.<sup>26</sup> The medical releasee must continue to be detained without bond for a period not more than 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the FCOR whether to issue a warrant charging the medical releasee with violation of the conditions of CMR. If the FCOR issues such warrant, the medical releasee must continue to be held in custody pending a revocation hearing.<sup>27</sup>

#### Revocation Hearing

The medical releasee must be afforded a hearing which is conducted by a commissioner or a duly authorized representative within 45 days after notice to the FCOR of the arrest of a medical

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<sup>22</sup> Section 947.149(5), F.S.

<sup>23</sup> Section 947.149(5)(a), F.S. Additionally, if the person whose CMR is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

<sup>24</sup> Section 947.141(1), F.S.

<sup>25</sup> Section 947.141(7), F.S.

<sup>26</sup> Section 947.141(2), F.S., further states that the chief county detention officer must transmit to the FCOR and the DOC a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based.

<sup>27</sup> *Id.*

releasee charged with a violation of the terms and conditions of CMR. If the medical releasee elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the medical releasee's:

- Alleged violation; and
- Right to:
  - Be represented by counsel.
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.<sup>28</sup>

The commissioner who conducts the hearing is required to make findings of fact in regard to the alleged violation within a reasonable time following the hearing and at least two commissioners must enter an order determining whether the charge of violation of CMR has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. The panel may revoke CMR, thereby returning the medical releasee to prison to serve the sentence imposed; reinstate the original order granting the release; or enter such other order as it considers proper.<sup>29</sup>

If CMR is revoked and the medical releasee is ordered to be returned to prison, the medical releasee is deemed to have forfeited all gain-time or commutation of time for good conduct earned up to the date of release. However, if CMR is revoked due to the improved medical or physical condition of the medical releasee, the medical releasee does not forfeit gain-time accrued before the date of CMR.<sup>30</sup> Gain-time or commutation of time for good conduct may be earned from the date of return to prison.

### *Statistics*

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years, including:

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.<sup>31</sup>

The DOC has recommended 149 inmates for release in the past three fiscal years, including:

- 76 in FY 2018-19;
- 39 in FY 2017-2018; and

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<sup>28</sup> Section 947.141(3), F.S.

<sup>29</sup> Section 947.141(4), F.S.

<sup>30</sup> Section 947.141(6), F.S.

<sup>31</sup> Emails from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Senate Committee on Criminal Justice) (December 15, 2017 and November 1, 2019, respectively). *See also* FCOR Annual Report FY 2017-18, p. 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited November 6, 2019).



- 34 in FY 2016-2017.<sup>32</sup>

Currently, the DOC's only role in the CMR process is to make the initial designation of medical eligibility and to refer the inmate's case to the FCOR for an investigation and final decision.

### **Gain-time**

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>33</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>34</sup>

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>35</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>36</sup>
- Meritorious gain-time;<sup>37</sup> and
- Educational achievement gain-time.<sup>38</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>39</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>40</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>34</sup> Section 944.275(4)(f), F.S.

<sup>35</sup> Chapter 93-406, L.O.F.

<sup>36</sup> Section 944.275(4)(b), F.S., provides that incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

<sup>37</sup> Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

<sup>38</sup> Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

<sup>39</sup> Section 944.275(3)(c), F.S.

<sup>40</sup> Section 944.275(2)(a), F.S.

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>41</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>42</sup>

The DOC is authorized in certain circumstances, including when a medical releasee has his or her CMR release revoked, to declare all gain-time earned by an inmate forfeited.<sup>43</sup>

### **Federal First Step Act**

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).<sup>44</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, modifying provisions related to compassionate release to:

- Require inmates be informed of reduction in sentence availability and process;
- Modify the definition of “terminally ill;”
- Require notice and assistance for terminally ill offenders;
- Require requests from terminally ill offenders to be processed within 14 days.<sup>45</sup>

Specifically, in the case of a diagnosis of a terminal illness, the BOP is required to, subject to confidentiality requirements:

- Notify the defendant's attorney, partner, and family members, not later than 72 hours after the diagnosis, of the defendant's diagnosis of a terminal condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction;
- Provide the defendant's partner and family members, including extended family, with an opportunity to visit the defendant in person not later than 7 days after the date of the diagnosis;
- Upon request from the defendant or his attorney, partner, or a family member, ensure that BOP employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction; and
- Process a request for sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member not later than 14 days from receipt of a request.<sup>46</sup>

The statutory time frames mentioned above begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the

<sup>41</sup> Section 944.275(3)(a), F.S.

<sup>42</sup> *Id.* See also s. 944.275(4)(b), F.S.

<sup>43</sup> Section 944.28(1), F.S.

<sup>44</sup> The First Step Act of 2018, Pub. L. No. 115-391 (2018).

<sup>45</sup> Section 603(b) of the First Step Act, codified at 18 USC § 3582. See also U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 3-4, available at [https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf) (last visited November 12, 2019).

<sup>46</sup> *Id.*

Warden and the appropriate Unit Manager as soon as possible so as to ensure requirements are met.<sup>47</sup>

### **III. Effect of Proposed Changes:**

The bill repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC with the purpose of:

- Determining whether release is appropriate for eligible inmates;
- Supervising the released inmates; and
- Conducting revocation hearings.

The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people. The members of the panel are appointed by the secretary or his or her designee for the purpose of determining the appropriateness of CMR and conducting revocation hearings on the inmate releases.

#### **Eligibility Criteria**

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate. The bill provides definitions for such terms, including:

- “Inmate with a debilitating illness,” which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.
- “Permanently incapacitated inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.
- “Terminally ill inmate,” which means an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

#### **Referral Process**

The bill requires that any inmate in the custody of the DOC who meets one or more of the eligibility requirements must be considered for CMR. However, the authority to grant CMR rests solely with the DOC, as it currently does with the FCOR. Additionally, the bill provides that an inmate does not have a right to release or to a medical evaluation to determine eligibility for release on CMR pursuant to s. 945.0911, F.S.

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<sup>47</sup> *Id.*

The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate's release.

Upon an inmate's identification as potentially eligible for release on CMR, the DOC must refer such inmate to the three-member panel described above for review and determination of release.

The bill requires the DOC to provide notice to a victim of the inmate's referral to the panel immediately upon identification of the inmate as potentially eligible for release on CMR if the case that resulted in the inmate's commitment to the DOC involved a victim and such victim specifically requested notification pursuant to Art. 1, s. 16, of the Florida Constitution. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

### **Determination of Release**

The bill requires the three-member panel established in s. 945.0911(1), F.S., to conduct a hearing within 45 days after receiving the referral to determine whether CMR is appropriate for the inmate. Before the hearing, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate on CMR. A majority of the panel members must agree that release on CMR is appropriate for the inmate. If CMR is approved, the inmate must be released by the DOC to the community within a reasonable amount of time with necessary release conditions imposed.

The bill provides that an inmate who is granted CMR is considered a medical releasee upon release to the community.

An inmate who is denied CMR by the three-member panel is able to have the decision reviewed. The bill provides that the DOC's general counsel and chief medical officer must review the decision of the three-member panel and make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the release on CMR. The bill provides that the appeal decision of the secretary is a final administrative decision not subject to appeal.

Additionally, an inmate who is denied CMR may be subsequently reconsidered for such release in a manner prescribed by department rule.

### **Release Conditions**

The bill requires that an inmate granted release on CMR be released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The medical releasee is required to comply with all reasonable conditions of release the DOC imposes, which must include, at a minimum:

- Periodic medical evaluations at intervals determined by the DOC at the time of release.
- Supervision by an officer trained to handle special offender caseloads.

- Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.
- Any conditions of community control provided for in s. 948.101, F.S.<sup>48</sup>
- Any other conditions the DOC deems appropriate to ensure the safety of the community and compliance by the medical releasee.

The bill provides that a medical releasee is considered to be in the care, custody, supervision, and control of the DOC and remains eligible to earn or lose gain-time in accordance with s. 944.275, F.S., and department rule. However, the bill clarifies that the medical releasee may not be counted in the prison system population, and the medical releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

### **Revocation of CMR Release and Recommitment to the DOC**

The bill establishes a process for the revocation of CMR that very closely parallels current law and for which may be based on two circumstances, including the:

- Discovery that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for release on CMR; or
- Violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law.

#### ***Revocation Based on Medical or Physical Improvement***

When the basis of the revocation proceedings are based on an improved medical or physical condition of the medical releasee, the bill authorizes the DOC to:

- Order that the medical releasee be returned to the custody of the DOC for a CMR revocation hearing, as prescribed by rule; or
- Allow the medical releasee to remain in the community pending the revocation hearing.

The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional medical release to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

A medical releasee whose CMR was revoked due to improvement in his or her medical or physical condition must be recommitted to the DOC to serve the balance of his or her sentence with credit for the time served on CMR and without forfeiture of any gain-time accrued before recommitment. If the medical releasee whose CMR is revoked due to an improvement in her or his medical or physical condition would otherwise be eligible for parole or any other release program, the medical releasee may be considered for such release program pursuant to law.

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<sup>48</sup> Some examples on community control conditions required under s. 948.101, F.S., include to maintain specified contact with the parole and probation officer; confinement to an agreed-upon residence during hours away from employment and public service activities; mandatory public service; and supervision by the DOC by means of an electronic monitoring device or system.

***Revocation Based on Violation of Conditions***

The bill provides that CMR may also be revoked for violation of any release conditions the DOC establishes, including, but not limited to, a new violation of law. In contrast to when a revocation is based on improved medical or physical condition, if the basis of the violation of release conditions is related to a new violation of law, the medical releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made.

If the judge determines that there was no probable cause for the arrest, the medical releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's probable cause determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the CMR release.

The bill requires the DOC to order that the medical releasee subject to revocation for a violation of conditions be returned to the custody of the DOC for a CMR revocation hearing as prescribed by rule. A majority of the panel members must agree that revocation is appropriate for the medical releasee's CMR to be revoked.

The bill provides that a medical releasee who has his or her CMR revoked due to a violation of conditions must serve the balance of his or her sentence with credit for the actual time served on CMR. Additionally, the medical releasee's gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1), F.S. If the medical releasee's whose CMR is revoked would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

***Revocation Hearing Process***

If the medical releasee subject to revocation for either basis elects to proceed with a hearing, the medical releasee must be informed orally and in writing of certain rights, including the releasee's:

- Alleged basis for the pending revocation proceeding against the releasee.
- Right to:
  - Be represented by counsel.<sup>49</sup>
  - Be heard in person.
  - Secure, present, and compel the attendance of witnesses relevant to the proceeding.
  - Produce documents on his or her own behalf.
  - Access all evidence used to support the revocation proceeding against the releasee and confront and cross-examine adverse witnesses.
  - Waive the hearing.

***Review Process of Revocation Determination***

The bill authorizes a medical releasee whose release is revoked based on either basis to have the revocation decision reviewed. The bill requires the DOC's general counsel to review the revocation decision and make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of

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<sup>49</sup> However, this bill explicitly provides that this does not create a right to publicly funded legal counsel.

CMR. In addition to the review by the general counsel, the chief medical officer must also review the revocation decision and make a recommendation to the secretary when the basis is due to an improved medical or physical condition.

The bill provides that any decision of the secretary related to a revocation decision is a final administrative decision not subject to appeal.

### **Special Requirements of the DOC Related to Terminal Inmate's**

The bill also implements provisions similar to those provided for in federal law related to compassionate release of inmate's that have been diagnosed with a terminal illness. The bill requires the DOC to, subject to confidentiality requirements, follow the following procedures related to an inmate who is diagnosed with a terminal medical condition that makes him or her eligible for consideration for release under the "terminally ill" definition discussed above while in the custody of the DOC:

- Notify the inmate's family or next of kin, and attorney, if applicable, of such diagnosis within 72 hours of the diagnosis.
- Provide the inmate's family, including extended family, with an opportunity to visit the inmate in person within seven days upon such diagnosis.
- Initiate a review for CMR immediately upon such diagnosis.

Additionally, the bill provides that an inmate who has mental and physical capacity must consent to release of confidential information for the DOC to comply with these notification requirements.

The bill authorizes the DOC to adopt rules as necessary to implement the act.

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., conforming these provisions to changes made by the act.

The bill is effective October 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, the CJIC heard SB 1334 (2019), which expanded the definitions of CMR eligibility in a manner similar to the bill and the CJIC found that this expansion would result in a negative significant prison bed impact (i.e. a decrease of more than 25 prison beds).<sup>50</sup> Additionally, the bill will likely result in a reduction in the associated inmate healthcare costs.

The bill removes any role of determining the appropriateness of an inmate's release on CMR from the FCOR and places such comparable duties within the DOC. As a result, the bill will likely result in a workload and cost shift from the FCOR to the DOC. Additionally, to the extent that the establishment of such program with the DOC results in a workload and fiscal impact greater than currently expended within the FCOR, then the bill could result in a negative indeterminate fiscal impact. However, the DOC currently performs the initial determination of eligibility and therefore will likely not experience an increased workload related to that portion of the newly-established CMR program within the DOC.

Additionally, the DOC is the primary health care provider for any inmates in its custody and as a result, the DOC has many necessary medical records in its possession for making determinations of the appropriateness of release on CMR. Additionally, the DOC has staff whose primary function is to monitor persons who have been convicted of criminal acts in violation of Florida law. To the extent that requiring the DOC to conduct the entire process of determining the appropriateness of an inmate's release on CMR and subsequent supervision of the medical releasee results in a costs savings and efficiencies, the bill will likely result in a reduced workload and cost savings to the state.

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<sup>50</sup> The CJIC, *Impact Conference Results for CS/SB 1334 (2019)*, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1334.pdf> (last visited November 6, 2019).



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates section 945.0911 of the Florida Statutes.

The bill repeals section 947.149 of the Florida Statutes.

The bill amends the following sections of the Florida Statutes: 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on November 12, 2019:**

The committee substitute:

- Requires the DOC to:
  - Notify the family of an inmate who has been diagnosed with a terminal condition of such diagnosis within 72 hours;
  - Allow the family of an inmate who has been diagnosed with a terminal condition to have a visit with the inmate within 7 days of such diagnosis; and
  - Immediately begin the referral process for the conditional medical release review upon an inmate's diagnosis of a terminal condition.
- Ensures that the rights provided to medical releasee's during revocation hearing proceedings are afforded to a medical releasee regardless of the basis for the revocation hearing.
- Makes technical changes, including, in part, ensuring consistency with the terms used to describe an inmate who has been approved for conditional medical release and released into the community.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 134 - 265  
and insert:  
pursuant to this section is appropriate for the inmate. If  
conditional medical release is approved, the inmate must be  
released by the department to the community within a reasonable  
amount of time with necessary release conditions imposed  
pursuant to subsection (6). An inmate who is granted conditional  
medical release is considered a medical releasee upon release to



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the community.

(c) An inmate who is denied conditional medical release by the panel may have the decision reviewed by the department's general counsel and chief medical officer, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of conditional medical release pursuant to this section. The decision of the secretary is a final administrative decision not subject to appeal. An inmate who is denied conditional medical release may be subsequently reconsidered for such release in a manner prescribed by department rule.

(6) RELEASE CONDITIONS.—

(a) An inmate granted release pursuant to this section is released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. Such inmate is considered a medical releasee upon release from the department into the community. The medical releasee must comply with all reasonable conditions of release the department imposes, which must include, at a minimum:

1. Periodic medical evaluations at intervals determined by the department at the time of release.

2. Supervision by an officer trained to handle special offender caseloads.

3. Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the medical releasee's compliance with release conditions.

4. Any conditions of community control provided for in s. 948.101.

5. Any other conditions the department deems appropriate to



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ensure the safety of the community and compliance by the medical releasee.

(b) A medical releasee is considered to be in the care, custody, supervision, and control of the department and remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule. The medical releasee may not be counted in the prison system population, and the medical releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

(7) REVOCATION HEARING AND RECOMMITMENT.—

(a)1. If the medical releasee's supervision officer discovers that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for release under this section, then the conditional medical release may be revoked. The department may order, as prescribed by department rule, that the medical releasee be returned to the custody of the department for a conditional medical release revocation hearing or may allow the medical releasee to remain in the community pending the revocation hearing.

2. The revocation hearing must be conducted by the panel established in subsection (1). Before a revocation hearing pursuant to this paragraph, the director of inmate health services or his or her designee must review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

3. A majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional



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69 medical release to be revoked. If conditional medical release is  
70 revoked due to improvement in his or her medical or physical  
71 condition, the medical releasee must be recommitted to the  
72 department to serve the balance of his or her sentence with  
73 credit for the time served on conditional medical release and  
74 without forfeiture of any gain-time accrued before recommitment.  
75 If the medical releasee whose conditional medical release is  
76 revoked due to an improvement in her or his medical or physical  
77 condition would otherwise be eligible for parole or any other  
78 release program, he or she may be considered for such release  
79 program pursuant to law.

80 4. A medical releasee whose conditional medical release is  
81 revoked pursuant to this paragraph may have the decision  
82 reviewed by the department's general counsel and chief medical  
83 officer, who must make a recommendation to the secretary. The  
84 secretary must review all relevant information and make a final  
85 decision about the appropriateness of the revocation of  
86 conditional medical release pursuant to this paragraph. The  
87 decision of the secretary is a final administrative decision not  
88 subject to appeal.

89 (b)1. The medical releasee's conditional medical release  
90 may also be revoked for violation of any release conditions the  
91 department establishes, including, but not limited to, a new  
92 violation of law.

93 2. If the basis of the violation of release conditions is  
94 related to a new violation of law, the medical releasee must be  
95 detained without bond until his or her initial appearance at  
96 which a judicial determination of probable cause is made. If the  
97 judge determines that there was no probable cause for the



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arrest, the medical releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's determination also constitutes reasonable grounds to believe that the medical releasee violated the conditions of the conditional medical release.

3. The department must order that the medical releasee subject to revocation under this paragraph be returned to department custody for a conditional medical release revocation hearing.

4. A majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional medical release to be revoked. If conditional medical release is revoked pursuant to this paragraph, the medical releasee must serve the balance of his or her sentence with credit for the actual time served on conditional medical release. The releasee's gain-time accrued before recommitment may be forfeited pursuant to s. 944.28(1). If the medical releasee whose conditional medical release is revoked subject to this paragraph would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

5. A medical releasee whose conditional medical release has been revoked pursuant to this paragraph may have the revocation reviewed by the department's general counsel, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of conditional medical release pursuant to this paragraph. The decision of the secretary is a final administrative decision not subject to appeal.



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(c) If the medical releasee subject to revocation under paragraph (a) or paragraph (b) elects to proceed with a hearing, the medical releasee must be informed orally and in writing of the following:

1. The alleged basis for the pending revocation proceeding against the releasee.

2. The releasee's right to be represented by counsel.  
However, this subparagraph does not create a right to publicly funded legal counsel.

3. The releasee's right to be heard in person.

4. The releasee's right to secure, present, and compel the attendance of witnesses relevant to the proceeding.

5. The releasee's right to produce documents on his or her own behalf.

6. The releasee's right of access to all evidence used to support the revocation proceeding against the releasee and to confront and cross-examine adverse witnesses.

7. The releasee's right to waive the hearing.

(8) SPECIAL REQUIREMENTS UPON AN INMATE'S DIAGNOSIS OF A TERMINAL CONDITION.—

(a) If an inmate is diagnosed with a terminal medical condition that makes him or her eligible for consideration for release under paragraph (2)(c) while in the custody of the department, subject to confidentiality requirements, the department must:

1. Notify the inmate's family or next of kin, and attorney, if applicable, of such diagnosis within 72 hours of the diagnosis.

2. Provide the inmate's family, including extended family,



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with an opportunity to visit the inmate in person within 7 days upon such diagnosis.

3. Initiate a review for conditional medical release as provided for in this section immediately upon such diagnosis.

(b) If the inmate has mental and physical capacity, he or she must consent to release of confidential information for the department to comply with the notification requirements required in this subsection.

(9) RULEMAKING AUTHORITY.—The department may adopt rules as necessary to implement this section.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 19 - 45

and insert:

conditions for release; providing that an inmate who is approved for conditional medical release must be released from the department in a reasonable amount of time; providing that an inmate is considered a medical releasee upon release from the department into the community; providing that a medical releasee remains in the care, custody, supervision, and control of the department and is eligible to earn or lose gain-time; prohibiting a medical releasee or his or her community-based housing from being counted in the prison system population and the prison capacity figures, respectively; providing for the revocation of a medical releasee's conditional medical release; authorizing the medical releasee to be returned to the department's custody if his or her medical or physical





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condition improves; requiring a majority of the panel members to agree on the appropriateness of revocation; providing that gain-time is not forfeited for revocation based on improvement in the medical releasee's condition; providing a review process for a medical releasee who has his or her release revoked; authorizing the medical releasee to be recommitted if he or she violates any conditions of the release; requiring that the medical releasee be detained if a violation is based on certain circumstances; requiring that a majority of the panel members agree on the appropriateness of revocation; requiring specified medical releasees to be recommitted to the department upon the revocation of the conditional medical release; authorizing the forfeiture of gain-time if the revocation is based on certain violations; providing a review process for a medical releasee who has his or her release revoked; requiring that the medical releasee be given specified information in certain instances; requiring the department to notify certain persons within a specified time frame of an inmate's diagnosis of a terminal medical condition; requiring the department to allow a visit between an inmate and certain persons within 7 days of a diagnosis of a terminal medical condition; requiring the department to initiate the conditional medical release review process immediately upon an inmate's diagnosis of a terminal medical condition; requiring the inmate to consent to release of information in



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certain circumstances; providing rulemaking

By Senator Brandes

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1 A bill to be entitled  
 2 An act relating to inmate conditional medical release;  
 3 creating s. 945.0911, F.S.; establishing the  
 4 conditional medical release program within the  
 5 Department of Corrections; establishing a panel to  
 6 consider specified matters; defining terms; providing  
 7 for program eligibility; requiring any inmate who  
 8 meets certain criteria to be considered for  
 9 conditional medical release; providing that the inmate  
 10 does not have a right to release or to a certain  
 11 medical evaluation; requiring the department to  
 12 identify eligible inmates; requiring the department to  
 13 refer an inmate to the panel for consideration;  
 14 providing for victim notification in certain  
 15 circumstances; requiring the panel to conduct a  
 16 hearing within a specified timeframe; specifying  
 17 requirements for the hearing; providing a review  
 18 process for an inmate who is denied release; providing  
 19 conditions for release; providing that a medical  
 20 releasee remains in the care, custody, supervision,  
 21 and control of the department and is eligible to earn  
 22 or lose gain-time; prohibiting a medical releasee or  
 23 his or her community-based housing from being counted  
 24 in the prison system population and the prison  
 25 capacity figures, respectively; providing for the  
 26 revocation of an inmate's conditional medical release;  
 27 authorizing the medical releasee to be returned to the  
 28 department's custody if his or her medical or physical  
 29 condition improves; requiring a majority of the panel

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 members to agree on the appropriateness of revocation;  
 31 providing that gain-time is not forfeited for  
 32 revocation based on improvement in the inmate's  
 33 condition; providing a review process for an inmate  
 34 who has his or her release revoked; authorizing the  
 35 medical releasee to be recommitted if he or she  
 36 violates any conditions of the release; requiring that  
 37 the medical releasee be detained if a violation is  
 38 based on certain circumstances; requiring that a  
 39 majority of the panel members agree on the  
 40 appropriateness of revocation; authorizing the  
 41 forfeiture of gain-time if the revocation is based on  
 42 certain violations; providing a review process for an  
 43 inmate who has his or her release revoked; requiring  
 44 that the medical releasee be given specified  
 45 information in certain instances; providing rulemaking  
 46 authority; repealing s. 947.149, F.S., relating to  
 47 conditional medical release; amending ss. 316.1935,  
 48 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135,  
 49 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S.;  
 50 conforming cross-references to changes made by the  
 51 act; providing an effective date.

53 Be It Enacted by the Legislature of the State of Florida:

54  
 55 Section 1. Section 945.0911, Florida Statutes, is created  
 56 to read:

57 945.0911 Conditional medical release.-  
 58 (1) CREATION.-There is established a conditional medical

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release program within the department for the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings as provided for in this section. The establishment of the conditional medical release program must include a panel of at least three people appointed by the secretary or his or her designee for the purpose of determining the appropriateness of conditional medical release and conducting revocation hearings on the inmate releases.

(2) DEFINITIONS.—As used in this section, the term:

(a) “Inmate with a debilitating illness” means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.

(b) “Permanently incapacitated inmate” means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.

(c) “Terminally ill inmate” means an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.

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(3) ELIGIBILITY.—An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be an inmate with a debilitating illness, a permanently incapacitated inmate, or a terminally ill inmate.

(4) REFERRAL FOR CONSIDERATION.—

(a)1. Notwithstanding any provision to the contrary, any inmate in the custody of the department who meets one or more of the eligibility requirements under subsection (3) must be considered for conditional medical release.

2. The authority to grant conditional medical release rests solely with the department. An inmate does not have a right to release or to a medical evaluation to determine eligibility for release pursuant to this section.

(b) The department must identify inmates who may be eligible for conditional medical release based upon available medical information. In considering an inmate for conditional medical release, the department may require additional medical evidence, including examinations of the inmate, or any other additional investigations the department deems necessary for determining the appropriateness of the eligible inmate’s release.

(c) The department must refer an inmate to the panel established under subsection (1) for review and determination of conditional medical release upon his or her identification as potentially eligible for release pursuant to this section.

(d) If the case that resulted in the inmate’s commitment to the department involved a victim, and the victim specifically

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requested notification pursuant to s. 16, Art. I of the State Constitution, the department must notify the victim of the inmate's referral to the panel immediately upon identification of the inmate as potentially eligible for release under this section. Additionally, the victim must be afforded the right to be heard regarding the release of the inmate.

(5) DETERMINATION OF RELEASE.—

(a) Within 45 days after receiving the referral, the panel established in subsection (1) must conduct a hearing to determine whether conditional medical release is appropriate for the inmate. Before the hearing, the director of inmate health services or his or her designee must review any relevant information, including, but not limited to, medical evidence, and provide the panel with a recommendation regarding the appropriateness of releasing the inmate pursuant to this section.

(b) A majority of the panel members must agree that release pursuant to this section is appropriate for the inmate.

(c) An inmate who is denied conditional medical release by the panel may have the decision reviewed by the department's general counsel and chief medical officer, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of conditional medical release pursuant to this section. The decision of the secretary is a final administrative decision not subject to appeal. An inmate who is denied conditional medical release may be subsequently reconsidered for such release in a manner prescribed by department rule.

(6) RELEASE CONDITIONS.—

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(a) An inmate granted release pursuant to this section is released for a period equal to the length of time remaining on his or her term of imprisonment on the date the release is granted. The medical releasee must comply with all reasonable conditions of release the department imposes, which must include, at a minimum:

1. Periodic medical evaluations at intervals determined by the department at the time of release.

2. Supervision by an officer trained to handle special offender caseloads.

3. Active electronic monitoring, if such monitoring is determined to be necessary to ensure the safety of the public and the releasee's compliance with release conditions.

4. Any conditions of community control provided for in s. 948.101.

5. Any other conditions the department deems appropriate to ensure the safety of the community and compliance by the medical releasee.

(b) A medical releasee is considered to be in the care, custody, supervision, and control of the department and remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule. The medical releasee may not be counted in the prison system population, and the medical releasee's approved community-based housing location may not be counted in the capacity figures for the prison system.

(7) REVOCATION HEARING AND RECOMMITMENT.—

(a)1. If the medical releasee's supervision officer discovers that the medical or physical condition of the medical releasee has improved to the extent that she or he would no

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longer be eligible for release under this section, then the conditional medical release may be revoked. The department may order, as prescribed by department rule, that the medical releasee be returned to the custody of the department for a conditional medical release revocation hearing or may allow the medical releasee to remain in the community pending the revocation hearing.

2. The revocation hearing must be conducted by the panel established in subsection (1). Before a revocation hearing pursuant to this paragraph, the director of inmate health services or his or her designee must review any medical evidence pertaining to the releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

3. A majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional medical release. If conditional medical release is revoked due to improvement in his or her medical or physical condition, the medical releasee must serve the balance of his or her sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued before recommitment. If the inmate whose conditional medical release is revoked due to an improvement in her or his medical or physical condition would otherwise be eligible for parole or any other release program, the inmate may be considered for such release program pursuant to law.

4. A medical releasee whose release is revoked pursuant to this paragraph may have the decision reviewed by the department's general counsel and chief medical officer, who must

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make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of conditional medical release pursuant to this paragraph. The decision of the secretary is a final administrative decision not subject to appeal.

(b)1. Conditional medical release may also be revoked for violation of any release conditions the department establishes, including, but not limited to, a new violation of law.

2. If the basis of the violation of release conditions is related to a new violation of law, the medical releasee must be detained without bond until his or her initial appearance at which a judicial determination of probable cause is made. If the judge determines that there was no probable cause for the arrest, the medical releasee may be released. If the judge determines that there was probable cause for the arrest, the judge's determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release.

3. The department must order that the medical releasee subject to revocation under this paragraph be returned to department custody for a conditional medical release revocation hearing as prescribed by department rule.

4. A majority of the panel members must agree that revocation is appropriate for the medical releasee's conditional medical release. If conditional medical release is revoked pursuant to this paragraph, the medical releasee must serve the balance of his or her sentence with credit for the actual time served on conditional medical release. The releasee's gain-time

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accrued before recommitment may be forfeited pursuant to s. 944.28(1). If the inmate whose conditional medical release is revoked subject to this paragraph would otherwise be eligible for parole or any other release program, he or she may be considered for such release program pursuant to law.

5. A medical releasee whose release has been revoked pursuant to this paragraph may have the revocation reviewed by the department's general counsel, who must make a recommendation to the secretary. The secretary must review all relevant information and make a final decision about the appropriateness of the revocation of conditional medical release pursuant to this paragraph. The decision of the secretary is a final administrative decision not subject to appeal.

(c) If the medical releasee subject to revocation under paragraph (a) or paragraph (b) elects to proceed with a hearing, the releasee must be informed orally and in writing of the following:

1. The alleged violation with which the releasee is charged.

2. The releasee's right to be represented by counsel. However, this subparagraph does not create a right to publicly funded legal counsel.

3. The releasee's right to be heard in person.

4. The releasee's right to secure, present, and compel the attendance of witnesses relevant to the proceeding.

5. The releasee's right to produce documents on his or her own behalf.

6. The releasee's right of access to all evidence used against the releasee and to confront and cross-examine adverse

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witnesses.

7. The releasee's right to waive the hearing.

(8) RULEMAKING AUTHORITY.—The department may adopt rules as necessary to implement this section.

Section 2. Section 947.149, Florida Statutes, is repealed.

Section 3. Subsection (6) of section 316.1935, Florida Statutes, is amended to read:

316.1935 Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.—

(6) Notwithstanding s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3) (b) or paragraph (4) (b) is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~, prior to serving the mandatory minimum sentence.

Section 4. Paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is amended to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4) (b).

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2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 945.0911 ~~s. 947.149~~.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 5. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 775.087, Florida Statutes, are amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(2)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than

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pardon or executive clemency, or conditional medical release under s. 945.0911 ~~s. 947.149~~, prior to serving the minimum sentence.

(3)

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 ~~s. 947.149~~, prior to serving the minimum sentence.

Section 6. Subsection (3) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

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(a) A "firearm" or "destructive device" as those terms are defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 ~~s. 947.149~~, prior to serving the minimum sentence.

Section 7. Subsection (1) of section 790.235, Florida Statutes, is amended to read:

790.235 Possession of firearm or ammunition by violent career criminal unlawful; penalty.—

(1) Any person who meets the violent career criminal criteria under s. 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15

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years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under s. 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, or conditional medical release under s. 945.0911 ~~s. 947.149~~.

Section 8. Subsection (7) of section 794.0115, Florida Statutes, is amended to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 945.0911 ~~s. 947.149~~, before serving the minimum sentence.

Section 9. Paragraphs (b), (c), and (g) of subsection (1) and subsection (3) of section 893.135, Florida Statutes, are amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of

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cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the

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intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the

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quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of

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imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

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4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)30.;

(V) A fentanyl derivative, as described in s.

893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s.

893.0356, of any substance described in sub-sub-subparagraphs

(I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of \$50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of \$100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000.

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5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result, such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60

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581 kilograms or more of any morphine, opium, oxycodone,  
 582 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
 583 isomer, or salt of an isomer thereof, including heroin, as  
 584 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
 585 60 kilograms or more of any mixture containing any such  
 586 substance, and who knows that the probable result of such  
 587 importation would be the death of a person, commits capital  
 588 importation of illegal drugs, a capital felony punishable as  
 589 provided in ss. 775.082 and 921.142. A person sentenced for a  
 590 capital felony under this paragraph shall also be sentenced to  
 591 pay the maximum fine provided under subparagraph 1.

592 (g)1. Any person who knowingly sells, purchases,  
 593 manufactures, delivers, or brings into this state, or who is  
 594 knowingly in actual or constructive possession of, 4 grams or  
 595 more of flunitrazepam or any mixture containing flunitrazepam as  
 596 described in s. 893.03(1)(a) commits a felony of the first  
 597 degree, which felony shall be known as "trafficking in  
 598 flunitrazepam," punishable as provided in s. 775.082, s.  
 599 775.083, or s. 775.084. If the quantity involved:

600 a. Is 4 grams or more but less than 14 grams, such person  
 601 shall be sentenced to a mandatory minimum term of imprisonment  
 602 of 3 years, and the defendant shall be ordered to pay a fine of  
 603 \$50,000.

604 b. Is 14 grams or more but less than 28 grams, such person  
 605 shall be sentenced to a mandatory minimum term of imprisonment  
 606 of 7 years, and the defendant shall be ordered to pay a fine of  
 607 \$100,000.

608 c. Is 28 grams or more but less than 30 kilograms, such  
 609 person shall be sentenced to a mandatory minimum term of

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610 imprisonment of 25 calendar years and pay a fine of \$500,000.

611 2. Any person who knowingly sells, purchases, manufactures,  
 612 delivers, or brings into this state or who is knowingly in  
 613 actual or constructive possession of 30 kilograms or more of  
 614 flunitrazepam or any mixture containing flunitrazepam as  
 615 described in s. 893.03(1)(a) commits the first degree felony of  
 616 trafficking in flunitrazepam. A person who has been convicted of  
 617 the first degree felony of trafficking in flunitrazepam under  
 618 this subparagraph shall be punished by life imprisonment and is  
 619 ineligible for any form of discretionary early release except  
 620 pardon or executive clemency or conditional medical release  
 621 under s. 945.0911 ~~s. 947.149~~. However, if the court determines  
 622 that, in addition to committing any act specified in this  
 623 paragraph:

624 a. The person intentionally killed an individual or  
 625 counseled, commanded, induced, procured, or caused the  
 626 intentional killing of an individual and such killing was the  
 627 result; or

628 b. The person's conduct in committing that act led to a  
 629 natural, though not inevitable, lethal result,

630 such person commits the capital felony of trafficking in  
 631 flunitrazepam, punishable as provided in ss. 775.082 and  
 632 921.142. Any person sentenced for a capital felony under this  
 633 paragraph shall also be sentenced to pay the maximum fine  
 634 provided under subparagraph 1.

635 (3) Notwithstanding the provisions of s. 948.01, with  
 636 respect to any person who is found to have violated this  
 637 section, adjudication of guilt or imposition of sentence shall  
 638

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not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~, prior to serving the mandatory minimum term of imprisonment.

Section 10. Subsection (2) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences

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concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 945.0911 ~~s. 947.149~~.

Section 11. Paragraph (b) of subsection (7) of section 944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notification; identification card.—  
(7)

(b) Paragraph (a) does not apply to inmates who:

1. The department determines have a valid driver license or state identification card, except that the department shall provide these inmates with a replacement state identification card or replacement driver license, if necessary.

2. Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration.

3. Are released due to an emergency release or a conditional medical release under s. 945.0911 ~~s. 947.149~~.

4. Are not in the physical custody of the department at or within 180 days before release.

5. Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a

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697 qualifying address.

698 Section 12. Subsection (1) of section 944.70, Florida  
699 Statutes, is amended to read:

700 944.70 Conditions for release from incarceration.—

701 (1) (a) A person who is convicted of a crime committed on or  
702 after October 1, 1983, but before January 1, 1994, may be  
703 released from incarceration only:

- 704 1. Upon expiration of the person's sentence;
- 705 2. Upon expiration of the person's sentence as reduced by  
706 accumulated gain-time;
- 707 3. As directed by an executive order granting clemency;
- 708 4. Upon attaining the provisional release date;
- 709 5. Upon placement in a conditional release program pursuant  
710 to s. 947.1405; or
- 711 6. Upon the granting of control release pursuant to s.  
712 947.146.

713 (b) A person who is convicted of a crime committed on or  
714 after January 1, 1994, may be released from incarceration only:

- 715 1. Upon expiration of the person's sentence;
- 716 2. Upon expiration of the person's sentence as reduced by  
717 accumulated meritorious or incentive gain-time;
- 718 3. As directed by an executive order granting clemency;
- 719 4. Upon placement in a conditional release program pursuant  
720 to s. 947.1405 or a conditional medical release program pursuant  
721 to s. 945.0911 ~~s. 947.149~~; or
- 722 5. Upon the granting of control release, including  
723 emergency control release, pursuant to s. 947.146.

724 Section 13. Paragraph (h) of subsection (1) of section  
725 947.13, Florida Statutes, is amended to read:

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726 947.13 Powers and duties of commission.—

727 (1) The commission shall have the powers and perform the  
728 duties of:

729 ~~(h) Determining what persons will be released on~~  
730 ~~conditional medical release under s. 947.149, establishing the~~  
731 ~~conditions of conditional medical release, and determining~~  
732 ~~whether a person has violated the conditions of conditional~~  
733 ~~medical release and taking action with respect to such a~~  
734 ~~violation.~~

735 Section 14. Section 947.141, Florida Statutes, is amended  
736 to read:

737 947.141 Violations of conditional release, control release,  
738 ~~or conditional medical release~~ or addiction-recovery  
739 supervision.—

740 (1) If a member of the commission or a duly authorized  
741 representative of the commission has reasonable grounds to  
742 believe that an offender who is on release supervision under s.  
743 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731 has violated  
744 the terms and conditions of the release in a material respect,  
745 such member or representative may cause a warrant to be issued  
746 for the arrest of the releasee; if the offender was found to be  
747 a sexual predator, the warrant must be issued.

748 (2) Upon the arrest on a felony charge of an offender who  
749 is on release supervision under s. 947.1405, s. 947.146, ~~s.~~  
750 ~~947.149~~, or s. 944.4731, the offender must be detained without  
751 bond until the initial appearance of the offender at which a  
752 judicial determination of probable cause is made. If the trial  
753 court judge determines that there was no probable cause for the  
754 arrest, the offender may be released. If the trial court judge

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determines that there was probable cause for the arrest, such determination also constitutes reasonable grounds to believe that the offender violated the conditions of the release. Within 24 hours after the trial court judge's finding of probable cause, the detention facility administrator or designee shall notify the commission and the department of the finding and transmit to each a facsimile copy of the probable cause affidavit or the sworn offense report upon which the trial court judge's probable cause determination is based. The offender must continue to be detained without bond for a period not exceeding 72 hours excluding weekends and holidays after the date of the probable cause determination, pending a decision by the commission whether to issue a warrant charging the offender with violation of the conditions of release. Upon the issuance of the commission's warrant, the offender must continue to be held in custody pending a revocation hearing held in accordance with this section.

(3) Within 45 days after notice to the Florida Commission on Offender Review of the arrest of a releasee charged with a violation of the terms and conditions of conditional release, control release, conditional medical release, or addiction-recovery supervision, the releasee must be afforded a hearing conducted by a commissioner or a duly authorized representative thereof. If the releasee elects to proceed with a hearing, the releasee must be informed orally and in writing of the following:

(a) The alleged violation with which the releasee is charged.

(b) The releasee's right to be represented by counsel.

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(c) The releasee's right to be heard in person.

(d) The releasee's right to secure, present, and compel the attendance of witnesses relevant to the proceeding.

(e) The releasee's right to produce documents on the releasee's own behalf.

(f) The releasee's right of access to all evidence used against the releasee and to confront and cross-examine adverse witnesses.

(g) The releasee's right to waive the hearing.

(4) Within a reasonable time following the hearing, the commissioner or the commissioner's duly authorized representative who conducted the hearing shall make findings of fact in regard to the alleged violation. A panel of no fewer than two commissioners shall enter an order determining whether the charge of violation of conditional release, control release, conditional medical release, or addiction-recovery supervision has been sustained based upon the findings of fact presented by the hearing commissioner or authorized representative. By such order, the panel may revoke conditional release, control release, conditional medical release, or addiction-recovery supervision and thereby return the releasee to prison to serve the sentence imposed, reinstate the original order granting the release, or enter such other order as it considers proper. Effective for inmates whose offenses were committed on or after July 1, 1995, the panel may order the placement of a releasee, upon a finding of violation pursuant to this subsection, into a local detention facility as a condition of supervision.

(5) Effective for inmates whose offenses were committed on or after July 1, 1995, notwithstanding the provisions of ss.



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813 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and  
 814 951.23, or any other law to the contrary, by such order as  
 815 provided in subsection (4), the panel, upon a finding of guilt,  
 816 may, as a condition of continued supervision, place the releasee  
 817 in a local detention facility for a period of incarceration not  
 818 to exceed 22 months. Prior to the expiration of the term of  
 819 incarceration, or upon recommendation of the chief correctional  
 820 officer of that county, the commission shall cause inquiry into  
 821 the inmate's release plan and custody status in the detention  
 822 facility and consider whether to restore the inmate to  
 823 supervision, modify the conditions of supervision, or enter an  
 824 order of revocation, thereby causing the return of the inmate to  
 825 prison to serve the sentence imposed. The provisions of this  
 826 section do not prohibit the panel from entering such other order  
 827 or conducting any investigation that it deems proper. The  
 828 commission may only place a person in a local detention facility  
 829 pursuant to this section if there is a contractual agreement  
 830 between the chief correctional officer of that county and the  
 831 Department of Corrections. The agreement must provide for a per  
 832 diem reimbursement for each person placed under this section,  
 833 which is payable by the Department of Corrections for the  
 834 duration of the offender's placement in the facility. This  
 835 section does not limit the commission's ability to place a  
 836 person in a local detention facility for less than 1 year.

837 (6) Whenever a conditional release, control release,  
 838 conditional medical release, or addiction-recovery supervision  
 839 is revoked by a panel of no fewer than two commissioners and the  
 840 releasee is ordered to be returned to prison, the releasee, by  
 841 reason of the misconduct, shall be deemed to have forfeited all

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842 gain-time or commutation of time for good conduct, as provided  
 843 for by law, earned up to the date of release. However, if a  
 844 conditional medical release is revoked due to the improved  
 845 medical or physical condition of the releasee, the releasee  
 846 shall not forfeit gain-time accrued before the date of  
 847 conditional medical release. This subsection does not deprive  
 848 the prisoner of the right to gain-time or commutation of time  
 849 for good conduct, as provided by law, from the date of return to  
 850 prison.

851 (7) If a law enforcement officer has probable cause to  
 852 believe that an offender who is on release supervision under s.  
 853 947.1405, s. 947.146, ~~s. 947.149~~, or s. 944.4731 has violated  
 854 the terms and conditions of his or her release by committing a  
 855 felony offense, the officer shall arrest the offender without a  
 856 warrant, and a warrant need not be issued in the case.

857 Section 15. This act shall take effect October 1, 2020.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19

Meeting Date

556

Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Olivia Babis

Job Title Public Policy Analyst

Address 2473 Care Dr. Ste 200

Street

Phone 850-617-9718

Tallahassee FL 32308

City

State

Zip

Email oliviab@disabilityrightsflorida.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Disability Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 12, 2019

*Meeting Date*

556

*Bill Number (if applicable)*

Topic Inmate Conditional Medical Release

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19  
Meeting Date

556  
Bill Number (if applicable)

Topic Inmate Conditional Medical Release

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850-425-1344

Email Tcglobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing ACLU of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19

Meeting Date

556

Bill Number (if applicable)

Topic Immune Conditional Medical Release

Amendment Barcode (if applicable)

Name Phillip Sudermon

Job Title Policy Director

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

*Meeting Date*

SB 556

*Bill Number (if applicable)*

Topic Inmate Conditional Medical Release

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

*City*

*State*

*Zip*

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11-12-19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

556

Bill Number (if applicable)

Topic Med. Release

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville

FL

State

32614

Zip

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FAMN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

*Meeting Date*

SB 556

*Bill Number (if applicable)*

Topic Inmate Conditional Medical Release

*Amendment Barcode (if applicable)*

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

*Street*

Tallahassee

FL

32317

*City*

*State*

*Zip*

Email garywhester@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19

Meeting Date

0556  
SB 0056

Bill Number (if applicable)

Topic Inmate Conditional Release

Amendment Barcode (if applicable)

Name Ken Kniepman

Job Title Associate

Address 201 W Park

Phone \_\_\_\_\_

Street

Tallahassee

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

Meeting Date

556

Bill Number (if applicable)

Topic Conditional Medical Relief

Amendment Barcode (if applicable)

Name Jorge Chamorro

Job Title Attorney

Address 108 South Monroe

Phone (888) 681-0024

Street Tallahassee FL 32301

Email jorge@flapartners.com

City Tallahassee

State FL

Zip 32301

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FACDL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

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I respectfully request that **Senate Bill #556**, relating to **Inmate Conditional Medical Release**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24



## 2019 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Commission on Offender Review

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	<u>SB 556</u>
<b>BILL TITLE:</b>	<u>Inmate Conditional Release</u>
<b>BILL SPONSOR:</b>	<u>Brandes</u>
<b>EFFECTIVE DATE:</b>	<u>10/01/2020</u>

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<b><u>CURRENT COMMITTEE</u></b>
Click or tap here to enter text.

<b><u>SIMILAR BILLS</u></b>	
<b>BILL NUMBER:</b>	Click or tap here to enter text.
<b>SPONSOR:</b>	Click or tap here to enter text.

<b><u>PREVIOUS LEGISLATION</u></b>	
<b>BILL NUMBER:</b>	Click or tap here to enter text.
<b>SPONSOR:</b>	Click or tap here to enter text.
<b>YEAR:</b>	Click or tap here to enter text.
<b>LAST ACTION:</b>	Click or tap here to enter text.

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	Click or tap here to enter text.
<b>SPONSOR:</b>	Click or tap here to enter text.

<b>Is this bill part of an agency package?</b>
No

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	10/24/19
<b>LEAD AGENCY ANALYST:</b>	Alec Yarger, Legislative Affairs Director
<b>ADDITIONAL ANALYST(S):</b>	Click or tap here to enter text.
<b>LEGAL ANALYST:</b>	Click or tap here to enter text.
<b>FISCAL ANALYST:</b>	Gina Giacomo, Director of Administration

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## POLICY ANALYSIS

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### **EXECUTIVE SUMMARY**

SB 556 removes the Conditional Medical Release Program from FCOR by repealing s. 947.149, F.S., and reestablishes it within the Department of Corrections in a newly created s. 945.0911, F.S.

The bill also creates a new designation for CMR called “inmate with a debilitating illness”, defined as “an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.”

The bill amends the definition for “terminally ill” to specify “death is expected within 12” months as the standard.

### **SUBSTANTIVE BILL ANALYSIS**

#### **PRESENT SITUATION:**

Conditional Medical Release is a discretionary early release program authorized by s. 947.149, F.S., for inmates with an existing medical or physical condition rendering them permanently incapacitated or terminally ill. The Florida Commission on Offender Review (FCOR) is authorized to release inmates on supervision who are “terminally ill” or “permanently incapacitated,” and who are not a danger to themselves or others. The Department of Corrections is responsible for referring potential conditional medical release cases to FCOR for consideration.

Currently, the two designations which make an inmate eligible for consideration are defined as:

- “Permanently incapacitated inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others; or
- “Terminally ill inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

The Department of Corrections supervises inmates who are granted conditional medical release. The supervision term of an inmate released on conditional medical release is for the remainder of the inmate's sentence.

FCOR monitors the offender's progress through periodic medical reviews and conducts revocation hearings when alleged violations are reported. The supervision can be revoked, and the offender returned to prison, if FCOR determines that a willful and substantial violation has occurred. FCOR may also return the offender to custody if his or her medical or physical condition improves.

The Department of Corrections has recommended 149 inmates for release in the last three fiscal years. FCOR granted release to 75 (just over 50%) of those recommended by the Department of Corrections. In FY 2018-19, FCOR granted release to 38 of the 76 inmates recommended for conditional medical release, or 50%.

#### **EFFECT OF THE BILL:**

##### **Section 1:**

The bill creates s. 945.0911, F.S., to establish the Conditional Medical Release Program within the Department of Corrections.

The bill directs the Secretary of Corrections to appoint three people to a panel to determine the appropriateness of conditional medical release and conduct revocation hearings for conditional medical releasees.

The bill defines three designations that would make an inmate eligible for conditional medical release:

- “Inmate with a debilitating illness” is a new designation that does not currently make an inmate eligible for conditional medical release. It is defined as “an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or to others.”
- “Permanently incapacitated inmate” is identical to the designation of the same name currently in statute. It is defined as “an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of

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medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or to others.”

- “Terminally ill inmate” is very similar to the definition that is currently in statute. The definition provided by the bill specifies that “death is expected within 12 months” is the standard for “terminally ill.” It is defined as “an inmate who has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery, death is expected within 12 months, and the inmate does not constitute a danger to herself or himself or to others.”

The bill places the authority to grant conditional medical release solely with the Department of Corrections. It also provides that an inmate does not have a right to conditional medical release nor an evaluation to determine eligibility for such release.

The bill requires the Department of Corrections to refer potentially eligible inmates to the panel of three appointees for review and determination of conditional medical release.

In the event that the crime that resulted in the inmate’s incarceration involved a victim, the bill requires the Department of Corrections to notify the victim and provide them the right to be heard regarding the release of the inmate.

The bill requires the panel of appointees to conduct a hearing within 45 days of receiving the referral of a potentially eligible inmate. The Director of Inmate Health is required to review any relevant information before the hearing and provide a recommendation to the panel. A majority of the panel members must agree that conditional medical release is appropriate for the inmate in order to grant release.

The bill provides that an inmate who is denied conditional medical release may have the decision reviewed by the Department of Corrections General Counsel and Chief Medical Officer, who then make a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to grant conditional medical release and this decision is not subject to appeal.

The bill also establishes that inmates granted conditional medical release will be released for an amount of time equal to the time remaining on their sentence when released. During this time, the releasee must comply with all conditions of release set by the Department of Corrections. Those conditions must include:

- Periodic medical evaluations;
- Supervision by a trained officer;
- Active electronic monitoring; and
- Any conditions required by community control (948.101, F.S.).

The bill also allows the Department of Corrections to include any other conditions deemed appropriate on a case by case basis.

The bill provides that a conditional medical releasee remains eligible to earn or lose gain-time.

The bill provides for a revocation process if the medical or physical condition of the releasee improves to the extent that they are no longer eligible for conditional medical release. Upon discovering that the releasee’s condition has improved, the Department of Corrections may order that they be returned to custody for a revocation hearing conducted by the panel of three appointees.

The bill provides that if a conditional medical releasee elects to proceed with the revocation hearing, they must be informed orally and in writing of the following:

- The alleged violation with which the releasee is charged;
- The right to be represented by counsel (although not a right to publicly funded counsel);
- The right to be heard in person;
- The right to secure, present, and compel the attendance of witnesses relevant to the hearing;
- The right to produce documents on his or her own behalf;
- The right to access of all evidence used against the releasee and to confront and cross-examine witnesses; and
- The right to waive the hearing.

The Director of Inmate Health must review evidence and make a recommendation regarding the releasee’s improved medical condition to the panel. A majority of the panel members must agree to revoke the releasee’s conditional medical release.

The bill provides that an inmate who has their conditional medical release revoked due to an improvement in medical or physical condition may have the decision reviewed by the Department of Corrections General Counsel and Chief Medical Officer, who then make a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to revoke conditional medical release and this decision is not subject to appeal.

The bill also provides for a revocation process for any violation of the conditional medical release conditions established by the Department of Corrections or new violation of law. Upon discovering a violation, the Department of Corrections must order that the releasee be returned to custody for a revocation hearing conducted by the panel of three appointees. A majority of the panel members must agree to revoke the releasee's conditional medical release.

The bill provides that an inmate who has their conditional medical release revoked due to a violation of the established conditions or new violation of law may have the decision reviewed by the Department of Corrections General Counsel, who then makes a recommendation to the Secretary of Corrections. In these instances, the Secretary has the final decision on whether or not to revoke conditional medical release and this decision is not subject to appeal.

The bill provides rulemaking authority to the Department of Corrections to adopt rules to implement this section (Section 1) of the bill.

#### **Section 2:**

The bill repeals section s. 947.149, F.S., deleting the existing Conditional Release Program within the Florida Commission on Offender Review.

#### **Sections 3-14:**

The bill amends ss. 316.1935, 775.084, 775.087, 784.07, 790.235, 794.0115, 893.135, 921.0024, 944.605, 944.70, 947.13, and 947.141, F.S., to conform cross-references to changes made by the bill.

#### **Section 15:**

The bill provides that the act will be effective on October 1, 2020.

#### **DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?** Y ☒ N ☐

If yes, explain:	The bill removes 947.149(6), F.S., a statute that requires FCOR to adopt rules to implement the conditional medical release program.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Chapter 23-24 Conditional Medical Release Program

#### **WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

#### **ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**

Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

#### **ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A

Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

## FISCAL ANALYSIS

### DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

### DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	N/A
Expenditures:	<p>This bill would have a minimal, but negative fiscal impact to the Commission on Offender Review (FCOR) by reducing the number of discretionary release determinations.</p> <p>In FY1819, FCOR calculated that the per unit cost for a discretionary release determination was \$696.98.</p> <p>In FY1819, FCOR made 84 Conditional Medical Release (CMR) determinations. During this time, 804 hours were spent on the investigation/determination, 64 hours were spent on victim assistance, and 433 hours were spent on revocations for CMR. This adds up to a total of 1301 hours (less than 1 FTE).</p> <p>There is no position at FCOR that deals exclusively with Conditional Medical Release. The process for CMR is similar enough to other releases that the individuals who process parole cases process CMR cases as well.</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

### DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☒



Revenues:	N/A
Expenditures:	N/A
Other:	N/A

**DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**

Y ☐ N ☒

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

DRAFT

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## TECHNOLOGY IMPACT

DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.

Click or tap here to enter text.

## FEDERAL IMPACT

DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.

Click or tap here to enter text.

## ADDITIONAL COMMENTS

Click or tap here to enter text.

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

Click or tap here to enter text.

**Cox, Ryan**

---

**From:** Yarger, Alexander <alecyarger@fcor.state.fl.us>  
**Sent:** Friday, December 15, 2017 10:25 AM  
**To:** Cox, Ryan  
**Subject:** RE: Conditional Medical Release  
**Attachments:** CMR info.pdf; Analysis-of-US-Compassionate-and-Geriatric-Release-Laws.pdf

Good morning,

Here is the information you requested. I have also attached a packet with some data on CMR.

FY14/15: 14 inmates released  
FY15/16: 27 inmates released  
FY16/17: 14 inmates released

Thanks,

**Alec Yarger**  
Director of Legislative Affairs  
Florida Commission on Offender Review  
Office: (850) 921-2804  
Cell: (850) 728-3548

**From:** Cox, Ryan [mailto:Cox.Ryan@flsenate.gov]  
**Sent:** Friday, December 15, 2017 9:37 AM  
**To:** Yarger, Alexander <alecyarger@fcor.state.fl.us>  
**Subject:** Conditional Medical Release

Good morning, Alex:

Can you send me data for the last three fiscal years on the number of inmates that have been released on CMR and the number of inmates, if any, that were recommitted to the department due to a change in medical status? Thank you.

Sincerely,

*Ryan C. Cox*

Senior Attorney  
Committee on Criminal Justice  
(850) 487-5192

## Cox, Ryan

---

**From:** Yarger, Alexander <alecyarger@fcor.state.fl.us>  
**Sent:** Friday, November 1, 2019 2:08 PM  
**To:** Cox, Ryan  
**Subject:** Re: Updated Conditional Medical Release numbers

Good afternoon

In FY1819, the Department of Corrections referred 76 inmates for CMR and FCOR granted release to 38.

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From: Cox, Ryan  
Sent: Friday, November 1, 1:55 PM  
Subject: Updated Conditional Medical Release numbers  
To: Yarger, Alexander

Good afternoon, Alex:

Can you please send me the numbers for FY 2018-19 of how many people were recommended for CMR and how many were granted release by the FCOR? Thank you!

Sincerely,

Ryan C. Cox  
Senior Attorney  
Senate Committee on Criminal Justice  
(850) 487-5192



# FLORIDA COMMISSION ON OFFENDER REVIEW

SERVING THE CITIZENS OF FLORIDA SINCE 1941

## CONDITIONAL MEDICAL RELEASE: EXECUTIVE SUMMARY

**What is CMR?** Conditional Medical Release is a form of release granted to inmates who are recommended to the Florida Commission on Offender Review (FCOR) for release by the Florida Department of Corrections (FDC) due to the inmate being permanently incapacitated or terminally ill. (Florida Statute 947.149 and Administrative Rule 23-24.040)

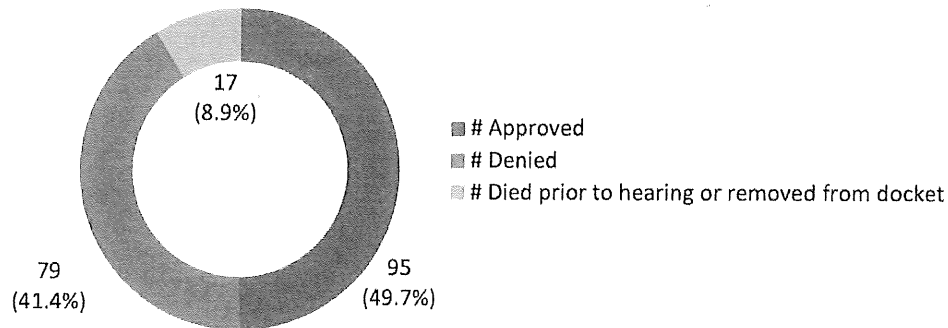
**Characteristics of those granted CMR over the last seven years:** Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date. Of the inmates who were granted CMR, most are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas counties, which is again reflective of the prison population in general. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases had an average of slightly more than five years left on their sentences to serve upon release. Most of the inmates recommended for CMR were diagnosed with some form of cancer.

**Average number of approved and denied cases:** During the seven-year period, an average of 13.6 of the 95 CMR cases were approved each year, an average of 11.3 of 79 cases were denied each year and an average of 2.4 of 17 cases involved inmates who died prior to docket each year. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

**Average timeframes over the seven-year period from docket to death:** Using the averages from the seven-year period, the Department would submit a request for CMR consideration for an inmate and it would be placed on the docket within 14 days. He would be released from prison within five days and would be deceased within five or six months (154 days). The average number of days from when FCOR receives the initial request for CMR to getting it put on the docket is 14, or two weeks. The average number of days from request received to death is 154 or slightly more than five months during the seven-year period. The average number of days from CMR request granted to the inmate being released to home or a facility is five; and the average number of days from release to home (or facility) to death is 133 or slightly more than four months. This number continues to decline, to the point that in FY1314, the average number of days from release from prison to death is 30.8 days.

**Outcomes of those released to CMR:** Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated the conditions of their CMR, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

### Total CMR Cases FY 07/08-13/14



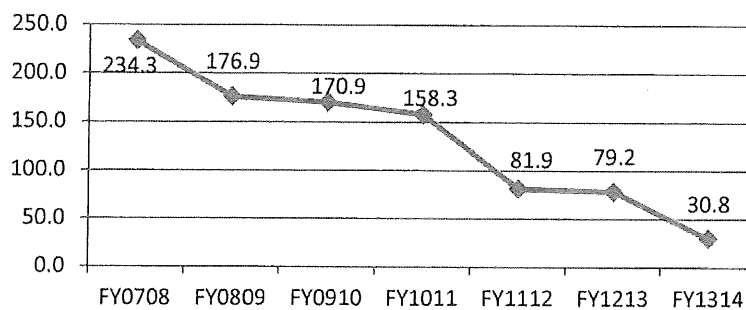
Over a seven-year period (FY0708-FY1314), a total of 191 inmates were considered for conditional medical release (CMR), some more than once. Almost half (95 or 49.7%) were granted CMR, 79 or 41.4% were denied, and 17 or 8.9% died or were removed from consideration prior to the docket date.

### CMR Case Outcomes FY 07/08-13/14

FY	# Approved	Percent of FY Total Approved	# Denied	Percent of FY Total Denied	# Died prior to hearing or removed from docket	Percent of FY Total Removed from Docket	FY cases	Total Percent for FY
FY0708	13	50.0%	9	34.6%	4	15.4%	26	100.0%
FY0809	20	55.6%	14	38.9%	2	5.6%	36	100.0%
FY0910	9	42.9%	9	42.9%	3	14.3%	21	100.0%
FY1011	17	56.7%	12	40.0%	1	3.3%	30	100.0%
FY1112	16	45.7%	17	48.6%	2	5.7%	35	100.0%
FY1213	12	52.2%	8	34.8%	3	13.0%	23	100.0%
FY1314	8	40.0%	10	50.0%	2	10.0%	20	100.0%
<b>Total over 7 years</b>	<b>95</b>	<b>49.7%</b>	<b>79</b>	<b>41.4%</b>	<b>17</b>	<b>8.9%</b>	<b>191</b>	<b>100.0%</b>
<b>Averages</b>	13.6		11.3		2.4		27.3	

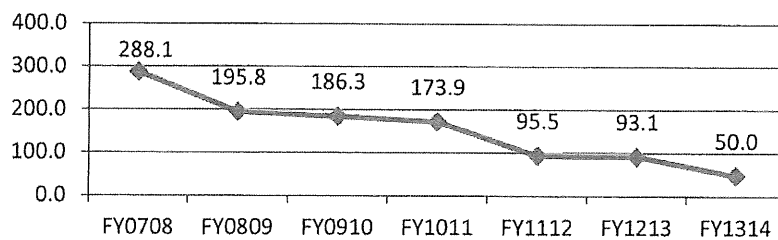
During the seven years covered, the "average" conditional medical release (CMR) gets put on the docket within two weeks (14.1 days) of requesting CMR, and is approved (49.7%). After approval, they wait an average of 5.1 days before they are released. After release, they live an average of 133.2 days, though during the last three years that average has dropped to 64 days. Only one of the 95 approved was serving time for a sex offense. The majority of diagnoses were for some form of terminal cancer, and the life expectancy was generally estimated at six months or fewer. During the seven-year period, the average number of CMR cases approved each year was 13.6, the average number denied was 11.3 and the average number who died prior to docket was 2.4. An average of 27.3 CMR cases were considered each year by the Commission during this period. The highest percentage of cases approved occurred in FY1011 (56.7%) while the lowest percentage of cases approved was in FY1314 (40.0%); the highest percentage of cases denied was also in FY1314 (50.0%), while the lowest percentage of cases denied was in FY0708 (34.6%)

### Average # of Days from Release Date to Death



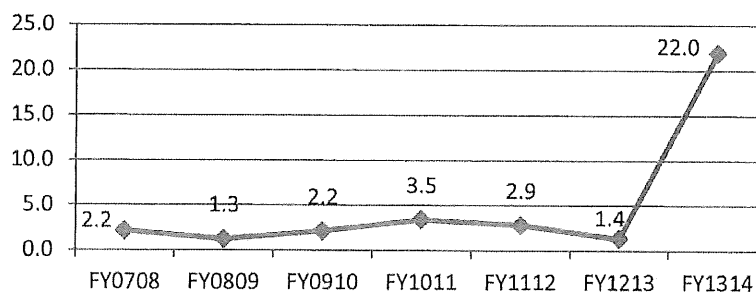
There has been a steady decline in the number of days inmates are living after release from prison on CMR, from a high of 234.3 days in FY0708, to a low of 30.8 days in FY1314. The overall average during the seven year period is 133.2 days from release from prison to death. With the change in eligibility standards from within six months of death to within 12 months, the number of days from release to death is expected to increase.

### Average # of Days from Release Request to Death



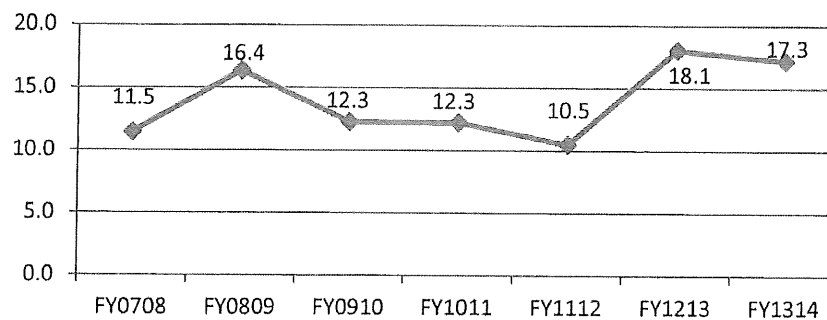
As would be expected based on the previous chart, the average number of days from when the request for CMR is received to when the inmate dies also continues to decline, from a high of 288.1 in FY0708 to a low of 50 days in FY1314. The overall average number of days from CMR request received to death is 154.6.

### Average # of Days from Granted Date to Release Date



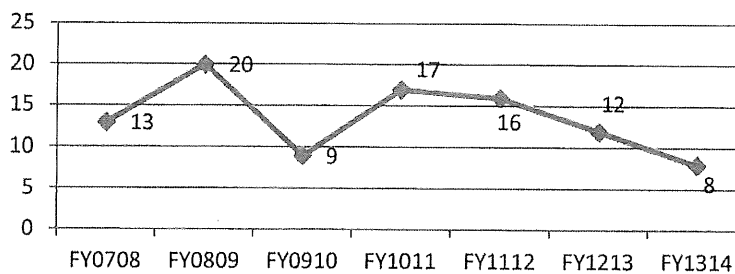
While the average is five days from grant to release, that number is skewed due to one unusual case in FY1314 that took 132 days. This case required that the inmate be accepted into a secure nursing home before release, delaying his release until a bed was available. Excluding that case, the average number of days from granted to release over the other six years is 2.3.

### Average # of Days from Request Received to Docket



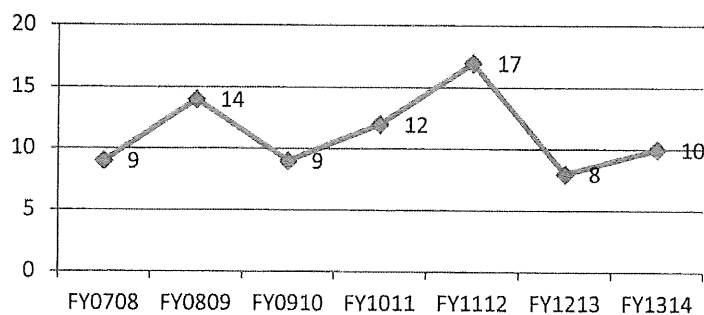
By the same token, FCOR does an excellent job of moving the request along once it's received to get it on the docket quickly, particularly considering there might not be a docket every week. The average has risen slightly over the past seven years, from 11 days to 17, with an average for the seven years of 14.1 days, or two weeks. While it is FCOR's practice to put these cases on the docket immediately, if the Commission is not voting that week it results in a delay to the following week's docket.

### Total CMR Cases Approved



The number of FCOR CMR cases that have been approved over the last seven years has dropped, along with the number submitted. About half (49.7%) of all submitted cases are approved, on average.

### CMR Cases Denied

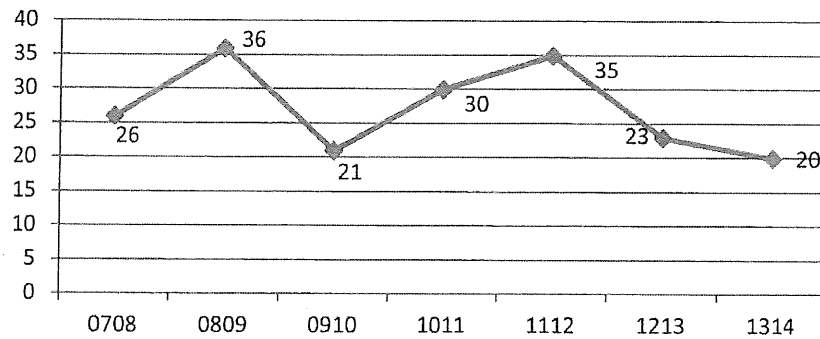


*\*Note these include both docketed and non-docketed cases.*

An average of 41.4% of CMR cases are denied each year, and another 8.9% expire prior to their case being heard and are removed from the docket.



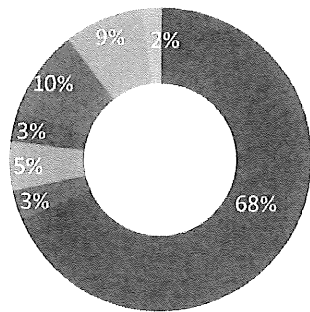
### CMR Cases Referred to FCOR by FDC



The number of CMR requests submitted to FCOR from FDC each year has declined over the seven-year period, from 26 in FY0708 to 20 in FY1314 (including cases removed from docket during each of those years), even as the prison population has increased from 98,192 on June 30, 2008 to 100,942 on June 30, 2014\*.

*\*FDC attributes the drop off to the transition of FDC's health services from a public to private enterprise.*

### Outcomes for Approved CMR Cases FY 07/08-13/14 (as of April 2015)



- Released and died (65)
- Released and alive (3)
- Died in prison before release (5)
- EOS'd before release (3)
- EOS'd after release (9)
- Violated and returned to prison or reinstated to CMR or EOS'd (8)
- Revoked when he got better (2)

Approval Outcomes	FY1314	FY1213	FY1112	FY1011	FY0910	FY0809	FY0708	Total	Percent
Released and died	4	6	13	14	5	15	8	65	68.4%
Released and alive	2	1	0	0	0	0	0	3	3.2%
Died in prison before release	0	2	0	0	1	0	2	5	5.3%
EOS'd before release	0	1	0	0	0	1	1	3	3.2%
EOS'd after release*	1	1	2	2	1	1	1	9	9.5%
Violated and returned to prison or reinstated to CMR or EOS'd	0	1	1	1	2	2	1	8	8.4%
Revoked when he got better	1	0	0	0	0	1	0	2	2.1%
Total	8	12	16	17	9	20	13	95	100.0%

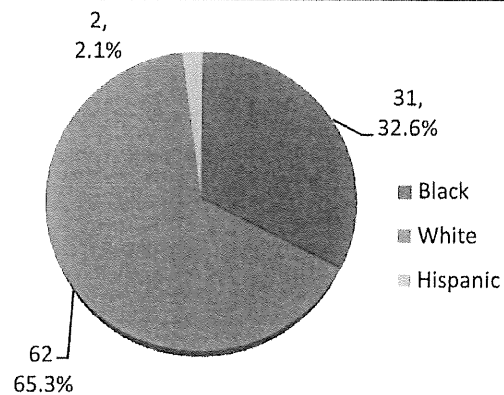
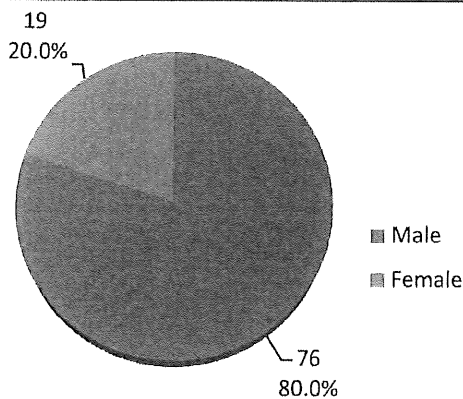
\*FY1112 recidivated

Most of those approved for CMR were released and subsequently died (68.4%) at home or at a facility within four or five months of release. Almost ten percent completed their sentences after they were released, but may have subsequently died. Five died in the short span of time between being approved for release and being released, and three others EOS'd (expired their sentences) before release to CMR. Eight violated, and either were revoked and returned to prison, were reinstated to CMR or completed their sentences (EOS'd) before the revocation process was complete. Two had their health improve and were returned to prison. One who EOS'd after release reoffended and is back in prison.

## CONDITIONAL MEDICAL RELEASE: DEMOGRAPHICS

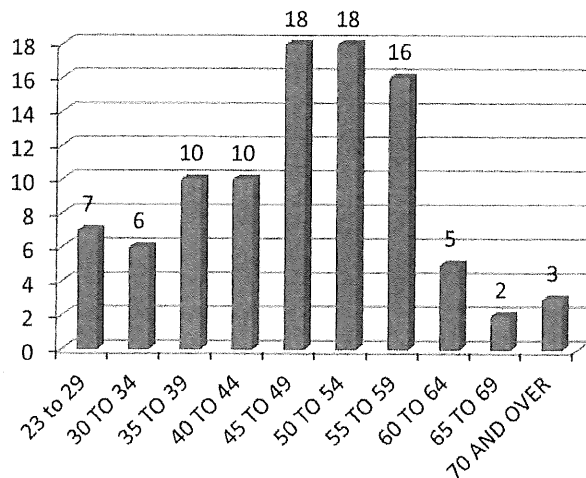
**Who are the offenders being released to CMR?** They are male (80.0%) and white (65.3%), which is somewhat reflective of the entire prison population, which was 92.9% male and 47.8% white as of June 30, 2014. Some of the black and white offenders may also be Hispanic, but did not identify themselves as such when asked their race. The largest age range of offenders granted CMR status is from ages 45-54 (37.9%). More than a third (34 or 35.8%) of all the granted cases came from Broward, Hillsborough, Miami-Dade and Pinellas (the most with 11 offenders or 11.6%) counties. The most common offense committed by those who were granted CMR was drug-related. Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender was granted CMR in the seven years studied. Four of the 95 cases were serving life sentences; the remaining 91 cases were serving an average of slightly more than five years.

**Gender, Race and Age of Inmates Granted CMR**



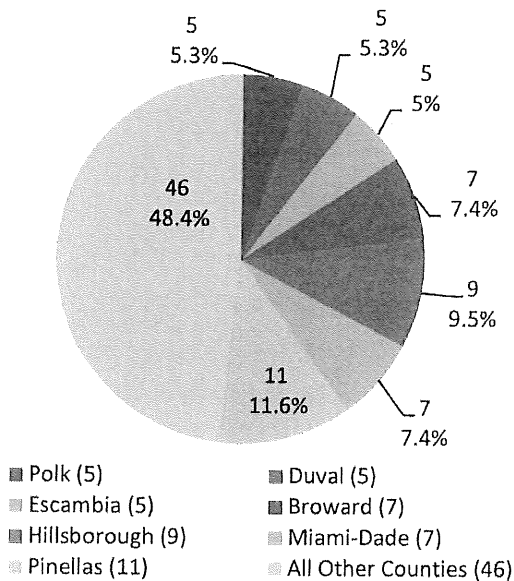
CMR inmates are consistently older than the general population. More than half (54.7%) of all CMR cases granted over the last seven years were ages 45-59, while only a quarter (25.4%) of the inmate population on June 30, 2014 fell into that category. More than a third (35.7%) of the CMR granted cases were age 50-59, compared to the general population on June 30, 2014 at 14.9%.

Age Ranges of Granted Cases	Number	Percent
23 to 29	7	7.4%
30 TO 34	6	6.3%
35 TO 39	10	10.5%
40 TO 44	10	10.5%
45 TO 49	18	18.9%
50 TO 54	18	18.9%
55 TO 59	16	16.8%
60 TO 64	5	5.3%
65 TO 69	2	2.1%
70 AND OVER	3	3.2%
<b>TOTAL</b>	<b>95</b>	<b>100.0%</b>



## County of Offense of Inmates Granted CMR

The four counties with the highest number of CMR cases (Pinellas, Hillsborough, Miami-Dade and Broward) are also in the top five counties for the number of inmates sentenced from those counties as of June 30, 2014. The number of CMR cases from these top four counties comprise more than a third of all the cases over seven years (35.8%). Adding the next three highest counties with approved CMR cases, Polk, Duval and Escambia, brings the total in just those seven counties to 51.6% of all the cases approved over seven years.

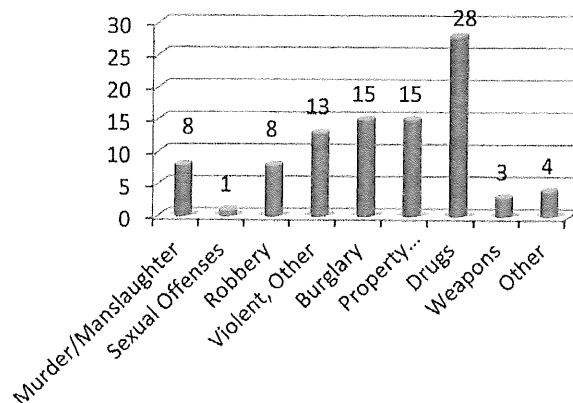


County of Offense	Number	Percent
ALACHUA	1	1.1%
BAKER	1	1.1%
BAY	1	1.1%
BREVARD	4	4.2%
BROWARD	7	7.4%
CALHOUN	1	1.1%
CHARLOTTE	1	1.1%
CITRUS	2	2.1%
CLAY	1	1.1%
COLLIER	2	2.1%
COLUMBIA	2	2.1%
DIXIE	1	1.1%
DUVAL	5	5.3%
ESCAMBIA	5	5.3%
GADSDEN	1	1.1%
HERNANDO	1	1.1%
HILLSBOROUGH	9	9.5%
INDIAN RIVER	1	1.1%
LEE	4	4.2%
LEON	1	1.1%
MADISON	1	1.1%
MANATEE	1	1.1%
MARION	1	1.1%
MIAMI-DADE	7	7.4%
NASSAU	1	1.1%
OKALOOSA	1	1.1%
ORANGE	3	3.2%
PALM BEACH	2	2.1%
PASCO	1	1.1%
PINELLAS	11	11.6%
POLK	5	5.3%
PUTNAM	1	1.1%
SARASOTA	1	1.1%
SEMINOLE	2	2.1%
SUWANNEE	2	2.1%
UNION	1	1.1%
VOLUSIA	1	1.1%
WALTON	2	2.1%
<b>Total</b>	<b>95</b>	<b>100.0%</b>

## Type of Offense by Inmates Granted CMR

Almost one third (29.5%) of all granted CMR cases during the seven-year period were serving time for drug offenses, followed by property/theft/fraud (15.8%) and burglary (15.8%). Only one sex offender has been granted CMR in the last seven years.

Granted CMR Cases by Type of Offense	Number	Percent
Murder/Manslaughter	8	8.4%
Sexual Offenses	1	1.1%
Robbery	8	8.4%
Violent, Other	13	13.7%
Burglary	15	15.8%
Property theft/damage/fraud	15	15.8%
Drugs	28	29.5%
Weapons	3	3.2%
Other	4	4.2%
<b>TOTAL</b>	<b>95</b>	<b>100.0%</b>



## CONDITIONAL MEDICAL RELEASE: STATUTES AND RULES

Florida Statute 947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

(b) "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) Notwithstanding any provision to the contrary, any person determined eligible under this section and sentenced to the custody of the department may, upon referral by the department, be considered for conditional medical release by the commission, in addition to any parole consideration for which the inmate may be considered, except that conditional medical release is not authorized for an inmate who is under sentence of death. No inmate has a right to conditional medical release or to a medical evaluation to determine eligibility for such release.

(3) The authority and whether or not to grant conditional medical release and establish additional conditions of conditional medical release rests solely within the discretion of the commission, in accordance with the provisions of this section, together with the authority to approve the release plan to include necessary medical care and attention. The department shall identify inmates who may be eligible for conditional medical release based upon available medical information and shall refer them to the commission for consideration. In considering an inmate for conditional medical release, the commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.

(4) The conditional medical release term of an inmate released on conditional medical release is for the remainder of the inmate's sentence, without diminution of sentence for good behavior. Supervision of the medical releasee must include periodic medical evaluations at intervals determined by the commission at the time of release.

(5)(a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person may be considered for such release program pursuant to law.

(b) In addition to revocation of conditional medical release pursuant to paragraph (a), conditional medical release may also be revoked for violation of any condition of the release established by the commission, in accordance with s. 947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

Administrative Rule: 23-24.040 Conditional Medical Release Postponement and Rescission

(1) Should any person who has been voted a conditional medical release become the subject of inmate disciplinary or classification proceedings, or become the subject of criminal arrest, information or indictment, or should the release plan prove unsatisfactory prior to actual physical release from the institution of confinement then, any Commissioner can postpone the release date.

(2) The inmate's release date can be postponed for sixty (60) days. On or before the sixty-first (61) day, the Commission shall either release the inmate on conditional medical release or order a Commission investigator to conduct a rescission hearing on the matter of the infraction(s), new information, acts or unsatisfactory release plan as charged.

(3) At a rescission hearing, the inmate shall be afforded all due process safeguards required by law and shall be properly notified not less than seven (7) days prior to the hearing.

(4) The rescission hearing shall be scheduled within fourteen (14) days of the date the Order for a Rescission Hearing is signed by the Commission.

(5) The hearing may be continued or postponed due to the inability of any party or witness to attend or for other good cause (for example, new disciplinary reports, state of emergency, prison lock-down, etc.).

(6) New disciplinary reports received after the Order of Postponement, but prior to the date of the hearing shall be considered at the rescission hearing, after re-noticing the inmate. (7) The investigator is not required to find the inmate guilty or not guilty at the rescission hearing, but to determine if any circumstances exist beyond the documentation which provided the basis of the Commission's decision to postpone the release.

(8) If the release has been postponed due to an unsatisfactory release plan, the investigator should receive testimony from the inmate and any witnesses as to if an alternate plan exists which may be presented to the Commission for consideration. (9) Following the rescission hearing, the Commission shall determine whether good cause has been established to rescind conditional medical release. The Commission shall then either order the release of the inmate on the same conditions or rescind the release. (10) If the Commission receives information from the Department of Corrections that the inmate no longer qualifies for conditional medical release based on an improvement in the medical condition, a rescission hearing is not required. However, the Commission shall provide written notice to the inmate that release has been rescinded due to a failure to qualify pursuant to Florida Statute, Section 947.149.

*Rulemaking Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History—New 1-5-94, Amended 2-12-13, 7-30-14.*

## *Conditional Medical Releases*

<b>CONDITIONAL MEDICAL RELEASE FOR THE LAST 10 FISCAL YEARS</b>					
Fiscal Year	CMR Docket Cases (Code 48)*	Individuals Referred by FDC (docket dupes removed)	Commission Action Granted (Code 49)	Total Released	Release Comments
FY0708	28	24	14	10	Total 14, two died before release, one EOS, 1TBD
FY0809	42	36	20	19	Total 20, one EOS
FY0910	20	19	9	8	Total 9, one died before
FY1011	38	30	16	16	Total 16
FY1112	39	34	16	16	Total 16
FY1213	28	21	12	7	Total 12, two died before release, two EOS, one TBD
FY1314	22	21	8	6	Total 8, two still in prison as of end of FY1314
FY1415	38	35	15	14	Total 14 released during FY; one died before
FY1516	55	51	29	27	Total 27 released - One to EOS; two others not
FY1617	37	34	16**	14	Total 14 released - one died before release; one

\*Every docketed case (code 48) is counted, even if it's the same inmate more than once.

\*\* One inmate was granted CMR twice.

### **16 Conditional Medical Releases Granted in FY1617**

A total of 37 inmates were docketed for CMR this FY (three were docketed twice), and 16 or about 43% were granted conditional release. Of those 16, 14 were released during FY1617, and one died before

# Analysis of US Compassionate and Geriatric Release Laws: Applying a Human Rights Framework to Global Prison Health

Tina Maschi<sup>1</sup> · George Leibowitz<sup>2</sup> · Joanne Rees<sup>3</sup> · Lauren Pappacena<sup>1</sup>

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**Abstract** The purpose of this paper was to analyze the compassionate and geriatric release laws in the USA and the role of advanced age and/or illness. In order to identify existing state and federal laws, a search of the LexisNexis legal database was conducted. Keyword search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. A content analysis of 47 identified federal and state laws was conducted using inductive and deductive analysis strategies. Of the possible 52 federal and state corrections systems (50 states, Washington D.C, and Federal Corrections), 47 laws for incarcerated people, or their families, to petition for early release based on advanced age or health were found. Six major categories of these laws were identified: (1) physical/mental health, (2) age, (3) pathway to release decision, (4) post-release support, (5) nature of the crime (personal and criminal justice history), and (6) stage of review. Recommendations are offered, for increasing social work policy and practice expertise, and advancing the rights and needs of this population in the context of promoting human rights, aging, health, and criminal justice reform.

**Keywords** Older adults · Criminal justice · Compassionate and geriatric release laws · Content analysis · Human rights · Social work · Forensic social work

✉ Tina Maschi  
tmaschi@fordham.edu

<sup>1</sup> Graduate School of Social Service, The Justia Agenda, Fordham University, New York, NY, USA

<sup>2</sup> School of Social Welfare, Stony Brook University, State University of New York, Stony Brook, USA

<sup>3</sup> Department of Social Work, Long Island University, Brooklyn, USA

## Introduction

Correctional systems across the globe are struggling with managing the rapidly growing aging and seriously ill population. In the USA, approximately 200,000 adults aged 55 and above are behind bars, many of which have a complex array of health, social service, and legal needs that all too often go unaddressed prior to and after their release from prison (Human Rights Watch [HRW] 2012). The large number of older people in prison is partially attributed to the passage of stricter sentencing laws, such as “Three Strikes You’re Out” and the subsequent mandatory longer prison terms (American Civil Liberties Union [ACLU] 2012). These restrictive policies have created a human-made disaster in which many sentenced to long-term prison sentences will reach old age while in prison or shortly after their release. Social work, interdisciplinary scholars, and human rights advocates view the current crisis as a human rights issue that impact the rights and needs of the aging and seriously ill population (Byock 2002; HRW 2012).

## Compassionate and Geriatric Release Laws

Beginning in the 1970s, there has been a growing awareness among lawmakers and other professionals, especially in the USA, of the need for compassionate and geriatric policies to address the growing aging and health crisis in prisons. Currently, medical parole and compassionate release laws, and programs for mostly nonviolent, terminally ill incarcerated people have been implemented in an effort to transition aging and/or serious or terminally ill incarcerated people to community-based care (Chiu 2010; Williams et al. 2011). Most of the social work and interdisciplinary scholarly literature in law and medicine in the USA has focused on compassionate release laws (Ferri 2013; Jefferson-Bullock 2015; Green 2014; Williams et al. 2011). The authors of these

journal articles describe the legal/ethical practice and financial dilemmas posed when incarcerating older and seriously ill people. These authors acknowledge that, in theory, the release of persons with serious and/or terminal illness from prison to the community is cost-effective. However, there are difficulties noted in their implementation including bureaucratic red tape and negative public attitudes toward more compassionate approaches to criminal justice (Coleman 2003; Ferri 2013; Jefferson-Bullock 2015; Kinsella 2004; Green 2014; Williams et al. 2011).

To date, there has not been comprehensive human rights-based analysis of both the compassionate and geriatric release laws in the USA. The USA is a compelling case study because it has the largest population of adults aged 50 and older ( $N=200,000$ ; ACLU 2012) behind bars. Additionally, the USA has 50 states in which laws vary by provisions based on a variety of eligibility factors including age, physical and mental health, and legal status. Therefore, the purpose of this content analysis of the US compassionate and geriatric release laws was to compare the provisions of current laws and to evaluate the extent to which these were consistent with human rights guidelines. This review was guided by the following research questions: (1) What are the characteristics of compassionate and geriatric release laws in the USA? And (2) to what extent are existing compassionate and geriatric release laws consistent with core principles of a human rights framework? As detailed in the discussion section, the results of this review have implications for social work and human rights for improving social work and interdisciplinary and intersectoral responses to the treatment of criminal justice involved aging and serious and terminally ill people (Anno et al. 2004).

### Applying a Human Rights Framework

Applying a human rights framework to the laws, policies, and practices with aging and seriously ill people in prison can be used to assess the extent to which these laws meet basic human rights principles. In particular, the principles of a human rights framework can provide assessment guidelines for developing or evaluating existing public health and criminal justice laws or policies, such as USA compassionate and geriatric release laws. The underlying values/principles of a human rights framework include dignity and respect for all persons, and the indivisible and interlocking holistic relationship of all human rights in civil, political, economic, social, and cultural domains (UN 1948). Additional principles include participation (especially with key stakeholder input on legal decision-making), nondiscrimination (i.e., laws and practices in which individuals are not discriminated against based on differences, such as age, race, gender, and legal history), transparency, and accountability (especially for government transparency and accountability with their citizens; Maschi 2016).

The Universal Declaration of Human Rights (UDHR) also is an instrument that provides assistance with determining the most salient human rights issues affected. Ratified in 1948 as a response to the atrocities of World War II, the UDHR was voted in favor of by 48 countries, including the USA (UN 1948). It provides the philosophical underpinnings and relevant articles to guide policy and practice responses to the aging and serious and terminally ill in prison. The UDHR preamble underscores the norm of “respect for the inherent dignity and equal and inalienable rights” of all human beings. This is of fundamental importance to crafting the treatment and release of aging and seriously ill persons in prison.

There are several UDHR articles that are important to consider when providing a rationale and response to the aging and seriously ill population in prison. For example, Article 3 states, “Everyone has the right to life, liberty, and the security of person.” Article 5 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 states, “Everyone has the right to recognition everywhere as a person before the law.” Article 8 states “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,” and Article 25 states, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food and clothing” (UN 1948, p. 3–7).

The United Nations Office on Drugs and Crime (UNODC 2009) Special Needs Handbook also offers additional guidelines to assess policy and practice responses to the aging and/or seriously and terminally ill in prison. According to the UNODC (2009), older prisoners, including those with mental and physical disabilities, and terminal illnesses are a special needs population and as such are to be given special health, social, and economic practice and policy considerations (UNODC 2009). The handbook also addresses the issue of age in corrections. It is of note that the age at which individuals are defined as “older” or “elderly” in the community often differs from the definition of elderly applied in corrections. Globally, many social welfare systems, including the USA’s, commonly view adults as older when they reach the age of 65 because that is when most individuals are eligible to receive full pension or social security benefits. However, although it varies among states, incarcerated persons in the USA may be classified as “older adult” or “elderly” as young as age 50 (HRW 2012; UNODC 2009).

### Study Significance

The results of this review also have important implications for global social service, health and correctional systems, and policymaking bodies. While these findings may not generalize globally, conducting a comparative analysis of the regional laws of one country, such as the USA, may be useful for

developing or refining existing laws internationally. This information also can be used by social workers to collaborate with correctional and community service providers. In particular, forensic social workers, especially those who are trained in case management, can play an important role in facilitating the release process and smooth care transitions of aging and seriously ill people released from prison (Office of the Inspector General, 2016). Local and global policy makers, including social workers, also can use these findings to craft more human rights responsive laws and policies that affect this vulnerable population.

## Methods

In order to identify all of the compassionate and geriatric release laws in the USA, the research team conducted a comprehensive search of the LexisNexis legal database. The following key word search terms were used: compassionate release, medical parole, geriatric prison release, elderly (or seriously ill), and prison. Identified laws were included in the sample if they met the following criteria: (1) identified aging or seriously ill people in prison and (2) were a law or policy regarding early release from prison based on age or health status. Two trained research assistants reviewed the laws and coded the data. The team met weekly for a 6-month period with the lead researcher until 100 % consensus was reached for all categories of data extracted. The search located 52 federal and state corrections systems (50 states, Washington DC, and Federal Corrections). Of the 52, 47 were found to have a law for incarcerated people or a family member (or surrogate) to petition for early release based on advanced age or health. There was no evidence of any applicable law or provision found in five states (i.e., Illinois, Massachusetts, South Carolina, South Dakota, and Utah).

## Data Analysis Methods

Interpretive content analysis strategies as outlined by Drisko and Maschi (2016) were used to analyze the compassionate and geriatric release laws from the USA. Interpretive content analysis is a systematic procedure that codes and analyzes qualitative data, such as the content of published articles or legal laws. A combination of deductive and inductive approaches can be used, and this strategy was used in the current review. Deductive analysis strategies were used to extract the data by constructing preexisting categories for the criteria commonly found in compassionate and geriatric release laws (e.g., age, physical and mental health status, nature of crime). For each category, counts of state and federal laws were then calculated for frequencies and percentages of each category (e.g., 13 states had laws with age provisions).

Inductive analysis strategies were used to analyze any emerging or new categories that could not be classified in existing categories. Tutty and colleagues' (1996) four-step qualitative data analysis strategies were utilized to analyze this data. Step 1 involved identifying "meaning units" (or in-vivo codes) from the data. For example, the assignment of meaning units included the assigning codes. In step 2, second-level coding and first-level meaning units were sorted and placed in their emergent categories. Meaning unit codes were arranged by clustering similar codes into a category and separating dissimilar codes into separate categories. The data were then analyzed for relationships, themes, and patterns. In step 3, the categories were examined for meaning and interpretation. In step 4, conceptually clustered matrices, or tables, were constructed to illustrate the patterns and themes found in the data, including characteristics of the principles of a human rights framework (Miles and Huberman 1994).

## Summary of Findings

Out of 50 states plus Washington, DC, and a Federal Law (totaling 52 jurisdictions), 47 jurisdictions including Washington, DC, and the Federal Government were found to have compassionate or geriatric release laws. Five states did not have any publicly available records of compassionate or geriatric release laws (i.e., IL, MA, SC, SD, and UT). After review of the laws from these 47 legal systems in the USA (45 separate US States and D.C., as well as one federal law), basic structural consistencies were found that impacted the determination for early release or furlough from prisons based on physical or mental incapacity or advanced age. Six categories of compassionate and geriatric release laws identified were (1) physical/mental health status, (2) age, (3) nature of crime (i.e., personal and criminal justice history or risk level), (4) pathway to release decision, (5) post-release support, and (6) stage of review (i.e., initial ground-level investigation for a release petition).

## Physical and Mental Health Status and Life Limits

Conditions for release in some US laws were based on physical and mental health status, including life limits. These early release or parole and furlough laws have some definition or measurement in which they can determine if an incarcerated person may be eligible for release. This included level of medical infirmity, age, and/or psychological or mental facility (see Tables 1 and 2). Some US states or federal laws used vague language about what conditions were viable for parole or furlough. In comparison, other laws were very specific about conditions for release. For example, some laws considered the potential threat to society or level of public safety risk of



**Table 1** Characteristics of laws that specify the conditions that warrant release

	Illness is terminal or incapacitating		Mental health consideration	Age±disability
	With a lifespan time limit	Without a lifespan time limit		
Number of states	17	19	17	14
Abbreviations	AK, AR, DC, HI, KS, KY, MO, MT, NC, NJ, NM, NV, PA, RI, TN, US FED, WY	AL, CT, FL, GA, ID, IN, KS, LA, MD, MN, NE, NH, NY, OH, OK, OR, TX, VT, WI	AK, AL, AR, DE, KS, MD, MI, MS, NH, NJ, RI, TN, TX, US FED, WI, WV, WY	AL, CT, DC, LA, MO, NC, NM, OR, TX, US FED, VA, WA, WI, WY

the incarcerated person. Other laws focused on the high cost of treatment or considered a combination of age, health, and risk factors that influenced release. There was little consistency, or even clarity, among these 47 laws about the well-being of the incarcerated people and their families, and/or victims and their families included across these US laws.

When determining if the incarcerated person's medical health warrants potential early parole or furlough, 36 laws used terminal illness as the consideration. Of those, 17 included a maximum anticipated survival period or time limit for life expectancy. For example, the US federal law includes a time limit of 18 months for the patient to survive in order to be considered for parole. In contrast, the state laws most often included a limit for life expectancy of 6 or 12 months to live. However, in one state, Kansas, the period is only 30-day life expectancy. In the 19 cases where states do not specify the time period for life expectancy, terminal illness is included as a potential factor for early release, as are terms such as "imminent peril of death" or "illness from which the inmate will not recover," or simply, "terminal illness."

The US laws also had provisions for mental or psychological health as a consideration for early release. Seventeen states included mental health capacity as a factor to consider for early parole or furlough. These 17 laws refer to any mental or psychological infirmity that results in incapacity to care for oneself or renders the person bedridden and/or incapable of caring for his or her activities of daily living (ADL). All of

these laws required evaluation by both medical and mental health care professionals to make the determination of functional capacity. Only one state, Texas, mentioned "mental retardation" as a potential consideration for parole. Only the US federal prison system is quite specific in defining cognitive impairment associated with either brain injury or disease, such as Alzheimer's.

When reviewing general health conditions that may be factors for early release or furlough, many laws (27) used language that indicated that the incarcerated person was incapacitated in such a way that he/she was incapable of performing activities of daily living, or was incapacitated in general. Fifteen of the laws stated that precondition for early release was that the incarcerated person must be incapacitated either due to age, mental health, or illness, and be a low level risk to society. In some laws, assessing level of public safety risk was the only factor that the medical staff must evaluate before making an application to the parole board or judiciary. In some state laws, the healthcare costs to the prison system are a consideration for early release of an individual.

Several laws that identified criteria for early release simply used terms such as "serious medical syndrome" or "needing medical attention." Many of the states that included vague language around what constellation of factors amount to the likelihood of early release seemed to have fewer transparent processes, leaving the decision to the parole board's discretion on a case-by-case basis.

**Table 2** Legal considerations for release

Considerations for early release for incapacitated or terminally ill patients included in legal language				
	No threat to society	Incapacitated so cannot care for self	Cost to treat is too high	General healthcare to be qualitatively assessed
Number of States	15	27	4	16
Abbreviations	CT, DC, LA, MD, MN, MT, NM, NC, NV, OK, TN, TX, US FED, VT, WY	AK, AL, AR, CA, CT, DC, GA, ID, KS, KY, MI, MN, MO, NC, NE, NJ, NM, NV, NY, OR, TN, TX, US FED, VT, WA, WI, WY	AK, GA, RI, WA	AL, AR, CO, DE, FL, HI, IN, MI, MN, MS, ND, NH, NJ, OH, PA, WV

## Age as a Consideration

Some states used age as a factor for considering early release. As illustrated in Table 3, of the 47 laws, only 13 had laws with provisions that considered age (ranging from 45 to 65 or older) as a determining factor for potential early parole (12) or furlough (1). In each law, age itself was not the sole determinant for release, but age in association with some degree of being unable to care for oneself, or an indication of some lack of capability in terms of performing activities of daily living. Most states did not define elderly. If age was defined, it mostly was delineated as 65 and older. Three states and the Federal Government limited how long an incarcerated elder must have served prior to considering advanced age as a factor for early release.

Interestingly, Oregon was the only state whose law recited language on the humane treatment of the aging population and stated that without the release of the prisoner at the advanced age/infirmity, their incarceration may be considered cruel or inhumane. All other states required that an incarcerated person of advanced age, as defined by each, had some incapacity that either was permanent and costly or rendered the incarcerated person unable to physically harm society in any way.

In several US laws, the age of the applicant was almost always considered a determining factor only in conjunction with a medical or cognitive condition. That is, age as a sole factor did not only justify release but also included the presence of a chronic and/or serious health issue. The few exceptions in state laws included Alabama and Louisiana, which considered age only as a reason to release an incarcerated person without incapacity. However, the incarcerated person's level of risk based on offense history and crimes was weighted heavily when determining release based on age without the presence of a notable serious or chronic health condition.

## Pathway to Release Decision

As shown in Table 4, similar to mental and physical health considerations, the pathways to release decisions varied from state to state. Only 18 of the states had very specific and strictly defined pathways to follow for compassionate release and early parole eligibility. The more specific rules included the mechanism, such as the individual or committee that made the final determination for release or furlough. Eleven states had very clearly written rules governing physician documentation, how many or which physicians would be considered for review, and what factors must be included in their medical letter.

In these US laws, early release applications were subject to official parole board review. The series of steps in order to reach the parole board and the supporting documentation varied across laws. Of the 17 states noted above that had clearly written review procedures, most required the deputy warden,

**Table 3** States including language around age as a factor for early release

States including language around age as a factor for early release	
State:	Age specification:
Alabama	55+
Connecticut	65 or "advanced"
Louisiana	45+ and serving at least 20 years of a 30+ sentence
Missouri	"Advanced"
North Carolina	65+
New Mexico	65+
Oregon	No specification
Texas	No Specification
Virginia	60+
Washington	No specification
Wisconsin	No specification
Wyoming	65+
US Federal Law	65+ and dependent on % of time served

in conjunction with the prison medical director, review all documentation prior to making a submission to the parole board. Often, the laws specified that the incarcerated person or his/her family or legal advocate petitions the parole board directly. The medical director could also petition for early release if the incarcerated person could not do so themselves. The 29 states that had less clearly defined provisions often specified that parole review boards consider all information prior to rendering a final decision. At least three states had requirements that the parole board must review the request for early parole within a certain number of days (e.g., 30 days). Other laws seemed to assume that the case would be heard in a

**Table 4** The pathway and process for determination of release

Process for determination of release			
	More malleable decision-process for release	Clearly defined process and rules for release	Clearly written rules around physician documentation
Number of States	28*	17	11
Abbreviations	AK, AZ, CO, CT, DE, FL, GA, HI, IN, KY, LA, MD, MI, MN, ND, NE, NH, NM, OH, OK, OR, PA, US, FED, VA, VT, WA, WV, WY	AL, AR, CA, DC, ID, KS, MO, MS, MT, NC, NJ, NV, NY, RI, TN, TX, WI	AK, AL, AZ, CA, MO, NC, NJ, NY, TX, WI, WY
	*IA and ME have precedent for early parole but no law in place		

timely manner or be reviewed by the next meeting of the parole board.

Some laws specified that a request for early release would be in the form of an application or petition to the parole board. Additionally, a submission of a post-release plan was also customary. Some laws addressed where the incarcerated person would receive post-release medical care or hospice services (Table 5). In some laws, these placements were to be vetted by the medical staff of the prison. Social workers or case managers were designated to provide other services, such as family supports, discharge planning, and care coordination.

Eighteen of the laws noted that the medical hospital or hospice, or family home with healthcare professionals, must be vetted prior to release to ensure both safety and proper healthcare. In addition, 11 of the laws mentioned that the incarcerated person must have financial resources to cover healthcare, such as Medicaid, in place prior to early release. Five of the laws mentioned a holistic style of care, including emotional support for the incarcerated person and family, as well as reintegration support. Of the states that allowed for the patient to live in the home with medical care, nine states cited “family conditions” or “support for the family as caregivers” as factors. Some laws mentioned that victim notification and participation as a condition must be met as part of the release petition.

Interestingly, many states, including the federal system, also required that the released person be closely monitored by a parole or medical officer to ensure that the released person’s physical health did not improve. If the incarcerated person’s condition should improve to the point they could function to perform activities of daily living or are no longer terminally ill, the incarcerated person must be returned to prison to complete their full sentence.

### Assessing Level of Risk: Nature of Crime (Criminal Offense History)

As shown in Table 6, most US states/Federal prisons excluded some incarcerated people—regardless of their overall health—from potential early release. Most laws stipulated that eligibility for early parole or furlough, the incarcerated person must be convicted of an offense with potential for parole ( $n = 25$ ). Some jurisdictions also specified that the incarcerated person may not have been convicted of murder, either first or second degree ( $n = 7$ ). However, most exclusions were focused upon the incarcerated person who has committed a Class A (e.g., murder or treason), B (e.g., homicide, drug trafficking, or violent assault), or C felony (e.g., some types of assault, fraud, theft, robbery, larceny, drug distribution).

In addition, 11 of the states/Federal laws and regulations excluded incarcerated persons convicted of offenses of a sexual nature. For those incarcerated persons with serious offense histories, a psychologist or psychiatrist must also investigate

**Table 5** Post-release support in place for release

	Post-release support in place			
	Medical facilities vetted	Financial coverage	Holistic support system	Family or support conditions
Number of States	18	11	5	9
Abbreviations	AK, DC, ID, IN, KS, MD, MN, MO, NC, NE, NJ, NM, NY, TN, TX, US FED, VT, WY	AK, AL, CO, ID, KS, MO, MT, NY, TN, US FED, WY	ID, MN, NC, NJ, NY	ID, LA, MD, MN, MT, NC, NJ, NY, US FED

and determine their level of risk for potential harm to society and recidivism. Nine state laws (KS, KY, MD, MT, NC, NV, NY, TN, and WI) included provisions that victims or their families must be notified of an upcoming case for parole or furlough, and may participate in the hearing (if there is one) or submit a letter or an opinion concerning the potential release of the prisoner.

### Style of Review

Forty-seven US laws differed in their style of review which ranged from strictly regulated to very discretionary release determinants. In addition to factors, such as age, physical and mental health status, and level of risk, other determinants included a state’s ability to grant medical release. For example, if the governor or Deputy Warden “deemed it beneficial,” either for reasons of cost or overcrowding, early release could be granted.

**Table 6** Type of crime considered for early release

	Type of crime considered for early release			
	Ability for parole and/or without sentence of death	Excluding murder	Consider % of time served	Excluding sexually oriented crimes
Number of States	25	7	8	11
Abbreviations	AK, CA, CT, DC, FL, ID, KY, LA, MD, MO, MS, MT, NC, NE, NH, NJ, OR, RI, TN, TX, US FED, VA, WA, WI, WY	AL, DC, LA, NJ, NM, NY, OR	CT, DE, IN, MO, MS, NC, NY, OH	AK, AL, AR, CO, ID, KY, MS, NC, NJ, TX, WI

## Discussion

### Implications for a Human Rights Approach to Social Work

The purpose of this content analysis was to describe and analyze the compassionate and geriatric release laws in the USA. As noted in the findings section, we found that these laws had one or more provisions that fell within one of these six major categories. These categories were (1) physical/mental health status, (2) age, (3) nature of the crime (e.g., offense history), (4) pathway to release decision, (5) post-release support, and (6) stage of review. These findings have important implications for social workers and other key stakeholders who want to advance the human rights of justice involved vulnerable populations of older persons and persons with physical or mental disabilities or terminal illnesses, especially those in prison. The 2015 release of the Council on Social Work Education's Educational Policy (CSWE 2015) states the "purpose of the social work profession is to promote human and community well-being" (CSWE 2015, p. 1). This purpose is inclusive of all individuals regardless of their backgrounds, including criminal justice histories. Two particularly relevant skills for social workers, who want to respond to the crisis of the aging and dying in prison, are to engage in human rights and social and economic justice and to understand laws and regulations that may impact practice at the micro, mezzo, and macro levels (CSWE 2015).

The US laws governing compassionate and geriatric release are an example of an intersectional human rights issue that bridges aging, health, and criminal justice practice and policy arenas. An often unrecognized human rights area of the social work profession is the specialization of forensic social work ((Maschi and Leibowitz 2017)). Forensic social workers, who are often referred to as practicing at intersection of social work and the law, are trained in micro (e.g., clinical) and/or macro (e.g., intersectoral collaboration and policy level) interventions. In particular, geriatric forensic social workers are well positioned to prevent or intervene with the aging and dying in prison issue because of combined generalist and specialized practice knowledge and skills. Given this current crisis, a two-pronged approach to clinical and policy practice in diverse settings, such as prisons, and with diverse populations, such as incarcerated older people is necessary (Maschi et al. 2013). For example, in many of the research, practice, and policy recommendations noted in the Office of the Inspector General's report (2015), social workers can play a role in addressing all of them. These recommendations are:

1. Consider the feasibility of placing additional social workers in more institutions, particularly those with larger populations of aging inmates.

2. Provide all staff training to identify signs of aging and assist in communicating with aging inmates.
3. Reexamine the accessibility and the physical infrastructure of all of its institutions to accommodate the large number of aging inmates with mobility needs.
4. Study the feasibility of creating units, institutions, or other structures specifically for aging inmates in those institutions with high concentrations of aging inmates.
5. Systematically identify programming needs of aging inmates and develop programs and activities to meet those needs.
6. Develop sections in release preparation courses that address the post-incarceration medical care and retirement needs of aging inmates.
7. Consider revising its compassionate release policy to facilitate the release of appropriate aging inmates, including by lowering the age requirement and eliminating the minimum 10 years served requirement (Office of Inspector General, United States Department of Justice. 2015, p. 3–4).

### Applying a Human Rights Approach to Justice Policy Reform

Most relevant to this paper, a human rights approach can be applied to assess the laws, policies, and practices to the extent to provisions of existing compassionate and geriatric release laws meet basic human rights principles. As described in the introduction, the principles of the human rights framework are dignity and worth of the person, the five domains of human rights (i.e., political, civil, social, economic, and cultural), participation, nondiscrimination, and transparency and accountability (UN 1948). Developed by the first author, the Compassionate and Geriatric Release Checklist (CGR-C, Maschi 2016) was created for social workers, policymakers, advocates, and other key stakeholders to use as an assessment tool to develop or amend existing compassionate or geriatric release laws (please contact the authors for a copy of the checklist). This tool also can be used by social workers to prepare expert testimony for local, state, or federal hearings or as an educational or professional training exercise. Applying a human rights framework, the checklist consists of six assessment categories for compassionate and geriatric release laws: dignity and respect of the person, promotes political, civil, economic, social, and cultural rights, nondiscrimination, participation, transparency, accountability, and special populations served.

A human rights-based analysis using the framework as highlighted in the checklist suggests that most of the provisions of each US compassionate and geriatric release often fall short of meeting the basic human rights principles that speak

to the dignity and worth of the incarcerated person, family and victim rights and supports, and accountability and transparency on the part of the judicial and correctional systems to grant release. Additionally, the majority of the US compassionate and geriatric release laws fell short of inconclusive nondiscrimination provisions. This is especially true when assessing level of risk of incarcerated people with histories of sex or violent offenses. Based on available research, this type of provision is overly restrictive. For example, research shows that older adults with diverse offense histories have low recidivism rates (1–5 %) compared to their younger counterparts and person (ACLU 2012; Jhi and Joo 2009). For example, in a study investigating whether risk factors for recidivism remained stable across age groups ( $N=1303$ ), the findings showed that rates decreased in older age groups (ages 55 and older (Fazel et al. 2006). These findings are consistent with recidivism rates in studies with international samples of older sexual offenders, including research conducted in the UK, the USA, and Canada. Given these findings about older age and the reduced risk for recidivism, it is important to underscore that incarcerated individuals with violent offense histories (despite their failing health status) or elderly in US federal and state prisons are often nevertheless excluded from compassionate or geriatric release provisions (HRW 2012).

#### **Applying a Multitiered Practice Model for All Levels of Prevention and Intervention**

The 2012 Report of the United Nations High Commissioner for Human Rights (UN 2012) urges that specialized treatment be given to older adults and seriously ill people in prison and post-release. The need for specialized treatment is because many incarcerated elders experienced histories of accumulated disadvantages and currently are experiencing grave human rights conditions in prison. Therefore, when crafting a human rights-based social work, a multitiered prevention and intervention response to the current crisis and the process that led to it is needed. One helpful human rights-based practice model is Wronka's (2007) Advanced Generalist/Public Health (AGPH) Model. The AGPH model conceptualizes four interventions levels designed to prevent or alleviate social problems, such as the crisis and the process leading to the aging and seriously ill people in prison. These coincide with macro, mezzo, micro, meta-micro, and meta-macro, and research levels of intervention. Although research has its own level, it also informs all intervention levels (Wronka 2007). These levels of intervention are described and then applied to how social workers can address the aging and dying crisis below.

**Macro and meta-macro levels** In the AGPH model, the macro level is a target of primary intervention strategies. The macro level targets a whole national population, such as the USA, to prevent a problem, such as the crisis of aging and dying

people in prison. The purpose of primary intervention strategies is to prevent individuals, families, and community from experiencing health and justice disparities (Maschi and Youdin 2012; Wronka 2007). An example of a primary intervention strategy is the development and implementation of a national campaign for criminal justice reform, especially with regard to peeling back the punitive and strict long-term sentencing policies that emerged in the 1980s. These policy advocacy strategies are an area where social worker are involved and/or could be more actively involved in crafting a more compassionate response to the aging and seriously ill in prison.

In an even larger meta-macro level, the focus is international. An example of a global prevention initiative is a social media campaign that promotes the importance of universal health and justice and fairness for all persons. Given that the criminal justice system disproportionately consists of historically underrepresented and underserved groups, such as older people, racial/ethnic minorities, and persons with physical or mental disabilities, a campaign that would promote prevention would reduce the societal oppression to prison pipeline, such as ending mass incarceration, is a potential strategy. Social workers, especially forensic social workers, can and do assume a pivotal role in these prevention efforts that advance human rights that reduce health and justice disparities for individuals of all ages and families and communities most affected by the USA's current state of hyper-incarceration (Wronka 2007).

**Mezzo levels** The mezzo level targets secondary intervention strategies among groups at risk, such as individuals that come to the attention of the law (Wronka 2007). These strategies may be interventions in high-risk environments, such as police stations and/or the courts. For example, a social worker can develop an alternative to incarceration/diversion program and monitor effectiveness on outcomes, such as reduced rates of imprisonment. Another example for an at-risk group is in prison settings. A social worker can develop or administer and evidence-based practice on health literacy or the management of chronic health problems that reduces the risk of rapid health decline while residing in the often unhealthy conditions of prison.

**Micro and meta-micro levels** The micro level is the target of tertiary intervention strategies and symptomatic populations, such as the older or serious or terminally ill population in prison. Tertiary level interventions commonly entail clinical intervention on an individual or family level, such as medical or palliative care social work interventions. For example, a social worker employed at a prison hospice may design and implement a grief therapy group for inmate peer supports or family members and monitor its effectiveness on the coping and well-being of the participants (Wronka 2007).

The meta-micro level consisting of informal supports also is the target of tertiary intervention strategies. Although clinical interventions help with problems, everyday life social connections, such as family, friends, and others, can have therapeutic benefits. For example, a social worker in a prison can be instrumental in arranging family, volunteers, or community service provider visits to a prison or connect with families, peers, or professionals to prepare them for the release of an ill person in prison (Wronka 2007).

**Research and evaluation level** In the AGPH model, research and evaluation are the method of quaternary (fourth level) intervention strategies. Findings from research and evaluation studies provide informed knowledge for prevention and intervention strategies across the other intervention levels. In turn, the primary, secondary, and tertiary levels influence the research questions to be asked and the types of research methods used (Wronka 2007). For example, research is needed to provide data-driven development of policies impacting this aging and dying in population or to monitor the implementation of existing compassionate and geriatric release laws. Quantitative and qualitative methods can be used to gather data from key stakeholders.

An example of an important area of research is the reliability and validity of risk assessment (Andrews et al. 2006; Lansing 2012), especially for those with violent sex offense histories. Based on age factors, risk assessment should be attentive to the level of risk based on age (younger versus older offenders). As indicated above, recidivism rates are lower in older age groups. In a study of older sex offenders, they were found to score lower on the Static-99, a widely used actuarial measure (Hansen, 2006), and research on repeat offending (sexual and violent offenses) among an older prison population showed that recidivism decreased in the older age group (55+ years; Fazel et al. 2006). Therefore, more research is needed to accurately assess risk that accounts for age (Andrews and Dowden 2012).

### Limitations of the Current Review

These findings have methodological limitations that warrant discussion. First, although a comprehensive search of the Lexis Nexus database was conducted, the extent to which all of the subject laws and possible amendments were available is unknown. Second, although multiple coders were used to select a sample of laws, classify them, and analyze their findings, it is entirely possible that other research teams may obtain different results. Third, the content analyses of categories and themes were developed deductively and inductively by the research team, and it goes without saying that a content analysis with a different set of categories and frequency counts would yield a different outcome. Yet, despite these limitations, this comprehensive analysis of the compassionate and

geriatric release laws in the USA offers insight into the next steps for research and evaluation to improve conditions for the elderly and seriously and terminally ill persons in prison and for their families and communities.

### Conclusion

From a human rights perspective, human beings—even individuals who have committed crimes—should receive adequate physical and psychological care in the prison system and have access to supports post-release. If incarcerated individuals are unable to receive adequate care inside prisons, it is incumbent upon social workers, advocates, and researchers to compel further investigation into the barriers to care. Potential barriers may include the potential cost of care for aging and terminally ill patients, public perception of release, expediency of the process of consideration, and level of access of timely evidence-based treatment. Supports for family members, surrogates and/or guardians, and survivors of crimes should be part of compassionate or geriatric release legislation. Social workers also should promote a compassionate care as opposed to the use of tactics that are punitive and forms of cruel and unusual punishment within the prison system and community post-release. If the standard of care available in-prison remains suboptimal to a basic standard of community care, it is social work's role to advocate for more humane prison conditions or prison release policies that result in improved care quality. It is our view that social workers grounded in human rights are the missing piece of compassion and care in our current punitive criminal justice system. Perhaps it is time to embrace our criminal justice roots for the “just” cause of promoting human rights for the aging and dying in prison.

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 560

INTRODUCER: Senators Brandes and Perry

SUBJECT: Sentencing

DATE: November 8, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Favorable</b>
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

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## I. Summary:

SB 560 revises the name and primary purpose of the Criminal Punishment Code, Florida's primary sentencing policy for noncapital felonies. Under current law, the primary purpose of the Criminal Punishment Code is to punish the offender. The bill renames the Criminal Punishment Code as the Public Safety Code and provides that the primary purpose of the Public Safety Code is public safety.

The bill should not have any prison bed impact because it does not change how sentences are currently calculated under the Criminal Punishment Code, modify existing penalties, or create new penalties.

The effective date of the bill is July 1, 2020.

## II. Present Situation:

In 1997, the Legislature enacted the Criminal Punishment Code<sup>1</sup> (Code) as Florida's "primary sentencing policy."<sup>2</sup> The primary purpose of the Code is to "punish the offender."<sup>3</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>4</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>5</sup> Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain drug trafficking offenses. The lowest permissible sentence is any nonstate prison sanction

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<sup>1</sup> Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

<sup>2</sup> See chs. 97-194 and 98-204, L.O.F.

<sup>3</sup> Section 921.002(1)(b), F.S.

<sup>4</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>5</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.



in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Absent mitigation,<sup>6</sup> the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.<sup>7</sup> However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.<sup>8</sup> Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 921.002, F.S., to revise the name and primary purpose of the Criminal Punishment Code, Florida's primary sentencing policy for noncapital felonies. Under current law, the primary purpose of the Criminal Punishment Code is to punish the offender. The bill renames the Criminal Punishment Code as the Public Safety Code and provides that the primary purpose of the Public Safety Code is public safety.

Conforming changes are made to numerous other statutes consistent with these described changes.

The effective date of the bill is July 1, 2020.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>6</sup> The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

<sup>7</sup> Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed one year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

<sup>8</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>9</sup> See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill should not have any prison bed impact because it does not change how sentences are currently calculated under the Criminal Punishment Code, modify existing penalties, or create new penalties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.082, 775.087, 782.051, 817.568, 893.13, 893.20, 910.035, 921.002, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 944.17, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, and 985.465.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Brandes

24-00766-20

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A bill to be entitled

An act relating to sentencing; amending s. 921.002, F.S.; renaming the Criminal Punishment Code as the Public Safety Code; revising the primary purpose of sentencing under the Public Safety Code from punishing an offender to public safety; conforming provisions to changes made by the act; amending ss. 775.082, 775.087, 782.051, 817.568, 893.13, 893.20, 910.035, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.0027, 924.06, 924.07, 944.17, 948.01, 948.015, 948.06, 948.20, 948.51, 958.04, and 985.465, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 921.002, Florida Statutes, is amended to read:

921.002 The Public Safety Code ~~Criminal Punishment Code~~.—The Public Safety Code applies ~~Criminal Punishment Code shall apply~~ to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent

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criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Public Safety Criminal Punishment Code embodies the principles that:

(a) Sentencing is neutral with respect to race, gender, and social and economic status.

(b) The primary purpose of sentencing is public safety ~~to punish the offender~~. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of public safety punishment.

(c) The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

(d) The severity of the sentence increases with the length and nature of the offender's prior record.

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4). The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Public Safety Criminal Punishment Code.

(f) Departures below the lowest permissible sentence established by the code must be articulated in writing by the trial court judge and made only when circumstances or factors reasonably justify the mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the lowest permissible sentence is a preponderance of the

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evidence.

(g) The trial court judge may impose a sentence up to and including the statutory maximum for any offense, including an offense that is before the court due to a violation of probation or community control.

(h) A sentence may be appealed on the basis that it departs from the Public Safety Criminal Punishment Code only if the sentence is below the lowest permissible sentence or as enumerated in s. 924.06(1).

(i) Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.

(2) When a defendant is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the former sentencing guidelines or the code, each felony shall be sentenced under the guidelines or the code in effect at the time the particular felony was committed. This subsection does not apply to sentencing for any capital felony.

(3) A court may impose a departure below the lowest permissible sentence based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026. The level of proof necessary to establish facts supporting the mitigation of a sentence is a preponderance of the evidence. When multiple reasons exist to support the mitigation, the mitigation shall be upheld when at least one circumstance or factor justifies the mitigation regardless of the presence of other circumstances or factors found not to

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justify mitigation. Any sentence imposed below the lowest permissible sentence must be explained in writing by the trial court judge.

(4) (a) The Department of Corrections shall report on trends in sentencing practices and sentencing score thresholds and provide an analysis on the sentencing factors considered by the courts and shall submit this information to the Legislature by October 1 of each year.

(b) The Criminal Justice Estimating Conference, with the assistance of the Department of Corrections, shall estimate the impact of any proposed change to the Public Safety Criminal Punishment Code on future rates of incarceration and on the prison population. The Criminal Justice Estimating Conference shall base its projections on historical data concerning sentencing practices which have been accumulated by the Department of Corrections and other relevant data from other state agencies and records of the Department of Corrections which disclose the average time served for offenses covered by any proposed changes to the Public Safety Criminal Punishment Code.

(c) In order to produce projects that are either required by law or requested by the Legislature to assist the Legislature in making modifications to the Public Safety Criminal Punishment Code, the Department of Corrections is authorized to collect and evaluate Public Safety Criminal Punishment Code scoresheets from each of the judicial circuits after sentencing. Beginning in 1999, by October 1 of each year, the Department of Corrections shall provide an annual report to the Legislature that shows the rate of compliance of each judicial circuit in providing

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117 scoresheets to the department.

118 Section 2. Paragraphs (d) and (e) of subsection (8) of  
119 section 775.082, Florida Statutes, are amended to read:

120 775.082 Penalties; applicability of sentencing structures;  
121 mandatory minimum sentences for certain reoffenders previously  
122 released from prison.—

123 (8)

124 (d) The Public Safety Criminal Punishment Code applies to  
125 all felonies, except capital felonies, committed on or after  
126 October 1, 1998. Any revision to the Public Safety Criminal  
127 Punishment Code applies to sentencing for all felonies, except  
128 capital felonies, committed on or after the effective date of  
129 the revision.

130 (e) Felonies, except capital felonies, with continuing  
131 dates of enterprise shall be sentenced under the sentencing  
132 guidelines or the Public Safety Criminal Punishment Code in  
133 effect on the beginning date of the criminal activity.

134 Section 3. Paragraph (c) of subsection (2) and paragraph  
135 (c) of subsection (3) of section 775.087, Florida Statutes, are  
136 amended to read:

137 775.087 Possession or use of weapon; aggravated battery;  
138 felony reclassification; minimum sentence.—

139 (2)

140 (c) If the minimum mandatory terms of imprisonment imposed  
141 pursuant to this section exceed the maximum sentences authorized  
142 by s. 775.082, s. 775.084, or the Public Safety Criminal  
143 Punishment Code under chapter 921, then the mandatory minimum  
144 sentence must be imposed. If the mandatory minimum terms of  
145 imprisonment pursuant to this section are less than the

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146 sentences that could be imposed as authorized by s. 775.082, s.  
147 775.084, or the Public Safety Criminal Punishment Code under  
148 chapter 921, then the sentence imposed by the court must include  
149 the mandatory minimum term of imprisonment as required in this  
150 section.

151 (3)

152 (c) If the minimum mandatory terms of imprisonment imposed  
153 pursuant to this section exceed the maximum sentences authorized  
154 by s. 775.082, s. 775.084, or the Public Safety Criminal  
155 Punishment Code under chapter 921, then the mandatory minimum  
156 sentence must be imposed. If the mandatory minimum terms of  
157 imprisonment pursuant to this section are less than the  
158 sentences that could be imposed as authorized by s. 775.082, s.  
159 775.084, or the Public Safety Criminal Punishment Code under  
160 chapter 921, then the sentence imposed by the court must include  
161 the mandatory minimum term of imprisonment as required in this  
162 section.

163 Section 4. Section 782.051, Florida Statutes, is amended to  
164 read:

165 782.051 Attempted felony murder.—

166 (1) Any person who perpetrates or attempts to perpetrate  
167 any felony enumerated in s. 782.04(3) and who commits, aids, or  
168 abets an intentional act that is not an essential element of the  
169 felony and that could, but does not, cause the death of another  
170 commits a felony of the first degree, punishable by imprisonment  
171 for a term of years not exceeding life, or as provided in s.  
172 775.082, s. 775.083, or s. 775.084, which is an offense ranked  
173 in level 9 of the Public Safety Criminal Punishment Code. Victim  
174 injury points shall be scored under this subsection.

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175 (2) Any person who perpetrates or attempts to perpetrate  
 176 any felony other than a felony enumerated in s. 782.04(3) and  
 177 who commits, aids, or abets an intentional act that is not an  
 178 essential element of the felony and that could, but does not,  
 179 cause the death of another commits a felony of the first degree,  
 180 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 181 which is an offense ranked in level 8 of the Public Safety  
 182 ~~Criminal Punishment~~ Code. Victim injury points shall be scored  
 183 under this subsection.

184 (3) When a person is injured during the perpetration of or  
 185 the attempt to perpetrate any felony enumerated in s. 782.04(3)  
 186 by a person other than the person engaged in the perpetration of  
 187 or the attempt to perpetrate such felony, the person  
 188 perpetrating or attempting to perpetrate such felony commits a  
 189 felony of the second degree, punishable as provided in s.  
 190 775.082, s. 775.083, or s. 775.084, which is an offense ranked  
 191 in level 7 of the Public Safety ~~Criminal Punishment~~ Code. Victim  
 192 injury points shall be scored under this subsection.

193 Section 5. Subsection (3) of section 817.568, Florida  
 194 Statutes, is amended to read:

195 817.568 Criminal use of personal identification  
 196 information.—

197 (3) Neither paragraph (2)(b) nor paragraph (2)(c) prevents  
 198 a court from imposing a greater sentence of incarceration as  
 199 authorized by law. If the minimum mandatory terms of  
 200 imprisonment imposed under paragraph (2)(b) or paragraph (2)(c)  
 201 exceed the maximum sentences authorized under s. 775.082, s.  
 202 775.084, or the Public Safety ~~Criminal Punishment~~ Code under  
 203 chapter 921, the mandatory minimum sentence must be imposed. If

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204 the mandatory minimum terms of imprisonment under paragraph  
 205 (2)(b) or paragraph (2)(c) are less than the sentence that could  
 206 be imposed under s. 775.082, s. 775.084, or the Public Safety  
 207 ~~Criminal Punishment~~ Code under chapter 921, the sentence imposed  
 208 by the court must include the mandatory minimum term of  
 209 imprisonment as required by paragraph (2)(b) or paragraph  
 210 (2)(c).

211 Section 6. Paragraph (d) of subsection (8) of section  
 212 893.13, Florida Statutes, is amended to read:

213 893.13 Prohibited acts; penalties.—

214 (8)

215 (d) Notwithstanding paragraph (c), if a prescribing  
 216 practitioner has violated paragraph (a) and received \$1,000 or  
 217 more in payment for writing one or more prescriptions or, in the  
 218 case of a prescription written for a controlled substance  
 219 described in s. 893.135, has written one or more prescriptions  
 220 for a quantity of a controlled substance which, individually or  
 221 in the aggregate, meets the threshold for the offense of  
 222 trafficking in a controlled substance under s. 893.135, the  
 223 violation is reclassified as a felony of the second degree and  
 224 ranked in level 4 of the Public Safety ~~Criminal Punishment~~ Code.

225 Section 7. Subsection (2) of section 893.20, Florida  
 226 Statutes, is amended to read:

227 893.20 Continuing criminal enterprise.—

228 (2) A person who commits the offense of engaging in a  
 229 continuing criminal enterprise commits ~~is guilty of~~ a life  
 230 felony, punishable pursuant to the Public Safety ~~Criminal~~  
 231 ~~Punishment~~ Code and by a fine of \$500,000.

232 Section 8. Paragraph (f) of subsection (5) of section

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910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(f) Upon successful completion of the problem-solving court program, the jurisdiction to which the case has been transferred shall dispose of the case. If the defendant does not complete the problem-solving court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Public Safety ~~Criminal Punishment~~ Code.

Section 9. Section 921.0022, Florida Statutes, is amended to read:

921.0022 Public Safety ~~Criminal Punishment~~ Code; offense severity ranking chart.—

(1) The offense severity ranking chart must be used with the Public Safety ~~Criminal Punishment~~ Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these offenses, the numerical statutory references in the left column of the chart and the felony degree designations in the middle column of the chart are controlling; the language in the right

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column of the chart is provided solely for descriptive purposes. Reclassification of the degree of the felony through the application of s. 775.0845, s. 775.085, s. 775.0861, s. 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart in this section shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023.

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2) (b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2) (b)	3rd	Failure to remit sales taxes, amount \$1,000 or more but less than \$20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.

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	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.	
278				
	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.	
279				
	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.	
280				
	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.	
281				
	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.	
282				
	322.212(5)(a)	3rd	False application for driver license or identification card.	
283				
	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value	

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	24-00766-20		2020560	
			more than \$200.	
284				
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.	
285				
	509.151(1)	3rd	Defraud an innkeeper, food or lodging value \$1,000 or more.	
286				
	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.	
287				
	713.69	3rd	Tenant removes property upon which lien has accrued, value \$1,000 or more.	
288				
	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).	
289				
	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.	
290				
	815.04(5)(a)	3rd	Offense against intellectual	

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			property (i.e., computer programs, data).	
291	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.	
292	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.	
293	826.01	3rd	Bigamy.	
294	828.122(3)	3rd	Fighting or baiting animals.	
295	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.	
296	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.	
297	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.	

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298	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.	
299	838.15(2)	3rd	Commercial bribe receiving.	
300	838.16	3rd	Commercial bribery.	
301	843.18	3rd	Fleeing by boat to elude a law enforcement officer.	
302	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).	
303	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.	
304	849.23	3rd	Gambling-related machines; "common offender" as to property rights.	
305				

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849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
(b) LEVEL 2		
Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.

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379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state

	24-00766-20		2020560__
321			limits.
	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
322			
	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
323			
	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
324			
	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$750 or more but less than \$5,000.
325			
	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$750, taken from unenclosed curtilage of dwelling.
326			
	812.015(7)	3rd	Possession, use, or attempted use of an

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			antishoplifting or inventory control device countermeasure.
327			
	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
328			
	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
329			
	817.52(3)	3rd	Failure to redeliver hired vehicle.
330			
	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
331			
	817.60(5)	3rd	Dealing in credit cards of another.
332			
	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
333			

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	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.	
334				
	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.	
335				
	831.01	3rd	Forgery.	
336				
	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.	
337				
	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.	
338				
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.	
339				
	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.	
340				
	831.11	3rd	Bringing into the state forged bank bills,	

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			checks, drafts, or notes.	
341				
	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.	
342				
	843.08	3rd	False personation.	
343				
	893.13(2)(a)2.	3rd	Purchase of any 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 other than cannabis.	
344				
	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.	
345				
346	(c) LEVEL 3			
347				
	Florida Statute	Felony Degree	Description	
348				
	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.	

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349 316.066 3rd Unlawfully obtaining or  
(3) (b) - (d) using confidential crash  
reports.

350 316.193(2) (b) 3rd Felony DUI, 3rd conviction.

351 316.1935(2) 3rd Fleeing or attempting to  
elude law enforcement  
officer in patrol vehicle  
with siren and lights  
activated.

352 319.30(4) 3rd Possession by junkyard of  
motor vehicle with  
identification number plate  
removed.

353 319.33(1) (a) 3rd Alter or forge any  
certificate of title to a  
motor vehicle or mobile  
home.

354 319.33(1) (c) 3rd Procure or pass title on  
stolen vehicle.

355 319.33(4) 3rd With intent to defraud,  
possess, sell, etc., a  
blank, forged, or

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unlawfully obtained title  
or registration.

356 327.35(2) (b) 3rd Felony BUI.

357 328.05(2) 3rd Possess, sell, or  
counterfeit fictitious,  
stolen, or fraudulent  
titles or bills of sale of  
vessels.

358 328.07(4) 3rd Manufacture, exchange, or  
possess vessel with  
counterfeit or wrong ID  
number.

359 376.302(5) 3rd Fraud related to  
reimbursement for cleanup  
expenses under the Inland  
Protection Trust Fund.

360 379.2431 3rd Taking, disturbing,  
(1) (e) 5. mutilating, destroying,  
causing to be destroyed,  
transferring, selling,  
offering to sell,  
molesting, or harassing  
marine turtles, marine  
turtle eggs, or marine

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361 turtle nests in violation  
of the Marine Turtle  
Protection Act.

362 379.2431 3rd Possessing any marine  
(1) (e) 6. turtle species or  
hatchling, or parts  
thereof, or the nest of any  
marine turtle species  
described in the Marine  
Turtle Protection Act.

363 379.2431 3rd Soliciting to commit or  
(1) (e) 7. conspiring to commit a  
violation of the Marine  
Turtle Protection Act.

364 400.9935(4) (a) 3rd Operating a clinic, or  
or (b) offering services requiring  
licensure, without a  
license.

365 400.9935(4) (e) 3rd Filing a false license  
application or other  
required information or  
failing to report  
information.

440.1051(3) 3rd False report of workers'

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366 compensation fraud or  
retaliation for making such  
a report.

501.001(2) (b) 2nd Tamper with a consumer  
product or the container  
using materially  
false/misleading  
information.

367 624.401(4) (a) 3rd Transacting insurance  
without a certificate of  
authority.

368 624.401(4) (b) 1. 3rd Transacting insurance  
without a certificate of  
authority; premium  
collected less than  
\$20,000.

369 626.902(1) (a) & 3rd Representing an  
(b) unauthorized insurer.

370 697.08 3rd Equity skimming.

371 790.15(3) 3rd Person directs another to  
discharge firearm from a  
vehicle.

372

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	24-00766-20		2020560	
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	
373				
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.	
374				
	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	
375				
	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	
376				
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.	
377				
	812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.	
378				
	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.	
379				

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	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.	
380				
	817.233	3rd	Burning to defraud insurer.	
381				
	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
382				
	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.	
383				
	817.236	3rd	Filing a false motor vehicle insurance application.	
384				
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
385				
	817.413(2)	3rd	Sale of used goods of \$1,000 or more as new.	
386				
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to	

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defraud or possessing a  
counterfeit payment  
instrument with intent to  
defraud.

387

831.29

2nd

Possession of instruments  
for counterfeiting driver  
licenses or identification  
cards.

388

838.021(3)(b)

3rd

Threatens unlawful harm to  
public servant.

389

843.19

2nd

Injure, disable, or kill  
police, fire, or SAR canine  
or police horse.

390

860.15(3)

3rd

Overcharging for repairs  
and parts.

391

870.01(2)

3rd

Riot; inciting or  
encouraging.

392

893.13(1)(a)2.

3rd

Sell, manufacture, or  
deliver cannabis (or other  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3.,  
(2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9.,

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(2)(c)10., (3), or (4)  
drugs).

393

893.13(1)(d)2.

2nd

Sell, manufacture, or  
deliver s. 893.03(1)(c),  
(2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10., (3),  
or (4) drugs within 1,000  
feet of university.

394

893.13(1)(f)2.

2nd

Sell, manufacture, or  
deliver s. 893.03(1)(c),  
(2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10., (3),  
or (4) drugs within 1,000  
feet of public housing  
facility.

395

893.13(4)(c)

3rd

Use or hire of minor;  
deliver to minor other  
controlled substances.

396

893.13(6)(a)

3rd

Possession of any  
controlled substance other  
than felony possession of

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cannabis.

397

893.13(7)(a)8.

3rd

Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

398

893.13(7)(a)9.

3rd

Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

399

893.13(7)(a)10.

3rd

Affix false or forged label to package of controlled substance.

400

893.13(7)(a)11.

3rd

Furnish false or fraudulent material information on any document or record required by chapter 893.

401

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

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related to the practitioner's practice.

402

893.13(8)(a)2.

3rd

Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

403

893.13(8)(a)3.

3rd

Knowingly write a prescription for a controlled substance for a fictitious person.

404

893.13(8)(a)4.

3rd

Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

405

918.13(1)(a)

3rd

Alter, destroy, or conceal investigation evidence.

406

944.47

3rd

(1)(a)1. &amp; 2.

Introduce contraband to correctional facility.

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407

944.47(1)(c) 2nd Possess contraband while  
upon the grounds of a  
correctional institution.

408

985.721 3rd Escapes from a juvenile  
facility (secure detention  
or residential commitment  
facility).

409

(d) LEVEL 4

410

411

Florida Statute	Felony Degree	Description
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412

316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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413

499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
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414

499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
-------------	-----	---

415

517.07(1)	3rd	Failure to register securities.
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416

517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
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417

784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
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418

784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
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419

784.075	3rd	Battery on detention or commitment facility staff.
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420

784.078	3rd	Battery of facility employee by throwing,
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				tossing, or expelling certain fluids or materials.
421	784.08 (2) (c)	3rd		Battery on a person 65 years of age or older.
422	784.081 (3)	3rd		Battery on specified official or employee.
423	784.082 (3)	3rd		Battery by detained person on visitor or other detainee.
424	784.083 (3)	3rd		Battery on code inspector.
425	784.085	3rd		Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
426	787.03 (1)	3rd		Interference with custody; wrongly takes minor from appointed guardian.
427	787.04 (2)	3rd		Take, entice, or remove

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				child beyond state limits with criminal intent pending custody proceedings.
428	787.04 (3)	3rd		Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
429	787.07	3rd		Human smuggling.
430	790.115 (1)	3rd		Exhibiting firearm or weapon within 1,000 feet of a school.
431	790.115 (2) (b)	3rd		Possessing electric weapon or device, destructive device, or other weapon on school property.
432	790.115 (2) (c)	3rd		Possessing firearm on school property.
433	800.04 (7) (c)	3rd		Lewd or lascivious

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			exhibition; offender	
			less than 18 years.	
434	810.02(4)(a)	3rd	Burglary, or attempted	
			burglary, of an	
			unoccupied structure;	
			unarmed; no assault or	
			battery.	
435	810.02(4)(b)	3rd	Burglary, or attempted	
			burglary, of an	
			unoccupied conveyance;	
			unarmed; no assault or	
			battery.	
436	810.06	3rd	Burglary; possession of	
			tools.	
437	810.08(2)(c)	3rd	Trespass on property,	
			armed with firearm or	
			dangerous weapon.	
438	812.014(2)(c)3.	3rd	Grand theft, 3rd degree	
			\$10,000 or more but less	
			than \$20,000.	
439	812.014	3rd	Grand theft, 3rd degree;	
	(2)(c)4.-10.		specified items.	
440				

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	812.0195(2)	3rd	Dealing in stolen	
			property by use of the	
			Internet; property	
			stolen \$300 or more.	
441	817.505(4)(a)	3rd	Patient brokering.	
442	817.563(1)	3rd	Sell or deliver	
			substance other than	
			controlled substance	
			agreed upon, excluding	
			s. 893.03(5) drugs.	
443	817.568(2)(a)	3rd	Fraudulent use of	
			personal identification	
			information.	
444	817.625(2)(a)	3rd	Fraudulent use of	
			scanning device,	
			skimming device, or	
			reencoder.	
445	817.625(2)(c)	3rd	Possess, sell, or	
			deliver skimming device.	
446	828.125(1)	2nd	Kill, maim, or cause	
			great bodily harm or	
			permanent breeding	
			disability to any	

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registered horse or  
cattle.

447

837.02(1)

3rd

Perjury in official  
proceedings.

448

837.021(1)

3rd

Make contradictory  
statements in official  
proceedings.

449

838.022

3rd

Official misconduct.

450

839.13(2)(a)

3rd

Falsifying records of an  
individual in the care  
and custody of a state  
agency.

451

839.13(2)(c)

3rd

Falsifying records of  
the Department of  
Children and Families.

452

843.021

3rd

Possession of a  
concealed handcuff key  
by a person in custody.

453

843.025

3rd

Deprive law enforcement,  
correctional, or  
correctional probation  
officer of means of

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protection or  
communication.

454

843.15(1)(a)

3rd

Failure to appear while  
on bail for felony (bond  
estreature or bond  
jumping).

455

847.0135(5)(c)

3rd

Lewd or lascivious  
exhibition using  
computer; offender less  
than 18 years.

456

874.05(1)(a)

3rd

Encouraging or  
recruiting another to  
join a criminal gang.

457

893.13(2)(a)1.

2nd

Purchase of cocaine (or  
other s. 893.03(1)(a),  
(b), or (d), (2)(a),  
(2)(b), or (2)(c)5.  
drugs).

458

914.14(2)

3rd

Witnesses accepting  
bribes.

459

914.22(1)

3rd

Force, threaten, etc.,  
witness, victim, or  
informant.

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460

914.23(2)

3rd

Retaliation against a  
witness, victim, or  
informant, no bodily  
injury.

461

918.12

3rd

Tampering with jurors.

462

934.215

3rd

Use of two-way  
communications device to  
facilitate commission of  
a crime.

463

944.47(1)(a)6.

3rd

Introduction of  
contraband (cellular  
telephone or other  
portable communication  
device) into  
correctional  
institution.

464

951.22(1)(h),  
(j) & (k)

3rd

Intoxicating drug,  
instrumentality or other  
device to aid escape, or  
cellular telephone or  
other portable  
communication device  
introduced into county  
detention facility.

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465

(e) LEVEL 5

466

467

Florida  
Statute

Felony  
Degree

Description

468

316.027(2)(a)

3rd

Accidents involving  
personal injuries other  
than serious bodily  
injury, failure to stop;  
leaving scene.

469

316.1935(4)(a)

2nd

Aggravated fleeing or  
eluding.

470

316.80(2)

2nd

Unlawful conveyance of  
fuel; obtaining fuel  
fraudulently.

471

322.34(6)

3rd

Careless operation of  
motor vehicle with  
suspended license,  
resulting in death or  
serious bodily injury.

472

327.30(5)

3rd

Vessel accidents  
involving personal  
injury; leaving scene.

473

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379.365(2)(c)1.

3rd

Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

474

379.367(4)

3rd

Willful molestation of a commercial harvester's

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spiny lobster trap, line, or buoy.

475

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

476

381.0041(11)(b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

477

440.10(1)(g)

2nd

Failure to obtain workers' compensation coverage.

478

440.105(5)

2nd

Unlawful solicitation for the purpose of making workers' compensation claims.

479

440.381(2)

3rd

Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

480

624.401(4)(b)2.

2nd

Transacting insurance

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	24-00766-20		2020560	
			without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.	
481	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.	
482	790.01(2)	3rd	Carrying a concealed firearm.	
483	790.162	2nd	Threat to throw or discharge destructive device.	
484	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.	
485	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.	
486	790.23	2nd	Felons in possession of firearms, ammunition, or	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
			electronic weapons or devices.	
487	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.	
488	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.	
489	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.	
490	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	
491	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.	
492	812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.	
493				

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.	
494				
	812.131(2)(b)	3rd	Robbery by sudden snatching.	
495				
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.	
496				
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	
497				
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.	
498				
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.	
499				
	817.568(2)(b)	2nd	Fraudulent use of personal identification	

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	24-00766-20		2020560	
			information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.	
500				
	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.	
501				
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.	
502				
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.	
503				
	827.071(4)	2nd	Possess with intent to promote any photographic	

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material, motion  
picture, etc., which  
includes sexual conduct  
by a child.

827.071(5)

3rd

Possess, control, or  
intentionally view any  
photographic material,  
motion picture, etc.,  
which includes sexual  
conduct by a child.

828.12(2)

3rd

Tortures any animal with  
intent to inflict  
intense pain, serious  
physical injury, or  
death.

839.13(2)(b)

2nd

Falsifying records of an  
individual in the care  
and custody of a state  
agency involving great  
bodily harm or death.

843.01

3rd

Resist officer with  
violence to person;  
resist arrest with  
violence.

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847.0135(5)(b)

2nd

Lewd or lascivious  
exhibition using  
computer; offender 18  
years or older.

847.0137  
(2) & (3)

3rd

Transmission of  
pornography by  
electronic device or  
equipment.

847.0138  
(2) & (3)

3rd

Transmission of material  
harmful to minors to a  
minor by electronic  
device or equipment.

874.05(1)(b)

2nd

Encouraging or  
recruiting another to  
join a criminal gang;  
second or subsequent  
offense.

874.05(2)(a)

2nd

Encouraging or  
recruiting person under  
13 years of age to join  
a criminal gang.

893.13(1)(a)1.

2nd

Sell, manufacture, or  
deliver cocaine (or  
other s. 893.03(1)(a),

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514

893.13(1)(c)2.

2nd

(1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)5.  
drugs).

Sell, manufacture, or  
deliver cannabis (or  
other s. 893.03(1)(c),  
(2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10.,  
(3), or (4) drugs)  
within 1,000 feet of a  
child care facility,  
school, or state,  
county, or municipal  
park or publicly owned  
recreational facility or  
community center.

515

893.13(1)(d)1.

1st

Sell, manufacture, or  
deliver cocaine (or  
other s. 893.03(1)(a),  
(1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)5.  
drugs) within 1,000 feet  
of university.

516

893.13(1)(e)2.

2nd

Sell, manufacture, or

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517

893.13(1)(f)1.

1st

deliver cannabis or  
other drug prohibited  
under s. 893.03(1)(c),  
(2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10.,  
(3), or (4) within 1,000  
feet of property used  
for religious services  
or a specified business  
site.

518

893.13(4)(b)

2nd

Use or hire of minor;  
deliver to minor other  
controlled substance.

519

893.1351(1)

3rd

Ownership, lease, or  
rental for trafficking  
in or manufacturing of

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controlled substance.

520  
521  
522

(f) LEVEL 6

523  
524  
525Florida  
StatuteFelony  
Degree

Description

316.027(2)(b)

2nd

Leaving the scene of a  
crash involving serious  
bodily injury.

524

316.193(2)(b)

3rd

Felony DUI, 4th or  
subsequent conviction.

525

400.9935(4)(c)

2nd

Operating a clinic, or  
offering services  
requiring licensure,  
without a license.

526

499.0051(2)

2nd

Knowing forgery of  
transaction history,  
transaction information,  
or transaction  
statement.

527

499.0051(3)

2nd

Knowing purchase or  
receipt of prescription  
drug from unauthorized  
person.

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528

499.0051(4)

2nd

Knowing sale or transfer  
of prescription drug to  
unauthorized person.

529

775.0875(1)

3rd

Taking firearm from law  
enforcement officer.

530

784.021(1)(a)

3rd

Aggravated assault;  
deadly weapon without  
intent to kill.

531

784.021(1)(b)

3rd

Aggravated assault;  
intent to commit felony.

532

784.041

3rd

Felony battery; domestic  
battery by  
strangulation.

533

784.048(3)

3rd

Aggravated stalking;  
credible threat.

534

784.048(5)

3rd

Aggravated stalking of  
person under 16.

535

784.07(2)(c)

2nd

Aggravated assault on  
law enforcement officer.

536

784.074(1)(b)

2nd

Aggravated assault on

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
			sexually violent predators facility staff.	
537	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.	
538	784.081 (2)	2nd	Aggravated assault on specified official or employee.	
539	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.	
540	784.083 (2)	2nd	Aggravated assault on code inspector.	
541	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	
542	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.	
543				

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	
544	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.	
545	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	
546	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	
547	794.05 (1)	2nd	Unlawful sexual activity with specified minor.	
548	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older	

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	24-00766-20		2020560	
				but less than 16 years
				of age; offender less
549				than 18 years.
	800.04 (6) (b)	2nd		Lewd or lascivious
				conduct; offender 18
550				years of age or older.
	806.031 (2)	2nd		Arson resulting in great
				bodily harm to
551				firefighter or any other
				person.
	810.02 (3) (c)	2nd		Burglary of occupied
				structure; unarmed; no
552				assault or battery.
	810.145 (8) (b)	2nd		Video voyeurism; certain
				minor victims; 2nd or
553				subsequent offense.
	812.014 (2) (b) 1.	2nd		Property stolen \$20,000
				or more, but less than
				\$100,000, grand theft in
554				2nd degree.
	812.014 (6)	2nd		Theft; property stolen
				\$3,000 or more;
				coordination of others.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
555	812.015 (9) (a)	2nd		Retail theft; property
				stolen \$750 or more;
				second or subsequent
556				conviction.
	812.015 (9) (b)	2nd		Retail theft; aggregated
				property stolen within
				30 days is \$3,000 or
				more; coordination of
557				others.
	812.13 (2) (c)	2nd		Robbery, no firearm or
				other weapon (strong-arm
558				robbery).
	817.4821 (5)	2nd		Possess cloning
				paraphernalia with
				intent to create cloned
559				cellular telephones.
	817.505 (4) (b)	2nd		Patient brokering; 10 or
560				more patients.
	825.102 (1)	3rd		Abuse of an elderly
				person or disabled
				adult.
561	825.102 (3) (c)	3rd		Neglect of an elderly

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	24-00766-20		2020560	
			person or disabled	
			adult.	
562	825.1025 (3)	3rd	Lewd or lascivious	
			molestation of an	
			elderly person or	
563	825.103 (3) (c)	3rd	disabled adult.	
			Exploiting an elderly	
			person or disabled adult	
			and property is valued	
564			at less than \$10,000.	
565	827.03 (2) (c)	3rd	Abuse of a child.	
566	827.03 (2) (d)	3rd	Neglect of a child.	
	827.071 (2) & (3)	2nd	Use or induce a child in	
			a sexual performance, or	
			promote or direct such	
567			performance.	
568	836.05	2nd	Threats; extortion.	
	836.10	2nd	Written threats to kill,	
			do bodily injury, or	
			conduct a mass shooting	
569			or an act of terrorism.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
	843.12	3rd	Aids or assists person	
			to escape.	
570	847.011	3rd	Distributing, offering	
			to distribute, or	
			possessing with intent	
			to distribute obscene	
			materials depicting	
571			minors.	
	847.012	3rd	Knowingly using a minor	
			in the production of	
			materials harmful to	
572			minors.	
	847.0135 (2)	3rd	Facilitates sexual	
			conduct of or with a	
			minor or the visual	
			depiction of such	
573			conduct.	
	914.23	2nd	Retaliation against a	
			witness, victim, or	
			informant, with bodily	
			injury.	
574				
	944.35 (3) (a) 2.	3rd	Committing malicious	
			battery upon or	
			inflicting cruel or	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



24-00766-20		2020560__	
			inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
575	944.40	2nd	Escapes.
576	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
577	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
578	951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.
579	(g) LEVEL 7		
580			
581	Florida Statute	Felony Degree	Description
582	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00766-20		2020560__	
			scene.
583	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
584	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
585	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
586	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
587	409.920	3rd	Medicaid provider fraud;
588	(2)(b)1.a.		\$10,000 or less.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
	409.920	2nd	Medicaid provider fraud;	
	(2) (b) 1.b.		more than \$10,000, but	
			less than \$50,000.	
589				
	456.065 (2)	3rd	Practicing a health care	
			profession without a	
			license.	
590				
	456.065 (2)	2nd	Practicing a health care	
			profession without a	
			license which results in	
			serious bodily injury.	
591				
	458.327 (1)	3rd	Practicing medicine	
			without a license.	
592				
	459.013 (1)	3rd	Practicing osteopathic	
			medicine without a	
			license.	
593				
	460.411 (1)	3rd	Practicing chiropractic	
			medicine without a	
			license.	
594				
	461.012 (1)	3rd	Practicing podiatric	
			medicine without a	
			license.	
595				
	462.17	3rd	Practicing naturopathy	

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	24-00766-20		2020560	
			without a license.	
596				
	463.015 (1)	3rd	Practicing optometry	
			without a license.	
597				
	464.016 (1)	3rd	Practicing nursing without	
			a license.	
598				
	465.015 (2)	3rd	Practicing pharmacy	
			without a license.	
599				
	466.026 (1)	3rd	Practicing dentistry or	
			dental hygiene without a	
			license.	
600				
	467.201	3rd	Practicing midwifery	
			without a license.	
601				
	468.366	3rd	Delivering respiratory	
			care services without a	
			license.	
602				
	483.828 (1)	3rd	Practicing as clinical	
			laboratory personnel	
			without a license.	
603				
	483.901 (7)	3rd	Practicing medical physics	
			without a license.	
604				

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
605	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.	
606	484.053	3rd	Dispensing hearing aids without a license.	
607	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.	
608	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.	
609	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.	
	655.50(10)(b)1.	3rd	Failure to report financial transactions	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
610			exceeding \$300 but less than \$20,000 by financial institution.	
611	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.	
612	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.	
613	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.	
614	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.	
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
			another (manslaughter).	
615	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).	
616	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).	
617	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.	
618	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.	
619	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.	
620	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
621	784.048(7)	3rd	Aggravated stalking; violation of court order.	
622	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.	
623	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.	
624	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.	
625	784.081(1)	1st	Aggravated battery on specified official or employee.	
626	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.	
627	784.083(1)	1st	Aggravated battery on code inspector.	
628	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560__
629	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
630	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
631	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
632	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
633	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
634	790.166(3)	2nd	Possessing, selling, using, or attempting to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560__
			use a hoax weapon of mass destruction.
635	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
636	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
637	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
638	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
639	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
640			

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
641	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.	
642	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.	
643	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.	
644	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.	
645	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
646	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.	
647	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.	
648	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.	
649	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.	
650	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.	
651	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
652	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.	
653	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.	
654	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.	
655	812.131 (2) (a)	2nd	Robbery by sudden snatching.	
656	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.	
657	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.	
	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
658	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.	
659	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.	
660	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.	
661	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.	
662	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.	
663	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm,	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560__	
			disability, or disfigurement.	
664	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.	
665	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.	
666	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.	
667	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.	
668	838.015	2nd	Bribery.	
669	838.016	2nd	Unlawful compensation or reward for official behavior.	

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560__	
670	838.021(3)(a)	2nd	Unlawful harm to a public servant.	
671	838.22	2nd	Bid tampering.	
672	843.0855(2)	3rd	Impersonation of a public officer or employee.	
673	843.0855(3)	3rd	Unlawful simulation of legal process.	
674	843.0855(4)	3rd	Intimidation of a public officer or employee.	
675	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.	
676	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.	
677	872.06	2nd	Abuse of a dead human body.	
678	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a	

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2020560

criminal gang; second or  
subsequent offense.

679

874.10

1st, PBL

Knowingly initiates,  
organizes, plans,  
finances, directs,  
manages, or supervises  
criminal gang-related  
activity.

680

893.13(1)(c)1.

1st

Sell, manufacture, or  
deliver cocaine (or other  
drug prohibited under s.  
893.03(1)(a), (1)(b),  
(1)(d), (2)(a), (2)(b), or  
(2)(c)5.) within 1,000  
feet of a child care  
facility, school, or  
state, county, or  
municipal park or publicly  
owned recreational  
facility or community  
center.

681

893.13(1)(e)1.

1st

Sell, manufacture, or  
deliver cocaine or other  
drug prohibited under s.  
893.03(1)(a), (1)(b),  
(1)(d), (2)(a), (2)(b), or

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(2)(c)5., within 1,000  
feet of property used for  
religious services or a  
specified business site.

682

893.13(4)(a)

1st

Use or hire of minor;  
deliver to minor other  
controlled substance.

683

893.135(1)(a)1.

1st

Trafficking in cannabis,  
more than 25 lbs., less  
than 2,000 lbs.

684

893.135  
(1)(b)1.a.

1st

Trafficking in cocaine,  
more than 28 grams, less  
than 200 grams.

685

893.135  
(1)(c)1.a.

1st

Trafficking in illegal  
drugs, more than 4 grams,  
less than 14 grams.

686

893.135  
(1)(c)2.a.

1st

Trafficking in  
hydrocodone, 28 grams or  
more, less than 50 grams.

687

893.135  
(1)(c)2.b.

1st

Trafficking in  
hydrocodone, 50 grams or  
more, less than 100 grams.

688

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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893.135 1st Trafficking in oxycodone,  
(1)(c)3.a. 7 grams or more, less than  
14 grams.

689 893.135 1st Trafficking in oxycodone,  
(1)(c)3.b. 14 grams or more, less  
than 25 grams.

690 893.135 1st Trafficking in fentanyl, 4  
(1)(c)4.b.(I) grams or more, less than  
14 grams.

691 893.135 1st Trafficking in  
(1)(d)1.a. phencyclidine, 28 grams or  
more, less than 200 grams.

692 893.135(1)(e)1. 1st Trafficking in  
methaqualone, 200 grams or  
more, less than 5  
kilograms.

693 893.135(1)(f)1. 1st Trafficking in  
amphetamine, 14 grams or  
more, less than 28 grams.

694 893.135 1st Trafficking in  
(1)(g)1.a. flunitrazepam, 4 grams or  
more, less than 14 grams.

695

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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893.135 1st Trafficking in gamma-  
(1)(h)1.a. hydroxybutyric acid (GHB),  
1 kilogram or more, less  
than 5 kilograms.

696 893.135 1st Trafficking in 1,4-  
(1)(j)1.a. Butanediol, 1 kilogram or  
more, less than 5  
kilograms.

697 893.135 1st Trafficking in  
(1)(k)2.a. Phenethylamines, 10 grams  
or more, less than 200  
grams.

698 893.135 1st Trafficking in synthetic  
(1)(m)2.a. cannabinoids, 280 grams or  
more, less than 500 grams.

699 893.135 1st Trafficking in synthetic  
(1)(m)2.b. cannabinoids, 500 grams or  
more, less than 1,000  
grams.

700 893.135 1st Trafficking in n-benzyl  
(1)(n)2.a. phenethylamines, 14 grams  
or more, less than 100  
grams.

701

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
702	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.	
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.	
703	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.	
704	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.	
705	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.	
706	943.0435(9)(a)	3rd	Sexual offender; failure	

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	24-00766-20		2020560	
			to comply with reporting requirements.	
707	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	
708	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.	
709	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.	
710	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.	
711	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	

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712	24-00766-20	2020560	
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
713	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
714	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
715	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
716			
717	(h) LEVEL 8		
718	Florida Statute	Felony Degree	Description

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

719	24-00766-20	2020560	
	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
720	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
721	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
722	499.0051(6)	1st	Knowing trafficking in contraband prescription drugs.
723	499.0051(7)	1st	Knowing forgery of prescription labels or prescription drug labels.
724	560.123(8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
725	560.125(5) (b)	2nd	Money transmitter business by unauthorized person, currency or

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560	
			payment instruments	
			totaling or exceeding	
			\$20,000, but less than	
			\$100,000.	
726				
	655.50 (10) (b) 2.	2nd	Failure to report	
			financial transactions	
			totaling or exceeding	
			\$20,000, but less than	
			\$100,000 by financial	
			institutions.	
727				
	777.03 (2) (a)	1st	Accessory after the fact,	
			capital felony.	
728				
	782.04 (4)	2nd	Killing of human without	
			design when engaged in	
			act or attempt of any	
			felony other than arson,	
			sexual battery, robbery,	
			burglary, kidnapping,	
			aggravated fleeing or	
			eluding with serious	
			bodily injury or death,	
			aircraft piracy, or	
			unlawfully discharging	
			bomb.	
729				
	782.051 (2)	1st	Attempted felony murder	

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	24-00766-20		2020560	
			while perpetrating or	
			attempting to perpetrate	
			a felony not enumerated	
			in s. 782.04 (3).	
730				
	782.071 (1) (b)	1st	Committing vehicular	
			homicide and failing to	
			render aid or give	
			information.	
731				
	782.072 (2)	1st	Committing vessel	
			homicide and failing to	
			render aid or give	
			information.	
732				
	787.06 (3) (a) 1.	1st	Human trafficking for	
			labor and services of a	
			child.	
733				
	787.06 (3) (b)	1st	Human trafficking using	
			coercion for commercial	
			sexual activity of an	
			adult.	
734				
	787.06 (3) (c) 2.	1st	Human trafficking using	
			coercion for labor and	
			services of an	
			unauthorized alien adult.	
735				

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	24-00766-20		2020560	
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.	
736	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.	
737	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.	
738	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.	
739	794.011(5)(b)	2nd	Sexual battery; victim	

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	24-00766-20		2020560	
			and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.	
740	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.	
741	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.	
742	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.	
743	800.04(4)(b)	2nd	Lewd or lascivious battery.	

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744

800.04 (4) (c) 1st Lewd or lascivious  
battery; offender 18  
years of age or older;  
prior conviction for  
specified sex offense.

745

806.01 (1) 1st Maliciously damage  
dwelling or structure by  
fire or explosive,  
believing person in  
structure.

746

810.02 (2) (a) 1st, PBL Burglary with assault or  
battery.

747

810.02 (2) (b) 1st, PBL Burglary; armed with  
explosives or dangerous  
weapon.

748

810.02 (2) (c) 1st Burglary of a dwelling or  
structure causing  
structural damage or  
\$1,000 or more property  
damage.

749

812.014 (2) (a) 2. 1st Property stolen; cargo  
valued at \$50,000 or  
more, grand theft in 1st

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750

degree.

812.13 (2) (b) 1st Robbery with a weapon.

751

812.135 (2) (c) 1st Home-invasion robbery, no  
firearm, deadly weapon,  
or other weapon.

752

817.505 (4) (c) 1st Patient brokering; 20 or  
more patients.

753

817.535 (2) (b) 2nd Filing false lien or  
other unauthorized  
document; second or  
subsequent offense.

754

817.535 (3) (a) 2nd Filing false lien or  
other unauthorized  
document; property owner  
is a public officer or  
employee.

755

817.535 (4) (a) 1. 2nd Filing false lien or  
other unauthorized  
document; defendant is  
incarcerated or under  
supervision.

756

817.535 (5) (a) 2nd Filing false lien or

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other unauthorized  
document; owner of the  
property incurs financial  
loss as a result of the  
false instrument.

757

817.568(6)

2nd

Fraudulent use of  
personal identification  
information of an  
individual under the age  
of 18.

758

817.611(2)(c)

1st

Traffic in or possess 50  
or more counterfeit  
credit cards or related  
documents.

759

825.102(2)

1st

Aggravated abuse of an  
elderly person or  
disabled adult.

760

825.1025(2)

2nd

Lewd or lascivious  
battery upon an elderly  
person or disabled adult.

761

825.103(3)(a)

1st

Exploiting an elderly  
person or disabled adult  
and property is valued at  
\$50,000 or more.

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762

837.02(2)

2nd

Perjury in official  
proceedings relating to  
prosecution of a capital  
felony.

763

837.021(2)

2nd

Making contradictory  
statements in official  
proceedings relating to  
prosecution of a capital  
felony.

764

860.121(2)(c)

1st

Shooting at or throwing  
any object in path of  
railroad vehicle  
resulting in great bodily  
harm.

765

860.16

1st

Aircraft piracy.

766

893.13(1)(b)

1st

Sell or deliver in excess  
of 10 grams of any  
substance specified in s.  
893.03(1)(a) or (b).

767

893.13(2)(b)

1st

Purchase in excess of 10  
grams of any substance  
specified in s.  
893.03(1)(a) or (b).

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768

893.13(6)(c)

1st

Possess in excess of 10  
grams of any substance  
specified in s.  
893.03(1)(a) or (b).

769

893.135(1)(a)2.

1st

Trafficking in cannabis,  
more than 2,000 lbs.,  
less than 10,000 lbs.

770

893.135  
(1)(b)1.b.

1st

Trafficking in cocaine,  
more than 200 grams, less  
than 400 grams.

771

893.135  
(1)(c)1.b.

1st

Trafficking in illegal  
drugs, more than 14  
grams, less than 28  
grams.

772

893.135  
(1)(c)2.c.

1st

Trafficking in  
hydrocodone, 100 grams or  
more, less than 300  
grams.

773

893.135  
(1)(c)3.c.

1st

Trafficking in oxycodone,  
25 grams or more, less  
than 100 grams.

774

893.135

1st

Trafficking in fentanyl,

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2020560

(1)(c)4.b.(II)

14 grams or more, less  
than 28 grams.

775

893.135  
(1)(d)1.b.

1st

Trafficking in  
phencyclidine, 200 grams  
or more, less than 400  
grams.

776

893.135  
(1)(e)1.b.

1st

Trafficking in  
methaqualone, 5 kilograms  
or more, less than 25  
kilograms.

777

893.135  
(1)(f)1.b.

1st

Trafficking in  
amphetamine, 28 grams or  
more, less than 200  
grams.

778

893.135  
(1)(g)1.b.

1st

Trafficking in  
flunitrazepam, 14 grams  
or more, less than 28  
grams.

779

893.135  
(1)(h)1.b.

1st

Trafficking in gamma-  
hydroxybutyric acid  
(GHB), 5 kilograms or  
more, less than 10  
kilograms.

780

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560
	893.135	1st	Trafficking in 1,4-
	(1) (j) 1.b.		Butanediol, 5 kilograms
			or more, less than 10
			kilograms.
781			
	893.135	1st	Trafficking in
	(1) (k) 2.b.		Phenethylamines, 200
			grams or more, less than
			400 grams.
782			
	893.135	1st	Trafficking in synthetic
	(1) (m) 2.c.		cannabinoids, 1,000 grams
			or more, less than 30
			kilograms.
783			
	893.135	1st	Trafficking in n-benzyl
	(1) (n) 2.b.		phenethylamines, 100
			grams or more, less than
			200 grams.
784			
	893.1351(3)	1st	Possession of a place
			used to manufacture
			controlled substance when
			minor is present or
			resides there.
785			
	895.03(1)	1st	Use or invest proceeds
			derived from pattern of
			racketeering activity.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	24-00766-20		2020560
786	895.03(2)	1st	Acquire or maintain
			through racketeering
			activity any interest in
			or control of any
			enterprise or real
			property.
787			
	895.03(3)	1st	Conduct or participate in
			any enterprise through
			pattern of racketeering
			activity.
788			
	896.101(5) (b)	2nd	Money laundering,
			financial transactions
			totaling or exceeding
			\$20,000, but less than
			\$100,000.
789			
	896.104(4) (a) 2.	2nd	Structuring transactions
			to evade reporting or
			registration
			requirements, financial
			transactions totaling or
			exceeding \$20,000 but
			less than \$100,000.
790			
791	(i) LEVEL 9		
792			

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00766-20		2020560	
Florida Statute	Felony Degree	Description	
793 316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.	
794 327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.	
795 409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.	
796 499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.	
797 560.123(8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.	
798 560.125(5) (c)	1st	Money transmitter business by unauthorized person, currency, or	

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		payment instruments totaling or exceeding \$100,000.	
799 655.50(10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.	
800 775.0844	1st	Aggravated white collar crime.	
801 782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.	
802 782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.	
803 782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate	

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a felony enumerated in s.  
782.04(3).

804

782.07(2)

1st

Aggravated manslaughter  
of an elderly person or  
disabled adult.

805

787.01(1)(a)1.

1st,PBL

Kidnapping; hold for  
ransom or reward or as a  
shield or hostage.

806

787.01(1)(a)2.

1st,PBL

Kidnapping with intent to  
commit or facilitate  
commission of any felony.

807

787.01(1)(a)4.

1st,PBL

Kidnapping with intent to  
interfere with  
performance of any  
governmental or political  
function.

808

787.02(3)(a)

1st,PBL

False imprisonment; child  
under age 13; perpetrator  
also commits aggravated  
child abuse, sexual  
battery, or lewd or  
lascivious battery,  
molestation, conduct, or  
exhibition.

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809

787.06(3)(c)1.

1st

Human trafficking for  
labor and services of an  
unauthorized alien child.

810

787.06(3)(d)

1st

Human trafficking using  
coercion for commercial  
sexual activity of an  
unauthorized adult alien.

811

787.06(3)(f)1.

1st,PBL

Human trafficking for  
commercial sexual  
activity by the transfer  
or transport of any child  
from outside Florida to  
within the state.

812

790.161

1st

Attempted capital  
destructive device  
offense.

813

790.166(2)

1st,PBL

Possessing, selling,  
using, or attempting to  
use a weapon of mass  
destruction.

814

794.011(2)

1st

Attempted sexual battery;  
victim less than 12 years  
of age.

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815	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.	
816	794.011(4)(a)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.	
817	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.	
818	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.	
819	794.011(4)(d)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for	

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			specified sex offenses.	
820	794.011(8)(b)	1st, PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.	
821	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.	
822	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.	
823	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.	
824	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.	
825	812.135(2)(b)	1st	Home-invasion robbery with weapon.	
826	817.535(3)(b)	1st	Filing false lien or other unauthorized	

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			document; second or subsequent offense; property owner is a public officer or employee.	
827	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.	
828	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.	
829	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.	

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	24-00766-20		2020560	
830	827.03(2)(a)	1st	Aggravated child abuse.	
831	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.	
832	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.	
833	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.	
834	893.135	1st	Attempted capital trafficking offense.	
835	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.	
836	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.	
837				

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	24-00766-20		2020560
	893.135	1st	Trafficking in illegal
	(1) (c) 1.c.		drugs, more than 28
			grams, less than 30
838			kilograms.
	893.135	1st	Trafficking in
	(1) (c) 2.d.		hydrocodone, 300 grams or
			more, less than 30
			kilograms.
839	893.135	1st	Trafficking in oxycodone,
	(1) (c) 3.d.		100 grams or more, less
			than 30 kilograms.
840	893.135	1st	Trafficking in fentanyl,
	(1) (c) 4.b. (III)		28 grams or more.
841	893.135	1st	Trafficking in
	(1) (d) 1.c.		phencyclidine, 400 grams
			or more.
842	893.135	1st	Trafficking in
	(1) (e) 1.c.		methaqualone, 25
			kilograms or more.
843	893.135	1st	Trafficking in
	(1) (f) 1.c.		amphetamine, 200 grams or
			more.
844			

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	24-00766-20		2020560
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.c.		hydroxybutyric acid
			(GHB), 10 kilograms or
			more.
845	893.135	1st	Trafficking in 1,4-
	(1) (j) 1.c.		Butanediol, 10 kilograms
			or more.
846	893.135	1st	Trafficking in
	(1) (k) 2.c.		Phenethylamines, 400
			grams or more.
847	893.135	1st	Trafficking in synthetic
	(1) (m) 2.d.		cannabinoids, 30
			kilograms or more.
848	893.135	1st	Trafficking in n-benzyl
	(1) (n) 2.c.		phenethylamines, 200
			grams or more.
849	896.101(5) (c)	1st	Money laundering,
			financial instruments
			totaling or exceeding
			\$100,000.
850	896.104(4) (a) 3.	1st	Structuring transactions
			to evade reporting or
			registration

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requirements, financial  
transactions totaling or  
exceeding \$100,000.

851

852 (j) LEVEL 10

853

Florida  
Statute

Felony  
Degree

Description

854

499.0051(9)

1st

Knowing sale or purchase  
of contraband  
prescription drugs  
resulting in death.

855

782.04(2)

1st,PBL

Unlawful killing of  
human; act is homicide,  
unpremeditated.

856

782.07(3)

1st

Aggravated manslaughter  
of a child.

857

787.01(1)(a)3.

1st,PBL

Kidnapping; inflict  
bodily harm upon or  
terrorize victim.

858

787.01(3)(a)

Life

Kidnapping; child under  
age 13, perpetrator also  
commits aggravated child  
abuse, sexual battery,

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or lewd or lascivious  
battery, molestation,  
conduct, or exhibition.

859

787.06(3)(g)

Life

Human trafficking for  
commercial sexual  
activity of a child  
under the age of 18 or  
mentally defective or  
incapacitated person.

860

787.06(4)(a)

Life

Selling or buying of  
minors into human  
trafficking.

861

794.011(3)

Life

Sexual battery; victim  
12 years or older,  
offender uses or  
threatens to use deadly  
weapon or physical force  
to cause serious injury.

862

812.135(2)(a)

1st,PBL

Home-invasion robbery  
with firearm or other  
deadly weapon.

863

876.32

1st

Treason against the  
state.

864

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865 Section 10. Section 921.0023, Florida Statutes, is amended  
 866 to read:  
 867 921.0023 Public Safety Criminal Punishment Code; ranking  
 868 unlisted felony offenses.—A felony offense committed on or after  
 869 October 1, 1998, that is not listed in s. 921.0022 is ranked  
 870 with respect to offense severity level by the Legislature,  
 871 commensurate with the harm or potential harm that is caused by  
 872 the offense to the community. Until the Legislature specifically  
 873 assigns an offense to a severity level in the offense severity  
 874 ranking chart, the severity level is within the following  
 875 parameters:  
 876 (1) A felony of the third degree within offense level 1.  
 877 (2) A felony of the second degree within offense level 4.  
 878 (3) A felony of the first degree within offense level 7.  
 879 (4) A felony of the first degree punishable by life within  
 880 offense level 9.  
 881 (5) A life felony within offense level 10.  
 882 Section 11. Section 921.0024, Florida Statutes, is amended  
 883 to read:  
 884 921.0024 Public Safety Criminal Punishment Code; worksheet  
 885 computations; scoresheets.—  
 886 (1) (a) The Public Safety Criminal Punishment Code worksheet  
 887 is used to compute the subtotal and total sentence points as  
 888 follows:  
 889  
 890 FLORIDA PUBLIC SAFETY CRIMINAL PUNISHMENT CODE  
 891 WORKSHEET  
 892  
 893 OFFENSE SCORE

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894  
 895 Primary Offense  
 896 Level Sentence Points Total  
 897 10 116 = .....  
 898 9 92 = .....  
 899 8 74 = .....  
 900 7 56 = .....  
 901 6 36 = .....  
 902 5 28 = .....  
 903 4 22 = .....  
 904 3 16 = .....  
 905 2 10 = .....  
 906 1 4 = .....  
 907  
 908 Total

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909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923

## Additional Offenses

Level	Sentence	Points		Counts	=	Total
10	58	x	....	=	....	
9	46	x	....	=	....	
8	37	x	....	=	....	
7	28	x	....	=	....	
6	18	x	....	=	....	
5	5.4	x	....	=	....	
4	3.6	x	....	=	....	
3	2.4	x	....	=	....	
2	1.2	x	....	=	....	
1	0.7	x	....	=	....	
M	0.2	x	....	=	....	

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924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935

Total

## Victim Injury

Level	Sentence	Points		Number	=	Total
2nd degree murder-death	240	x	....	=	....	
Death	120	x	....	=	....	
Severe	40	x	....	=	....	
Moderate	18	x	....	=	....	
Slight	4	x	....	=	....	
Sexual penetration	80	x	....	=	....	
Sexual contact	40	x	....	=	....	

Total

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936  
 937 Primary Offense + Additional Offenses + Victim Injury =  
 938 TOTAL OFFENSE SCORE  
 939  
 940 PRIOR RECORD SCORE  
 941  
 942 Prior Record  
 943  
 944 Level Sentence Points Number Total  
 945  
 946 10 29 x .... = ....  
 947  
 948 9 23 x .... = ....  
 949  
 950 8 19 x .... = ....  
 951  
 952 7 14 x .... = ....  
 953  
 954 6 9 x .... = ....  
 955  
 956 5 3.6 x .... = ....  
 957  
 958 4 2.4 x .... = ....  
 959  
 960 3 1.6 x .... = ....  
 961  
 962 2 0.8 x .... = ....  
 963  
 964 1 0.5 x .... = ....

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953 M 0.2 x .... = ....  
 954  
 955  
 956 Total  
 957 TOTAL OFFENSE SCORE.....  
 958 TOTAL PRIOR RECORD SCORE.....  
 959  
 960 LEGAL STATUS.....  
 961 COMMUNITY SANCTION VIOLATION.....  
 962 PRIOR SERIOUS FELONY.....  
 963 PRIOR CAPITAL FELONY.....  
 964 FIREARM OR SEMIAUTOMATIC WEAPON.....  
 965 SUBTOTAL.....  
 966  
 967 PRISON RELEASEE REOFFENDER (no) (yes).....  
 968 VIOLENT CAREER CRIMINAL (no) (yes).....  
 969 HABITUAL VIOLENT OFFENDER (no) (yes).....  
 970 HABITUAL OFFENDER (no) (yes).....  
 971 DRUG TRAFFICKER (no) (yes) (x multiplier).....  
 972 LAW ENF. PROTECT. (no) (yes) (x multiplier).....  
 973 MOTOR VEHICLE THEFT (no) (yes) (x multiplier).....  
 974 CRIMINAL GANG OFFENSE (no) (yes) (x multiplier).....  
 975 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no) (yes)  
 976 (x multiplier).....  
 977 ADULT-ON-MINOR SEX OFFENSE (no) (yes) (x multiplier).....  
 978 .....

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TOTAL SENTENCE POINTS.....

## (b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

I. The violation does not include a new felony conviction; and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or

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make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital

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felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a

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violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who

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is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by

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subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 947.149.

(3) A single digitized scoresheet shall be prepared for each defendant to determine the permissible range for the sentence that the court may impose, except that if the defendant is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the guidelines or the code, separate digitized scoresheets must be prepared. The scoresheet or scoresheets must cover all the defendant's offenses pending before the court for sentencing. The state attorney shall prepare the digitized scoresheet or scoresheets, which must be presented to the defense counsel for review for accuracy in all cases unless the

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judge directs otherwise. The defendant's scoresheet or scoresheets must be approved and signed by the sentencing judge.

(4) The Department of Corrections, in consultation with the Office of the State Courts Administrator, state attorneys, and public defenders, must develop and submit the revised digitized Public Safety Criminal Punishment Code scoresheet to the Supreme Court for approval by June 15 of each year, as necessary. The digitized scoresheet shall have individual, structured data cells for each data field on the scoresheet. Upon the Supreme Court's approval of the revised digitized scoresheet, the Department of Corrections shall produce and provide the revised digitized scoresheets by September 30 of each year, as necessary. Digitized scoresheets must include individual data cells to indicate whether any prison sentence imposed includes a mandatory minimum sentence or the sentence imposed was a downward departure from the lowest permissible sentence under the Public Safety Criminal Punishment Code.

(5) The Department of Corrections shall make available the digitized Public Safety Criminal Punishment Code scoresheets to those persons charged with the responsibility for preparing scoresheets.

(6) The clerk of the circuit court shall transmit a complete and accurate digitized copy of the Public Safety Criminal Punishment Code scoresheet used in each sentencing proceeding to the Department of Corrections. Scoresheets must be electronically transmitted no less frequently than monthly, by the first of each month, and may be sent collectively.

(7) A digitized sentencing scoresheet must be prepared for every defendant who is sentenced for a felony offense. The

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individual offender's digitized Public Safety Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets, must be included with the uniform judgment and sentence form provided to the Department of Corrections.

Section 12. Section 921.0025, Florida Statutes, is amended to read:

921.0025 Adoption and implementation of revised sentencing scoresheets.—Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules of Criminal Procedure, as revised by the Supreme Court, and any other rule pertaining to the preparation and submission of felony sentencing scoresheets, are adopted and implemented in accordance with this chapter for application to the Public Safety Criminal Punishment Code.

Section 13. Paragraph (m) of subsection (2) of section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(m) The defendant's offense is a nonviolent felony, the defendant's Public Safety Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court

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1211 program and is otherwise qualified to participate in the program  
 1212 as part of the sentence. For purposes of this paragraph, the  
 1213 term "nonviolent felony" has the same meaning as provided in s.  
 1214 948.08(6).

1215 Section 14. Section 921.0027, Florida Statutes, is amended  
 1216 to read:

1217 921.0027 Public Safety ~~Criminal Punishment~~ Code and  
 1218 revisions; applicability.—The Florida Public Safety ~~Criminal~~  
 1219 ~~Punishment~~ Code applies to all felonies, except capital  
 1220 felonies, committed on or after October 1, 1998. Any revision to  
 1221 the Public Safety ~~Criminal Punishment~~ Code applies to sentencing  
 1222 for all felonies, except capital felonies, committed on or after  
 1223 the effective date of the revision. Felonies, except capital  
 1224 felonies, with continuing dates of enterprise shall be sentenced  
 1225 under the Public Safety ~~Criminal Punishment~~ Code in effect on  
 1226 the beginning date of the criminal activity.

1227 Section 15. Subsection (1) of section 924.06, Florida  
 1228 Statutes, is amended to read:

1229 924.06 Appeal by defendant.—

1230 (1) A defendant may appeal from:

1231 (a) A final judgment of conviction when probation has not  
 1232 been granted under chapter 948, except as provided in subsection  
 1233 (3);

1234 (b) An order granting probation under chapter 948;

1235 (c) An order revoking probation under chapter 948;

1236 (d) A sentence, on the ground that it is illegal; or

1237 (e) A sentence imposed under s. 921.0024 of the Public  
 1238 Safety ~~Criminal Punishment~~ Code which exceeds the statutory  
 1239 maximum penalty provided in s. 775.082 for an offense at

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1240 conviction, or the consecutive statutory maximums for offenses  
 1241 at conviction, unless otherwise provided by law.

1242 Section 16. Paragraph (i) of subsection (1) of section  
 1243 924.07, Florida Statutes, is amended to read:

1244 924.07 Appeal by state.—

1245 (1) The state may appeal from:

1246 (i) A sentence imposed below the lowest permissible  
 1247 sentence established by the Public Safety ~~Criminal Punishment~~  
 1248 Code under chapter 921.

1249 Section 17. Paragraph (c) of subsection (3) and paragraph  
 1250 (e) of subsection (5) of section 944.17, Florida Statutes, are  
 1251 amended to read:

1252 944.17 Commitments and classification; transfers.—

1253 (3)

1254 (c)1. When the highest ranking offense for which the  
 1255 prisoner is convicted is a felony, the trial court shall  
 1256 sentence the prisoner pursuant to the Public Safety ~~Criminal~~  
 1257 ~~Punishment~~ Code in chapter 921.

1258 2. When the highest ranking offense for which the prisoner  
 1259 is convicted is a misdemeanor, the trial court shall sentence  
 1260 the prisoner pursuant to s. 775.082(4).

1261 (5) The department shall also refuse to accept a person  
 1262 into the state correctional system unless the following  
 1263 documents are presented in a completed form by the sheriff or  
 1264 chief correctional officer, or a designated representative, to  
 1265 the officer in charge of the reception process. The department  
 1266 may, at its discretion, receive such documents electronically:

1267 (e) A copy of the Public Safety ~~Criminal Punishment~~ Code  
 1268 scoresheet and any attachments thereto prepared pursuant to Rule



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3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets.

In addition, the sheriff or other officer having such person in charge shall also deliver with the foregoing documents any available presentence investigation reports as described in s. 921.231 and any attached documents. After a prisoner is admitted into the state correctional system, the department may request such additional records relating to the prisoner as it considers necessary from the clerk of the court, the Department of Children and Families, or any other state or county agency for the purpose of determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs. An agency that receives such a request from the department must provide the information requested. The department may, at its discretion, receive such information electronically.

Section 18. Paragraph (a) of subsection (7) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(7) (a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Public Safety ~~Criminal Punishment~~ Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, the offense is a nonviolent felony, the defendant is amenable to substance abuse treatment,

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and the defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 19. Section 948.015, Florida Statutes, is amended to read:

948.015 Presentence investigation reports.—The circuit court, when the defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty and has a lowest permissible sentence under the Public Safety ~~Criminal Punishment~~ Code of any nonstate prison sanction, may refer the case to the department for investigation or recommendation. Upon such referral, the department shall make the following report in writing at a time specified by the court prior to sentencing. The full report shall include:

(1) A complete description of the situation surrounding the criminal activity with which the offender has been charged, including a synopsis of the trial transcript, if one has been made; nature of the plea agreement, including the number of counts waived, the pleas agreed upon, the sentence agreed upon, and any additional terms of agreement; and, at the offender's discretion, his or her version and explanation of the criminal activity.

(2) The offender's sentencing status, including whether the offender is a first offender, a habitual or violent offender, a youthful offender, or is currently on probation.

(3) The offender's prior record of arrests and convictions.

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- 1327 (4) The offender's educational background.
- 1328 (5) The offender's employment background, including any
- 1329 military record, present employment status, and occupational
- 1330 capabilities.
- 1331 (6) The offender's financial status, including total
- 1332 monthly income and estimated total debts.
- 1333 (7) The social history of the offender, including his or
- 1334 her family relationships, marital status, interests, and
- 1335 activities.
- 1336 (8) The residence history of the offender.
- 1337 (9) The offender's medical history and, as appropriate, a
- 1338 psychological or psychiatric evaluation.
- 1339 (10) Information about the environments to which the
- 1340 offender might return or to which the offender could be sent
- 1341 should a sentence of nonincarceration or community supervision
- 1342 be imposed by the court, and consideration of the offender's
- 1343 plan concerning employment supervision and treatment.
- 1344 (11) Information about any resources available to assist
- 1345 the offender, such as:
- 1346 (a) Treatment centers.
- 1347 (b) Residential facilities.
- 1348 (c) Career training programs.
- 1349 (d) Special education programs.
- 1350 (e) Services that may preclude or supplement commitment to
- 1351 the department.
- 1352 (12) The views of the person preparing the report as to the
- 1353 offender's motivations and ambitions and an assessment of the
- 1354 offender's explanations for his or her criminal activity.
- 1355 (13) An explanation of the offender's criminal record, if

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- 1356 any, including his or her version and explanation of any
- 1357 previous offenses.
- 1358 (14) A statement regarding the extent of any victim's loss
- 1359 or injury.
- 1360 (15) A recommendation as to disposition by the court. The
- 1361 department shall make a written determination as to the reasons
- 1362 for its recommendation, and shall include an evaluation of the
- 1363 following factors:
- 1364 (a) The appropriateness or inappropriateness of community
- 1365 facilities, programs, or services for treatment or supervision
- 1366 for the offender.
- 1367 (b) The ability or inability of the department to provide
- 1368 an adequate level of supervision for the offender in the
- 1369 community and a statement of what constitutes an adequate level
- 1370 of supervision.
- 1371 (c) The existence of other treatment modalities which the
- 1372 offender could use but which do not exist at present in the
- 1373 community.
- 1374 Section 20. Paragraph (j) of subsection (2) of section
- 1375 948.06, Florida Statutes, is amended to read:
- 1376 948.06 Violation of probation or community control;
- 1377 revocation; modification; continuance; failure to pay
- 1378 restitution or cost of supervision.—
- 1379 (2)
- 1380 (j)1. Notwithstanding s. 921.0024 and effective for
- 1381 offenses committed on or after July 1, 2009, the court may order
- 1382 the defendant to successfully complete a postadjudicatory
- 1383 treatment-based drug court program if:
- 1384 a. The court finds or the offender admits that the offender

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1385 has violated his or her community control or probation;  
 1386 b. The offender's Public Safety Criminal Punishment Code  
 1387 scoresheet total sentence points under s. 921.0024 are 60 points  
 1388 or fewer after including points for the violation;  
 1389 c. The underlying offense is a nonviolent felony. As used  
 1390 in this subsection, the term "nonviolent felony" means a third  
 1391 degree felony violation under chapter 810 or any other felony  
 1392 offense that is not a forcible felony as defined in s. 776.08;  
 1393 d. The court determines that the offender is amenable to  
 1394 the services of a postadjudicatory treatment-based drug court  
 1395 program;  
 1396 e. The court has explained the purpose of the program to  
 1397 the offender and the offender has agreed to participate; and  
 1398 f. The offender is otherwise qualified to participate in  
 1399 the program under the provisions of s. 397.334(3).  
 1400 2. After the court orders the modification of community  
 1401 control or probation, the original sentencing court shall  
 1402 relinquish jurisdiction of the offender's case to the  
 1403 postadjudicatory treatment-based drug court program until the  
 1404 offender is no longer active in the program, the case is  
 1405 returned to the sentencing court due to the offender's  
 1406 termination from the program for failure to comply with the  
 1407 terms thereof, or the offender's sentence is completed.  
 1408 Section 21. Subsection (1) of section 948.20, Florida  
 1409 Statutes, is amended to read:  
 1410 948.20 Drug offender probation.—  
 1411 (1) If it appears to the court upon a hearing that the  
 1412 defendant is a chronic substance abuser whose criminal conduct  
 1413 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent

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1414 felony if such nonviolent felony is committed on or after July  
 1415 1, 2009, and notwithstanding s. 921.0024, the defendant's Public  
 1416 Safety Criminal Punishment Code scoresheet total sentence points  
 1417 are 60 points or fewer, the court may either adjudge the  
 1418 defendant guilty or stay and withhold the adjudication of guilt.  
 1419 In either case, the court may also stay and withhold the  
 1420 imposition of sentence and place the defendant on drug offender  
 1421 probation or into a postadjudicatory treatment-based drug court  
 1422 program if the defendant otherwise qualifies. As used in this  
 1423 section, the term "nonviolent felony" means a third degree  
 1424 felony violation under chapter 810 or any other felony offense  
 1425 that is not a forcible felony as defined in s. 776.08.  
 1426 Section 22. Paragraph (c) of subsection (2) of section  
 1427 948.51, Florida Statutes, is amended to read:  
 1428 948.51 Community corrections assistance to counties or  
 1429 county consortiums.—  
 1430 (2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.—A  
 1431 county, or a consortium of two or more counties, may contract  
 1432 with the Department of Corrections for community corrections  
 1433 funds as provided in this section. In order to enter into a  
 1434 community corrections partnership contract, a county or county  
 1435 consortium must have a public safety coordinating council  
 1436 established under s. 951.26 and must designate a county officer  
 1437 or agency to be responsible for administering community  
 1438 corrections funds received from the state. The public safety  
 1439 coordinating council shall prepare, develop, and implement a  
 1440 comprehensive public safety plan for the county, or the  
 1441 geographic area represented by the county consortium, and shall  
 1442 submit an annual report to the Department of Corrections

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1443 concerning the status of the program. In preparing the  
 1444 comprehensive public safety plan, the public safety coordinating  
 1445 council shall cooperate with the juvenile justice circuit  
 1446 advisory board established under s. 985.664 in order to include  
 1447 programs and services for juveniles in the plan. To be eligible  
 1448 for community corrections funds under the contract, the initial  
 1449 public safety plan must be approved by the governing board of  
 1450 the county, or the governing board of each county within the  
 1451 consortium, and the Secretary of Corrections based on the  
 1452 requirements of this section. If one or more other counties  
 1453 develop a unified public safety plan, the public safety  
 1454 coordinating council shall submit a single application to the  
 1455 department for funding. Continued contract funding shall be  
 1456 pursuant to subsection (5). The plan for a county or county  
 1457 consortium must cover at least a 5-year period and must include:

1458 (c) Specific goals and objectives for reducing the  
 1459 projected percentage of commitments to the state prison system  
 1460 of persons with low total sentencing scores pursuant to the  
 1461 Public Safety ~~Criminal Punishment~~ Code.

1462 Section 23. Subsection (3) of section 958.04, Florida  
 1463 Statutes, is amended to read:

1464 958.04 Judicial disposition of youthful offenders.—

1465 (3) The provisions of this section shall not be used to  
 1466 impose a greater sentence than the permissible sentence range as  
 1467 established by the Public Safety ~~Criminal Punishment~~ Code  
 1468 pursuant to chapter 921 unless reasons are explained in writing  
 1469 by the trial court judge which reasonably justify departure. A  
 1470 sentence imposed outside of the code is subject to appeal  
 1471 pursuant to s. 924.06 or s. 924.07.

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1472 Section 24. Subsection (4) of section 985.465, Florida  
 1473 Statutes, is amended to read:

1474 985.465 Juvenile correctional facilities or juvenile  
 1475 prison.—A juvenile correctional facility or juvenile prison is a  
 1476 physically secure residential commitment program with a  
 1477 designated length of stay from 18 months to 36 months, primarily  
 1478 serving children 13 years of age to 19 years of age or until the  
 1479 jurisdiction of the court expires. Each child committed to this  
 1480 level must meet one of the following criteria:

1481 (4) The child is at least 13 years of age at the time of  
 1482 the disposition for the current offense, the child is eligible  
 1483 for prosecution as an adult for the current offense, and the  
 1484 current offense is ranked at level 7 or higher on the Public  
 1485 Safety ~~Criminal Punishment~~ Code offense severity ranking chart  
 1486 pursuant to s. 921.0022.

1487 Section 25. This act shall take effect July 1, 2020.

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Fla. Director

Address \_\_\_\_\_  
Street

Phone 954.557.0016

City

State

Zip

Email cmurphy@fightoncrime.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19

Meeting Date

960

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville

FL

State

32614

Zip

Email newburn@fam.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. Ste. 401

Phone (850) 606-1000

Tallahassee FL 32301

City

State

Zip

Email andy.thomas@fpdz.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19

Meeting Date

560

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

Name

Jorge Chamizo

Job Title

Attorney

Address

108 South Monroe Street

Phone

(850) 681-0024

Street

Tallahassee FL 32307

Email

jorge@flapartners.com

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

FACSL

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/2019

*Meeting Date*

SB 560

*Bill Number (if applicable)*

Topic Sentencing

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/  
Meeting Date

560  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301  
City State Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing ACLU of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/19

Meeting Date

560

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No      Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 12, 2019

*Meeting Date*

560

*Bill Number (if applicable)*

Topic Sentencing

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

---

I respectfully request that **Senate Bill #560**, relating to **Sentencing**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Criminal Justice

---

BILL: CS/SB 572

INTRODUCER: Criminal Justice Committee and Senators Brandes and Perry

SUBJECT: Release from Imprisonment

DATE: December 11, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 572 amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the Department of Corrections (DOC) may grant from up to 10 days to up to 20 days for offenders sentenced for offenses regardless of when the offense was committed. This increase applies both prospectively and retroactively. The bill also provides that any gain-time cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

The bill also amends s. 945.091, F.S., authorizing the DOC to allow an inmate to participate in a supervised community release program (Program) up to 365 days before the inmate's tentative release date as an extension of the inmate's confinement. An inmate is only eligible for such Program if he or she is sentenced to a term of imprisonment of two or more years. The DOC must also administer a risk assessment tool to determine eligibility for this program. The Program may include active electronic monitoring and community control as defined in s. 948.001, F.S.

An inmate's participation in the Program may be terminated by the DOC if the inmate fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the DOC.

If there are reasonable grounds to believe that the inmate violated his or her supervised community release, the bill authorizes a law enforcement officer or probation officer to arrest the

inmate in accordance with s. 948.06, F.S. An alleged violation of the conditions of the Program must be reported to the supervising probation office or the DOC's emergency action center for disposition of disciplinary charges.

The bill also amends s. 944.275(4)(f), F.S., providing that time spent participating in a program authorized by s. 945.091, F.S., even if such program allows the inmate to not be released from prison on some form of community supervision, must be credited toward satisfaction of the 85 percent rule.

The Criminal Justice Estimating Conference (CJIC) has not heard the bill at this time. The CJIC heard SB 642 (2019), which, in part, included the provision of the bill that allows inmates convicted of certain nonviolent felonies to earn an increased amount of gain-time and reduces the requirement to serve a certain percentage of the term of imprisonment from 85 percent to 65 percent. The CJIC found that this provision of the bill will result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).

The DOC reports that the provisions of the bill related to extension of confinement will likely have a negative indeterminate fiscal impact on the DOC. The DOC reports it will require one full-time equivalent position, entitled Correctional Programs Consultant, to provide statewide implementation and oversight of the Program. The DOC reports it will also need one additional FTE position at a Correctional Services Assistant Consultant level. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2020.

## **II. Present Situation:**

The Criminal Punishment Code<sup>1</sup> (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

### **Gain-time and the “85 Percent” Requirement**

Section 921.002(1)(e), F.S., of the Criminal Punishment Code provides that for noncapital felony offenses committed on or after October 1, 1998, the sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and

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<sup>1</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F.

<sup>2</sup> Section 921.0022(1), F.S.

<sup>3</sup> Section 775.082(3)(b), (d), and (e), F.S.

<sup>4</sup> Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

meritorious gain-time as provided by law.<sup>5</sup> Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.<sup>6</sup> An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.<sup>7</sup>

Basic gain-time, which automatically reduced an inmate's sentence by a designated amount each month, was eliminated for offenses committed on or after January 1, 1994.<sup>8</sup> The only forms of gain-time that can currently be earned are:

- Incentive gain-time;<sup>9</sup>
- Meritorious gain-time;<sup>10</sup> and
- Educational achievement gain-time.<sup>11</sup>

The procedure for applying gain-time awards to an inmate's sentence is dependent upon the calculation of a "maximum sentence expiration date" and a "tentative release date." The tentative release date may not be later than the maximum sentence expiration date.<sup>12</sup> The maximum sentence expiration date represents the date when the sentence or combined sentences imposed on a prisoner will expire. To calculate the maximum sentence expiration date, the DOC reduces the total time to be served by any time lawfully credited.<sup>13</sup>

The tentative release is the date projected for the prisoner's release from custody after gain-time is granted or forfeited in accordance with s. 944.275, F.S.<sup>14</sup> Gain-time is applied when granted or restored to make the tentative release date proportionately earlier and forfeitures of gain-time, when ordered, are applied to make the tentative release date proportionately later.<sup>15</sup>

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<sup>5</sup> Persons sentenced for offenses committed prior to October 1, 1995 are not subject to the 85 percent requirement. *See Frequently Asked Questions Regarding Gaintime*, DOC, available at [https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711\(1\).pdf](https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711(1).pdf) (last visited on December 10, 2019).

<sup>6</sup> Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

<sup>7</sup> Section 944.275(4)(f), F.S.

<sup>8</sup> Chapter 93-406, L.O.F.

<sup>9</sup> Section 944.275(4)(b)3., F.S., provides that incentive gain-time is a total of up to ten days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

<sup>10</sup> Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

<sup>11</sup> Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program.

<sup>12</sup> Section 944.275(3)(c), F.S.

<sup>13</sup> Section 944.275(2)(a), F.S.

<sup>14</sup> Section 944.275(3)(a), F.S.

<sup>15</sup> *Id.* See also s. 944.275(4)(b), F.S.



However, for sentences imposed for offenses committed on or after October 1, 1995, no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.<sup>16</sup>

### **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;<sup>17</sup>
- Work at paid employment;<sup>18</sup>
- Participate in an educational or training program;<sup>19</sup>
- Voluntarily serve a public or nonprofit agency or faith-based service group in the community;<sup>20</sup> or
- Participate in a residential or nonresidential rehabilitative program.<sup>21</sup>

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<sup>16</sup> Section 944.275(4)(b)3., F.S.

<sup>17</sup> Section 945.091(1)(a), F.S. An inmate released from the custody of a facility under this subsection must return to the same or another facility as designated by the DOC. *See also* the DOC, *Senate Bill 338 (2019) Analysis*, at p. 2 (January 31, 2019) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as "The DOC SB 338 (2019) Analysis"]. SB 338 (2019) was substantially similar to this bill.

<sup>18</sup> 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.

<sup>19</sup> Section 945.091(1)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 945.091(1)(c), F.S. The treatment program must be operated by a public or private nonprofit agency, including faith-based service groups, with which the DOC has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057, F.S., must apply to all contracts considered under this provision. The DOC must ensure each agency provides appropriate supervision of inmates participating in such program.

The DOC must perform an investigation to determine whether the inmate is suitable for consideration of extension of his or her confinement prior to being approved for one of the provisions described above.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup>

The DOC's adopted rules related to the extension of confinement are that to be eligible for consideration he or she may not have convictions for certain offenses<sup>25</sup> and be classified as community custody in accordance with Rule 33-601.210, F.A.C., or have a recommendation for community custody currently under review.<sup>26</sup> Additionally, the DOC will also consider the following factors to ensure community release placement is appropriate:

- Arrest history, with particular attention to violent offenses or offenses in which the circumstances reflect that a sex act was intended, attempted, or completed;
- Pending outside charges;
- Disciplinary history, with particular attention to violence, escape risk, substance abuse, or sexual deviancy;
- Substance abuse history;
- Program needs, including re-entry;
- Victim concerns; and

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<sup>22</sup> Section 945.091(1), F.S.

<sup>23</sup> Section 945.091(1)(d), F.S. (1995). This paragraph was repealed in ch. 96-312, L.O.F.

<sup>24</sup> *Id.*

<sup>25</sup> Rule 33-601.602(2)(b), F.A.C., prohibits inmates with the following convictions to participate in a program or release authorized under s. 945.091, F.S.: Certain current or prior sex offense convictions; Current or prior conviction for murder or attempted murder under s. 782.04, F.S.; Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under s. 782.07(2), F.S.; Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under s. 782.07(3), F.S.; Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under s. 782.07(4), F.S.; Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under s. 782.09(1), F.S.; Current or prior conviction for attempted murder of a law enforcement officer under s. 784.07(3), F.S.; Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under s. 790.161(4), F.S.; Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.; A guilty finding on any disciplinary report for escape or attempted escape within the last five years; A current or prior conviction for escape covered by s. 945.092, F.S.; A felony, Immigration and Customs Enforcement, or misdemeanor (other than child support) warrant or detainer; or A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

<sup>26</sup> Rule 33-601.602(2)(d), F.A.C.

- The inmate's skills, physical ability, and overall compatibility with the requested community release program.<sup>27</sup>

### 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

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;
- 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 probation<sup>31</sup> set forth in s. 948.03, F.S.<sup>32</sup>

A person may be placed on additional terms of supervision as part of his or her community control sentence.<sup>33</sup>

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<sup>27</sup> Rule 33-601.602(2)(e), F.A.C.

<sup>28</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>29</sup> Section 948.10(1), F.S.

<sup>30</sup> *Id.* See also DOC, *Succeeding on Community Control*, available at <http://www.dc.state.fl.us/cc/ccforms/Succeeding-on-Community-Control.pdf> (last visited on November 4, 2019). A Community Control Offender Schedule and Daily Activity Log must be submitted weekly with a proposed schedule for the week and the parolee's officer reviews such schedule and either approves or denies the schedule. Additionally, a person is required to provide an hourly accounting of his or her whereabouts for the previous week to verify any deviations from the pre-approved schedule.

<sup>31</sup> 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.

<sup>32</sup> Section 948.101(1), F.S.

<sup>33</sup> Section 948.101(2), F.S.

## Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.<sup>34</sup> 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.<sup>35</sup>

The offender must be returned to the court granting such probation or community control.<sup>36</sup> 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.<sup>37</sup>

## Arrest Authority

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant under specified circumstances, including, but not limited to, when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
- A felony has been committed and the officer reasonably believes that the person committed it.
- The officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another peace officer for execution.
- A violation of ch. 316, F.S. (state uniform traffic control), has been committed in the presence of the officer.
- There is probable cause to believe that the person has violated s. 790.233, F.S. (possession of firearms by a convicted felon), s. 741.31, F.S. (possession of prohibited ammunition), a protective injunction order, or a specified foreign protection order.
- There is probable cause to believe that the person has committed an act of domestic violence or dating violence.

Additionally, a probation officer is authorized to issue an arrest warrant or arrest an offender in limited circumstances. Section 944.405(1), F.S., authorizes the DOC to issue an arrest warrant for a person who has “absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences.”

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<sup>34</sup> Section 948.10(3), F.S.

<sup>35</sup> Section 948.06(1)(a), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the offender has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

Section 948.06(1), F.S., also authorizes probation officers or law enforcement officers to arrest probationers and community 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.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> Dynamic risk factors, also called “criminogenic<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup>

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<sup>38</sup> The Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited November 4, 2019) (hereinafter cited as “The CRS Report”).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> “Criminogenic” is commonly understood to mean factors that can contribute to criminal behavior. The CRS Report, p. 3, n. 16.

<sup>42</sup> The CRS Report, p. 3.

<sup>43</sup> The CRS Report, Summary Page.

<sup>44</sup> The CRS Report, p. 4.

### *Use of Risk Assessment Instruments by the Department of Corrections*

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.<sup>45</sup> Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.<sup>46</sup> Spectrum has been independently verified through the School of Criminology at the Florida State University.<sup>47</sup>

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.<sup>48</sup> Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains<sup>49</sup> and three core program areas.<sup>50</sup>

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.<sup>51</sup> Spectrum was completed in September, 2016, and subsequently deployed throughout the state.<sup>52</sup>

### **III. Effect of Proposed Changes:**

#### **Gain-Time**

The bill amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses regardless of when the offense was committed. This increase applies both prospectively and retroactively.

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<sup>45</sup> The DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited November 4, 2019) (hereinafter cited as "Spectrum Video"); The DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

<sup>46</sup> Email from Jared Torres, the DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

<sup>47</sup> Letter from Dr. William D. Bales and Jennifer M. Brown to the DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

<sup>48</sup> The DOC Program Information.

<sup>49</sup> 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.

<sup>50</sup> 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).

<sup>51</sup> *Id.*

<sup>52</sup> 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 November 4, 2019).

The bill provides that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony. The bill specifies that “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S. Section 948.08(6), F.S., defines “nonviolent felony” as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony.<sup>53</sup>

The bill also amends s. 921.002, F.S., to make conforming changes that reference the changes to s. 944.275, F.S., to indicate that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

### **Extension on Confinement**

The bill amends s. 945.091, F.S., to allow an inmate who has a sentence of two years or more to participate in a supervised community release program (Program) as an extension of the inmate’s confinement, similar to the former Supervised Community Release Program discussed above. The Program release term may begin 365 days before the inmate’s provisional or tentative release date and may include active electronic monitoring and community control as defined in s. 948.001, F.S. An inmate participating in such Program is considered to be in the custody, care, supervision, and control of the DOC for purposes of gain-time awards and the 85 percent rule.

The bill requires the DOC to administer a RAI to determine an inmate’s eligibility for this Program. The bill provides that participation in and conditions of the Program will be as proscribed in department rule.

The DOC is authorized to terminate the inmate’s participation in the Program if he or she fails to comply with any of the terms of the Program as proscribed by rule. If an inmate is terminated from the supervision, he or she must be recommitted to the same institution or another institution designated by the DOC.

The bill allows a law enforcement officer or probation officer to arrest an inmate without a warrant in accordance with s. 948.06(1), F.S., if there are reasonable grounds to believe the inmate violated the terms of the Program. A law enforcement officer that arrests an inmate for a violation of the conditions of the Program is required to report the inmate’s alleged violations to the supervising probation office or the DOC’s emergency action center for disposition of disciplinary charges as proscribed in the DOC rules.

The bill provides that an inmate released on the Program in accordance with this provision is eligible to earn and lose gain-time as proscribed in law and rule.<sup>54</sup> 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.

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<sup>53</sup> A “forcible felony” is: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>54</sup> See s. 944.275(4)(f), F.S.

The bill also amends s. 944.275(4)(f), F.S., providing that time spent participating in a program authorized by s. 945.091, F.S., even if such program allows the inmate to not be released from prison on some form of community supervision, must be credited toward satisfaction of the 85 percent rule as a result of the inmate being considered in the care, custody, supervision, or control of the DOC.

The bill reenacts ss. 775.084, 921.002, and 946.053, F.S., incorporating the changes made by the act.

The bill is effective October 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes the DOC to release a specified inmate into the community on supervised release up to 365 days before the end of his or her sentence. This will provide private companies the opportunity to hire an inmate earlier than without the act.



### C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time.

#### **Gain-Time and 85 Percent**

The CJIC heard SB 642 (2019), which, in part, included the provision of the bill that allows inmates convicted of certain nonviolent felonies to earn an increased amount of gain-time and reduces the requirement to serve a certain percentage of the term of imprisonment from 85 percent to 65 percent. The CJIC found that this provision of the bill will result in a negative indeterminate prison bed impact. Additionally, the CJIC reported that this provision will result in a reduction of over 9,000 prison beds, or over \$860 million, in the next five years.<sup>55</sup>

#### **Extension on Confinement**

The DOC reports that this section of the bill would likely result in a negative indeterminate prison bed impact (i.e., an indeterminate decrease in prison beds). The DOC stated that the number is indeterminate for several reasons, including not being able to quantify how many inmates would be interested in the Program and, of those inmates, how many could obtain proper housing placements to warrant release.<sup>56</sup>

The DOC reports that as of October 22, 2019, there are 4,390 inmates who are in community custody and are within 365 days of their tentative release date. Of those, 3,143 are currently at work release centers. The remaining are approved for work release and are awaiting bed space. The DOC further reports that it anticipates that there will be an additional 2,159 inmates meeting the criteria of community custody and being within 365 days of their tentative release date within the next 6 months. The DOC states that the bill may reduce populations at reentry centers, work camps, and work release centers because inmates currently housed in these facilities would be eligible for the Program and may elect to participate in the program.<sup>57</sup>

SB 338 (2019) had similar provisions to the extension of confinement provisions of this bill. In the SB 338 (2019) Analysis, the DOC further reported that the fiscal impact of such provisions will vary based on the number of released inmates placed on active electronic monitoring, the rate at which electronic monitoring costs are paid, and the type of facility from which Program participants are released. The DOC would likely pay the electronic monitoring per diem rate, rather than the variable per diem rate, for the inmates released to this Program on electronic monitoring. The electronic monitoring per diem rate would be paid for the designated number of days with which the inmate was out in the community instead of housed in an institution, which could result in a cost savings to

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<sup>55</sup> The CJIC, Economic and Demographic Research, *CS/CS/SB 642 (2019) Conference Impact Results*, p. 13 and 21, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSCSSB642.pdf> (last visited December 10, 2019).

<sup>56</sup> The DOC, *SB 572 Agency Analysis*, at p. 5 (December 3, 2019) (on file with the Senate Committee on Criminal Justice) [hereinafter cited as “The DOC SB 572 Analysis”]. See also the DOC SB 338 (2019) Analysis, at p. 4.

<sup>57</sup> The DOC SB 572 Analysis, p. 5.

the DOC.<sup>58</sup> SB 572 allows for certain inmates to be released in the Program 365 days prior to the tentative or provisional release date, rather than 180 days as provided in SB 338 (2019). Therefore, it is expected that this bill will have a similar, potentially more significant, negative indeterminate fiscal impact than reported by the DOC in the SB 338 (2019) Analysis.

The DOC reports that the bill will result in the need for one additional full-time equivalent position in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the Program statewide.<sup>59</sup> The DOC reports it will also need one additional FTE position at a Correctional Services Assistant Consultant level to handle violators and absconders.<sup>60</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 921.002, 944.275, and 945.091.

This bill reenacts the following sections of the Florida Statutes: 775.084, 921.002, and 946.503.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Criminal Justice on December 10, 2019:**

The committee substitute:

- Increases monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses committed on or after October 1, 1995;
- Reduces the amount of a sentence that must be served by a prisoner convicted of a nonviolent felony from no less than 85 percent to no less than 65 percent;
- Maintains the provision that requires a prisoner to serve no less than 85 percent of his or her sentence if convicted of a violent felony; and

---

<sup>58</sup> The DOC SB 338 (2019) Analysis, at p. 4

<sup>59</sup> The DOC SB 572 Analysis, at p. 5. The DOC reported in the SB 338 (2019) Analysis that it will be requesting funding for the position in the amount of \$69,949 recurring General Revenue, \$4,429 nonrecurring General Revenue funds and salary rate of 45,943.

<sup>60</sup> The DOC SB 572, at p. 5.

- Deletes the provision that the inmate cannot earn gain-time in an amount that would result in the prisoner's release from the DOC's care, custody, supervision, or control prior to 85 percent.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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244404

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 74 - 75  
and insert:  
end, or terminate, or that would result in a prisoner's release,

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 9

and insert:



244404

11 s. 944.275, F.S.; providing that an inmate is  
12 considered in the care, custody, supervision, or  
13 control of the Department of Corrections when  
14 participating in specified programs and may receive  
15 credit towards specified portions of a sentence for  
16 such participation;



100336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Bracy) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 38 - 69

and insert:

Section 1. Paragraph (e) of subsection (1) of section 921.002, Florida Statutes, is amended to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations



100336

upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 65 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3.a. or less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4) or s. 944.275(4)(b)3.b. The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

Section 2. Paragraphs (b) and (f) of subsection (4) of section 944.275, Florida Statutes, are amended to read:

944.275 Gain-time.—

(4)

(b) For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate of incentive gain-time in effect on the date the inmate



100336

committed the offense that ~~which~~ resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and may ~~shall~~ not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed before ~~prior to~~ January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

a. For offenses ranked in offense severity levels 1 through 7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses, regardless of the date committed, the department may grant up to 20 days per month of incentive gain-time, except that:

a. If the offense is a nonviolent felony, as defined in s. 948.08(6), the prisoner is not eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, before he or she serves a minimum of 65 percent of the sentence imposed. For purposes of this sub-subparagraph, credits awarded by the court for time physically incarcerated must be credited





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toward satisfaction of 65 percent of the sentence imposed. A  
prisoner who is granted incentive gain-time pursuant to this  
sub-subparagraph may not accumulate further gain-time awards at  
any point when the tentative release date is the same as that  
date at which the prisoner will have served 65 percent of the  
sentence imposed. State prisoners sentenced to life imprisonment  
must be incarcerated for the rest of their natural lives, unless  
granted pardon or clemency.

b. If the offense is not a nonviolent felony, as defined in  
s. 948.08(6), the prisoner is not eligible to earn any type of  
gain-time in an amount that would cause a sentence to expire,  
end, or terminate, or that would result in a prisoner's release,  
before he or she serves a minimum of 85 percent of the sentence  
imposed. For purposes of this sub-subparagraph, credits awarded  
by the court for time physically incarcerated must be credited  
toward satisfaction of 85 percent of the sentence imposed. A  
prisoner who is granted incentive gain-time pursuant to this  
sub-subparagraph may not accumulate further gain-time awards at  
any point when the tentative release date is the same as that  
date at which the prisoner will have served 85 percent of the  
sentence imposed. State prisoners sentenced to life imprisonment  
must be incarcerated for the rest of their natural lives, unless  
granted pardon or clemency ~~For sentences imposed for offenses  
committed on or after October 1, 1995, the department may grant  
up to 10 days per month of incentive gain-time.~~

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 3



100336

and insert:

An act relating to release from imprisonment; amending  
s. 921.002, F.S.; revising a principle of the Criminal  
Punishment Code relating to a prisoner's required  
minimum term of imprisonment; amending s. 944.275,  
F.S.; revising the incentive gain-time that the  
Department of Corrections may grant a prisoner;  
providing exceptions; specifying that an inmate is not

By Senator Brandes

24-00768A-20

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1 A bill to be entitled  
 2 An act relating to extension of confinement; amending  
 3 s. 944.275, F.S.; specifying that an inmate is not  
 4 eligible to receive specified incentive gain-time if  
 5 such gain-time would result in the prisoner's release  
 6 from the care, custody, supervision, or control of the  
 7 Department of Corrections; requiring that  
 8 participation in specified programs be credited toward  
 9 satisfaction of specified portions of a sentence;  
 10 amending s. 945.091, F.S.; authorizing the department  
 11 to extend the limits of confinement to allow an inmate  
 12 to participate in supervised community release,  
 13 subject to certain requirements, as prescribed by the  
 14 department by rule; providing that an inmate  
 15 participating in such supervised community release is  
 16 considered to be in the custody, care, supervision,  
 17 and control of the department; authorizing the  
 18 department to terminate the inmate's supervised  
 19 community release under certain circumstances;  
 20 providing that an inmate participating in supervised  
 21 community release is eligible to earn or lose gain-  
 22 time, subject to certain restrictions; prohibiting the  
 23 inmate from being counted in the population of the  
 24 prison system; prohibiting the inmate's approved  
 25 community-based housing location from being counted in  
 26 the capacity figures for the prison system; reenacting  
 27 ss. 775.084(4)(k) and 921.002(1)(e), F.S., relating to  
 28 violent criminals and habitual offenders and the  
 29 Criminal Punishment Code, respectively, to incorporate

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 the amendment made to s. 944.275, F.S., in references  
 31 thereto; reenacting s. 946.503(2), F.S., relating to  
 32 the definition of the term "correctional work program"  
 33 to incorporate the amendment made to s. 945.091, F.S.,  
 34 in a reference thereto; providing an effective date.  
 35

36 Be It Enacted by the Legislature of the State of Florida:

37  
 38 Section 1. Paragraph (f) of subsection (4) of section  
 39 944.275, Florida Statutes, is amended, and paragraph (b) of that  
 40 subsection is republished, to read:

41 944.275 Gain-time.—

42 (4)

43 (b) For each month in which an inmate works diligently,  
 44 participates in training, uses time constructively, or otherwise  
 45 engages in positive activities, the department may grant  
 46 incentive gain-time in accordance with this paragraph. The rate  
 47 of incentive gain-time in effect on the date the inmate  
 48 committed the offense which resulted in his or her incarceration  
 49 shall be the inmate's rate of eligibility to earn incentive  
 50 gain-time throughout the period of incarceration and shall not  
 51 be altered by a subsequent change in the severity level of the  
 52 offense for which the inmate was sentenced.

53 1. For sentences imposed for offenses committed prior to  
 54 January 1, 1994, up to 20 days of incentive gain-time may be  
 55 granted. If granted, such gain-time shall be credited and  
 56 applied monthly.

57 2. For sentences imposed for offenses committed on or after  
 58 January 1, 1994, and before October 1, 1995:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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a. For offenses ranked in offense severity levels 1 through 7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time.

(f) An inmate who is subject to subparagraph (b)3. is not eligible to earn or receive gain-time under paragraph (a), paragraph (b), paragraph (c), or paragraph (d) or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release from the department's care, custody, supervision, or control, prior to serving a minimum of 85 percent of the sentence imposed. For purposes of this paragraph, credits awarded by the court for time physically incarcerated or time spent in the department's care, custody, supervision, or control through participation in a program under s. 945.091 shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by this section, a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted

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pardon or clemency.

Section 2. Paragraph (d) is added to subsection (1) of section 945.091, Florida Statutes, to read:

945.091 Extension of the limits of confinement; restitution by employed inmates.—

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(d) Participate in supervised community release as prescribed by the department by rule. An inmate who has a sentence of 2 years or more may begin participation in supervised community release 365 days before his or her provisional or tentative release date. The supervised community release may include active electronic monitoring and community control as defined in s. 948.001. An inmate participating in such supervised community release is considered to be in the custody, care, supervision, and control of the department for purposes of ss. 921.002 and 944.275 and must be assigned to the caseload of a community control officer. The department must administer a risk assessment instrument to appropriately determine an inmate's ability to be released pursuant to this paragraph.

1. If a participating inmate fails to comply with the

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conditions prescribed in the department's rule for supervised community release, the department may terminate the inmate's supervised community release and return him or her to the same or another institution designated by the department. A law enforcement officer or a probation officer may arrest the inmate without a warrant in accordance with s. 948.06, if there are reasonable grounds to believe he or she has violated the terms and conditions of supervised community release. The law enforcement officer must report the inmate's alleged violations to the supervising probation office or the department's emergency action center for disposition of disciplinary charges as prescribed by the department by rule.

2. An inmate participating in supervised community release under this paragraph remains eligible to earn or lose gain-time in accordance with s. 944.275 and department rule, but may not receive gain-time or other sentence credit in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release before serving a minimum of 85 percent of the sentence imposed. The inmate may not be counted in the population of the prison system, and the inmate's approved community-based housing location may not be counted in the capacity figures for the prison system.

Section 3. For the purpose of incorporating the amendment made by this act to section 944.275, Florida Statutes, in a reference thereto, paragraph (k) of subsection (4) of section 775.084, Florida Statutes, is reenacted to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or

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mandatory minimum prison terms.—

(4)

(k)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Section 4. For the purpose of incorporating the amendment made by this act to section 944.275, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 921.002, Florida Statutes, is reenacted to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties,

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and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4). The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

Section 5. For the purpose of incorporating the amendment made by this act to section 945.091, Florida Statutes, in a reference thereto, subsection (2) of section 946.503, Florida Statutes, is reenacted to read:

946.503 Definitions to be used with respect to correctional work programs.—As used in this part, the term:

(2) "Correctional work program" means any program presently a part of the prison industries program operated by the department or any other correctional work program carried on at any state correctional facility presently or in the future, but the term does not include any program authorized by s. 945.091 or s. 946.40.

Section 6. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19  
Meeting Date

572  
Bill Number (if applicable)

Topic Confinement

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933  
Street

Phone 352-682-2542

Gainesville FL 32614  
City State Zip

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-12-19

Meeting Date

572

Bill Number (if applicable)

Topic Confinement

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Fla. Director

Address

Street

Phone 954.557.0076

City

State

Zip

Email cmurphy@fightoncrime.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

11/12/2019

*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 572

*Bill Number (if applicable)*

Topic Extention of Confinement

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

November 12, 2019

*Meeting Date*

572

*Bill Number (if applicable)*

Topic Extension of Confinement

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** November 1, 2019

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I respectfully request that **Senate Bill #572**, relating to **Extension of Confinement**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24



## 2019 AGENCY LEGISLATIVE BILL ANALYSIS

**AGENCY: Department of Corrections**

### BILL INFORMATION

<b>BILL NUMBER:</b>	SB 338
<b>BILL TITLE:</b>	Extension of Confinement
<b>BILL SPONSOR:</b>	Senator Brandes
<b>EFFECTIVE DATE:</b>	October 1, 2019

### COMMITTEES OF REFERENCE

- 1) Criminal Justice
- 2) Appropriations Subcommittee on Criminal and Civil Justice
- 3) Appropriations
- 4)
- 5)

### CURRENT COMMITTEE

### SIMILAR BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

### PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

### IDENTICAL BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

**Is this bill part of an agency package?**

### BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	January 31, 2019
<b>LEAD AGENCY ANALYST:</b>	Joe Winkler
<b>ADDITIONAL ANALYST(S):</b>	Gregory Roberts, Sibyle Walker, Lee Adams
<b>LEGAL ANALYST:</b>	Philip Fowler
<b>FISCAL ANALYST:</b>	Suzanne Hamilton

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## POLICY ANALYSIS

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### 1. EXECUTIVE SUMMARY

The bill amends s. 945.091 F.S., authorizes the Florida Department of Corrections (FDC or Department) to extend the limits of confinement of an inmate in the last 180 days of a sentence to participate in supervised community supervision.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

##### Extended Limits of Confinement

Subsection 945.091(1)(a), F.S., allows for the extension of the limits of confinement by allowing trusted inmates under prescribed conditions to leave direct Department supervision. With Department approval, inmates may visit a dying relative, attend a funeral of a relative, or arrange for employment or residence for use when released. Inmates may also be released for specified periods to designated places if it will otherwise aid in their rehabilitation or successful transition back into the community.

Subsection 945.091(1)(b), F.S., provides that an inmate may participate in paid employment, an education or training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while still being confined by the Department, with exception of the hours served in any of the above activities. Section 945.091(c), F.S., states that an inmate may participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based groups. The Department may contract with agencies to provide treatment to the inmate.

##### Community Work Release

Currently under s. 945.091 F.S., inmates are allowed to work at paid employment in the community through the community work release program. Community Work Release (CWR) is a portion of the Community Release Program that allows selected inmates to work at paid employment in the community during the last months of their confinement. Work Release provides an inmate with a gradual reintegration back into the community, gainful employment, accumulation of savings from paid employment, and preservation of family and community ties. Within two weeks of admission to the community work release program, a written Personalized Program Plan is developed for each inmate. This plan incorporates the inmate's individual needs and provides a positive framework for program participation (i.e., orientation and intake, employment, furloughs, personal budget, substance abuse counseling, academic and vocational education, mental health, and medical rehabilitative programs). The plan includes program objectives to be accomplished while an inmate is assigned to the community work release program. Measurable criteria are established in determining completion of the objectives, along with a reasonable time schedule to achieve each goal and a progress review for evaluating progress toward objectives. Inmates are allowed to work in the community without Department supervision but must reside in a Community Release Center during the period they are not at work. As of January 25, 2019, there are 3,247 inmates in Community Work Release Centers.

##### Community Release Centers

Community Release Centers (CRC): No sex offenders may be assigned to community release centers. Facilities that house two categories of community custody inmates, those who are participating in community work release and work at paid employment in the community, those who work in a support capacity for the center (CWA). Inmates must be within 6 to 36 months of their release date, depending on their assignment.

Those assigned to CWA perform such tasks as: food service, maintenance of the center, or assignment to work squads. There are no perimeter fences and inmates must remain at the CRC when they are not working or attending programs outside the CRC.

##### Custody Level

The Department uses custody level as the fundamental determinant of an inmate's trustworthiness as required by statute. To be assigned to a community work release center an inmate must be classified as "community" custody. The following will prevent an inmate from being classified as community custody:

1. Current or prior sex offense convictions;
2. Current or prior conviction for murder or attempted murder under s. 782.04, F.S.;
3. Current or prior conviction for aggravated manslaughter of an elderly person or disabled adult or attempted manslaughter of an elderly person or disabled adult under ss. 782.07(2), F.S.;
4. Current or prior conviction for aggravated manslaughter of a child or attempted aggravated manslaughter of a child under ss. 782.07(3), F.S.;
5. Current or prior conviction for aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic or attempted aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic under ss. 782.07(4), F.S.;
6. Current or prior conviction for murder of an unborn child or attempted murder of an unborn child under ss. 782.09(1), F.S.;
7. Current or prior conviction for attempted murder of a law enforcement officer under ss. 784.07(3), F.S.;
8. Current or prior conviction for making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person or for attempted making, possessing, throwing, projecting, placing, or discharging any destructive device and the act results in the death of another person under ss. 790.161(4), F.S.;
9. Current or prior conviction for assisting self-murder or for attempted assisting self-murder under s. 782.08, F.S.
10. A guilty finding on any disciplinary report for escape or attempted escape within the last five years;
11. A current or prior conviction for escape covered by ss. 945.092, F.S.;
12. A felony, Immigration and Customs Enforcement, or misdemeanor (for other than child support) warrant or detainer;
13. A misdemeanor detainer for child support, unless it can be established by the inmate's classification officer that the detainer would be withdrawn upon payment of restitution, fines, or court ordered obligations and it appears that the inmate will earn sufficient funds to pay the obligation that has caused the detainer.

#### Community Control

In ss. 948.001(3), F.S., it defines community control as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced."

s. 948.10, F.S., provides that "community control" programs are to "focus on the provision of home confinement subject to an authorized level of limited freedom and special conditions that are commensurate with the seriousness of the crime. The program shall offer the courts and the Florida Commission on Offender Review an alternative, community-based method to punish an offender in lieu of incarceration and shall provide intensive supervision to closely monitor compliance with restrictions and special conditions, including, but not limited to, treatment or rehabilitative programs."

#### Arrest/Warrant Authority

In ss. 944.405, F.S., it authorizes the Department to issue an arrest warrant for a person who has "absconded from a rehabilitative community reentry program before the offender has satisfied his or her sentence or combined sentences." S. 948.06(1), F.S., authorizes probation officers or law enforcement officers to arrest probationers and community controlees without written warrant based on a belief the offender has violated terms of supervision.

#### Escape

In ss. 945.091(4), F.S., it provides that the willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the Department shall be deemed as an escape from the custody of the Department and shall be punishable as prescribed by law.

## **2. EFFECT OF THE BILL:**

The bill requires the Department to administer a risk assessment instrument to appropriately determine an inmate's ability to be released. The department currently uses custody level when determining eligibility for inmate placed on community work release.

S. 945.091(1)(b) authorizes participation in paid employment in the community to inmates "as to whom there is reasonable cause to believe that the inmate will honor his or her trust". It requires the Department to administer a

risk assessment instrument to appropriately determine an inmate's ability to be released. The custody classification system is the instrument by which the department determines if an inmate meets this standard.

The bill is similar to a program in effect under s.945.091, F.S. from 1986 to 1996 called Supervised Community Release Program (SCRCP). This program was limited to inmates within the last 90 days of sentence who were assigned to a community release center, or who were medically unable to participate in work release. SCRCP participants were not considered to be inmates but were able to earn gain time and were under the disciplinary rules of the Department.

The bill expands on the current concept of the "extension of the limits of confinement" under s.945.091, F.S. to create another step in the transition process by allowing an inmate, regardless of where he/she is assigned, to continue serving his/her state prison sentence while under custodial supervision in the community during the last 180 days of the sentence. Since the inmate remains in service of the court-imposed sentence while participating in the program, and the Department maintains the calculation of the release date in accordance with s.944.275, F.S. program participation remains consistent with the requirement that inmate serve 85% of the sentence. To allow an inmate to participate there must be "reasonable cause to believe that the inmate will honor his or her trust". The bill authorizes the Department to impose community control standards of supervision as well as electronic monitoring tracking technology, and provides the Department authority to establish standards for assessing progress in the program and for termination for failure to meet those standards. Program participants remain eligible to earn and forfeit gain time under Department rules.

As of December 31, 2018, there were about 479 inmates that were 180 days out from their release date that had served at least 85% of their sentence. Within the next 6 months there will be about 2508 additional inmates falling within this criterion.

Since the program would expose participating inmates to disciplinary penalties including loss of gain time, to avoid ex post facto violations participation would have to be voluntary as to crimes committed before the statutory change. Inmates sentenced for crimes committed after the statute changed could be required to participate; however, that may not be prudent considering the level of trust needed for inmates assigned in a community setting. If the inmate does not want to be in the program it may be best to allow for refusal. Also, a number of inmates would likely rather serve slightly more time in prison than be under community supervision, especially if that includes electronic monitoring (EM), risking return to prison for additional time if they violate. Finally, it is unknown as whether how many inmates in the pool have a suitable employment or residence to release to. Thus, the bed impact of the bill is indeterminate. Further, the fiscal impact of the bill will also vary based on the number of released inmates placed on electronic monitoring, and the rate at which they pay the EM costs, as well as the type of facility from which program participants were released (based on the different per diems between community release facilities, major institutions, and work camps). Finally, depending on the number of participants in the program, there could be a need for additional correctional probation officer positions.

The bill also provides authority for warrantless arrest by probation officers and law enforcement officers, similar to the authority currently under ss. 948.06(1), F.S.

Additionally, please note to implement the provisions of the bill, the Department will likely have to promulgate rules and/or amend existing rules and procedures.

Furthermore, when the inmate population is impacted in small increments statewide, the inmate variable per diem of \$20.04 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 17-18 average per diem for community supervision was \$5.47.

In addition, the current cost of supervision via electronic monitoring device is \$3.90 per day for contracted facilities and \$5.29 for department operated facilities.

The Department is requesting 1 (Correctional Programs Consultant) position to be located in the Bureau of Classification Management to oversee, provide guidance, and coordinate the implementation and administration of the SCR program statewide. Duties would include, but not be limited to: Rule, policy, and procedure creation/promulgation and interpretation. On-going management of eligible inmates by providing guidance, oversight, database creation/updating as it relates to the placement, removal, and reinstatement of inmates into and out of the SCR program. Provide statewide training, coordination, and implementation of the operation of the SCR program.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?** **Y ☒ N ☐**

If yes, explain:	Rulemaking will be necessary to effectuate the implementation of the bill.
Is the change consistent with the agency's core mission?	<b>Y <input checked="" type="checkbox"/> N <input type="checkbox"/></b>
Rule(s) impacted (provide references to F.A.C., etc.):	Addition of a rule for Supervised Community Release. Rule adjustments (additions and deletions for gain time application, disciplinary procedures, escape policies for absconders, conditions of supervision with DC form for instructions and signature by the inmate, specification as to who shall be responsible for carrying out the provisions of this bill (warden, probation officer, central office staff, etc.), specifications of the amount of the handling of inmate trust fund accounts, release gratuity, etc.

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	
Opponents and summary of position:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**

**Y ☐ N ☒**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** **Y ☐ N ☒**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

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**FISCAL ANALYSIS**

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**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**

**Y ☐ N ☐**

Revenues:	Unknown
Expenditures:	Unknown



Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**Y ☒ N ☐

Revenues:	The overall inmate and community supervision population fiscal impact is indeterminate																																																																												
Expenditures:	<p>The overall inmate and community supervision population fiscal impact is indeterminate.</p> <p>The cost associated with 1 Correctional Program Consultant is as follows:</p> <table border="1"> <thead> <tr> <th>Class Title</th> <th>Class Code</th> <th>Salary &amp; Benefits</th> <th>FTE</th> <th colspan="2">FY 19-20 Annual Costs</th> </tr> </thead> <tbody> <tr> <td>Correctional Program Consultant</td> <td>8094</td> <td>\$ 66,242</td> <td>1</td> <td>\$</td> <td>66,242</td> </tr> <tr> <td colspan="3"><b>Total salaries &amp; benefits</b></td> <td>1</td> <td>\$</td> <td>66,242</td> </tr> <tr> <td>Recurring expense - Professional</td> <td></td> <td>\$ 3,378</td> <td></td> <td></td> <td>3,378</td> </tr> <tr> <td>Non-recurring expense - Professional</td> <td></td> <td>\$ 4,429</td> <td></td> <td></td> <td>4,429</td> </tr> <tr> <td colspan="3"><b>Total expenses</b></td> <td></td> <td>\$</td> <td>7,807</td> </tr> <tr> <td>Human Resource Services</td> <td></td> <td>\$ 329</td> <td></td> <td>\$</td> <td>329</td> </tr> <tr> <td colspan="3"><b>Total Operating</b></td> <td>1</td> <td>\$</td> <td>74,378</td> </tr> <tr> <td colspan="6">Summary of Costs</td> </tr> <tr> <td></td> <td></td> <td>Recurring</td> <td></td> <td>\$</td> <td>69,949</td> </tr> <tr> <td></td> <td></td> <td>Non-recurring</td> <td></td> <td></td> <td>4,429</td> </tr> <tr> <td></td> <td></td> <td>Total</td> <td></td> <td>\$</td> <td>74,378</td> </tr> </tbody> </table>					Class Title	Class Code	Salary & Benefits	FTE	FY 19-20 Annual Costs		Correctional Program Consultant	8094	\$ 66,242	1	\$	66,242	<b>Total salaries &amp; benefits</b>			1	\$	66,242	Recurring expense - Professional		\$ 3,378			3,378	Non-recurring expense - Professional		\$ 4,429			4,429	<b>Total expenses</b>				\$	7,807	Human Resource Services		\$ 329		\$	329	<b>Total Operating</b>			1	\$	74,378	Summary of Costs								Recurring		\$	69,949			Non-recurring			4,429			Total		\$	74,378
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Does the legislation contain a State Government appropriation?																																																																													
If yes, was this appropriated last year?																																																																													

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown

Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**

Y ☐ N ☒

If yes, explain impact.	
Bill Section Number:	

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**TECHNOLOGY IMPACT**

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1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.

The technology systems impact is significant, but indeterminate. There would likely be a significant technology impact due to the need for updating and additional programming on both the Institutions and Community Corrections sentence structure screens.

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**FEDERAL IMPACT**

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1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.

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**ADDITIONAL COMMENTS**

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N/A

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:

As referenced in the Policy analysis above, rulemaking by FDC will be necessary to effectuate the intent of the bill.

### **Compass 100**

Compass 100 meets the statutory requirement that, “each inmate released from incarceration by the department must complete a 100-hour comprehensive transition course that covers job readiness and life management skills.” Compass 100 integrates a comprehensive, standardized program of career, life and community readiness skills into the existing academic and vocational programs already offered by the Florida Department of Corrections (FDC). Individuals who do not have an academic or vocational need will be enrolled in a hybrid section that contains a combination of self-directed instruction and weekly meetings with the Bureau of Programs’ staff to track progress and offer assistance.

To effectively deliver career and community readiness skills, the Compass 100 curriculum contains a modular system of lessons and supporting materials. In addition to the modules, participants will engage in lessons, assignments and discussions on a variety of life and career readiness skills. They include topics such as punctuality, workplace etiquette, interpersonal communication and problem solving, to name a few.

Compass 100 participants will be required to complete the *Thinking for a Change* (T4C) program. T4C is a nationally recognized cognitive-behavioral intervention course specifically designed to assist incarcerated individuals, by changing their thinking and providing skills to effectively communicate and solve problems. For those who cannot complete T4C, there will be an alternate module of lessons to satisfy in order to receive the 24 points/hours. Throughout the program participants will build a *Readiness Portfolio* which will contain items such as well-developed plans/goals, resume, current community resources, scheduled community appointments, program completion certificates and other pertinent documents that will assist in transition back into the community.

### **Spectrum**

Spectrum is an advanced evidence-driven assessment and screening system designed to follow an inmate from community supervision, through institutions and back to the community. This enables FDC to provide data-driven, informed decisions regarding the continuum of care for an individual within our custody. Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education. Spectrum calculates an individual’s overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas. Through motivational interviewing and individualized case planning, FDC maps resources to identified needs to reduce an individual’s risk of recidivism.

### **Academic and Workforce education/GED**

Programs encompasses 3 areas:

1. Core Programs

Florida Department of Corrections

Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED

- a. Literacy
  - b. Academic/workforce education
  - c. Substance abuse treatment
- 2. Domain Programs
  - a. Cognitive Behavioral Treatment, i.e. Thinking for a Change
- 3. Elective Programs
  - a. A wide array of evidence driven, promising programs that influence pro-social behavior and support FDC curriculum
    - i. Labs that support Cognitive Behavioral Treatment coursework, i.e. Babies to Brains for Parenting module of Thinking for a Change
    - ii. Dog training
    - iii. Volunteer support programs, i.e. Toast Masters



## Cox, Ryan

---

**From:** Torres, Jared <Jared.Torres@fdc.myflorida.com>  
**Sent:** Thursday, January 25, 2018 4:58 PM  
**To:** Cox, Ryan  
**Cc:** Vaughan, Scotti  
**Subject:** Re: Spectrum

Ryan,

Please find below Department staff:

Spectrum, as well as its predecessor CINAS, is based on the Risk – Needs – Responsivity (RNR) model and they both contain responsivity elements.

Core programming refers to GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors.

On Jan 25, 2018, at 3:27 PM, Cox, Ryan <[Cox.Ryan@flsenate.gov](mailto:Cox.Ryan@flsenate.gov)> wrote:

Hey guys – one more thing from Abe...

I saw this sentence on your Program information background document – “Spectrum calculates an individual’s overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains and 3 core program areas”

What are the three core program areas? Is this the Risk-Needs-Responsivity Model I was asking about earlier?

Sincerely,

*Ryan C. Cox*

Senior Attorney  
Senate Committee on Criminal Justice  
(850) 487-5192

**From:** Cox, Ryan  
**Sent:** Thursday, January 25, 2018 2:50 PM  
**To:** 'Torres, Jared' <[Jared.Torres@fdc.myflorida.com](mailto:Jared.Torres@fdc.myflorida.com)>; 'Vaughan, Scotti' <[Scotti.Vaughan@fdc.myflorida.com](mailto:Scotti.Vaughan@fdc.myflorida.com)>  
**Subject:** Spectrum

Can you also send me an email about who independently verified Spectrum risk assessment tool? Thanks!

Sincerely,



FLORIDA STATE UNIVERSITY  
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

January 19, 2018

Secretary Julie L. Jones  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, FL 32399-2500

Dear Secretary Jones,

The purpose of this letter is to communicate the findings from our independent assessment of the Department's Corrections Integrated Needs Assessment System (CINAS). The primary function of CINAS is to empirically determine an inmate's post-release risk of recidivism so the Department can prioritize high-risk inmates for programming.

Our validation report finds that the components of CINAS are performing as intended. Specifically, CINAS produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States. We hope the findings and recommendations provided in the attached report will be helpful in the transition to the Department's revised risk assessment system—Spectrum.

We wish to express our gratitude to the following individuals for sharing their tremendous knowledge of the development and implementation of CINAS: Abe Uccello, Patrick Mahoney, Brad Locke, Kerensa Lockwood, and others in the Division of Development as well as Rusty McLaughlin in the Bureau of Classification Management. We also wish to extend our gratitude to David Ensley, Dena French, Lori Nolting, and Jami Dunsford in the Bureau of Research and Data Analysis for providing us with the requisite data and valuable insights regarding the construction of the system data and algorithm. By our estimates, these individuals and others have contributed significant time and effort to the internal design, development, and implementation of CINAS. Our report concludes that their efforts have produced commendable results.

If you or your team has questions or needs clarification on the information provided in the attached report, please do not hesitate to contact us.

Sincerely,

William D. Bales, Ph.D.

Jennifer M. Brown, ABD

## Cox, Ryan

---

**From:** Torres, Jared <Jared.Torres@fdc.myflorida.com>  
**Sent:** Thursday, January 25, 2018 4:52 PM  
**To:** Cox, Ryan  
**Cc:** Vaughan, Scotti  
**Subject:** Per request - Spectrum Verification of Risk Assessment Tool  
**Attachments:** Letter to FDC Secretary Julie Jones.pdf; ATT00001.txt

Per request. Regarding: Independent verification of risk assessment tool. Thanks!

Our Vision: "Inspiring success by transforming one life at a time."



# CourtSmart Tag Report

**Room:** LL 37

**Case No.:**

**Type:**

**Caption:** Senate Criminal Justice Committee

**Judge:**

**Started:** 11/12/2019 10:32:25 AM

**Ends:** 11/12/2019 11:59:49 AM

**Length:** 01:27:25

10:32:24 AM Meeting called to order by Chair Perry  
10:32:26 AM Roll call by Administrative Assistant Sue Arnold  
10:32:31 AM Quorum present  
10:32:37 AM Comments from Chair Perry  
10:32:43 AM Chair turned over to Senator Brandes  
10:32:59 AM Introduction of Tab 3, SB 464 by Chair Brandes  
10:33:06 AM Explanation of Tab 3, SB 464, Certain Defendants with Mental Illness by Senator Wright  
10:34:47 AM Introduction of Amendment Barcode No. 868090 by Senator Brandes  
10:34:56 AM Explanation of Amendment by Senator Wright  
10:35:08 AM Comments from Chair Brandes  
10:35:17 AM Closure waived on Amendment  
10:35:21 AM Amendment Barcode No. 868090 adopted  
10:35:31 AM Closure waived by Senator Wright  
10:35:42 AM Roll call by Administrative Assistant Sue Arnold  
10:35:46 AM CS/SB 464 reported favorably  
10:35:56 AM Introduction of Tab 5 by Chair Brandes  
10:36:03 AM Explanation of SB 510, Bail Pending Appellate Review by Senator Wright  
10:37:16 AM Question from Chair Brandes  
10:37:22 AM Response from Senator Wright  
10:37:37 AM Comments from Chair Brandes  
10:37:53 AM Response from Senator Wright  
10:38:00 AM Question from Senator Pizzo  
10:38:04 AM Response from Senator Wright  
10:38:37 AM Follow-up question from Senator Pizzo  
10:38:45 AM Response from Senator Wright  
10:39:04 AM Senator Flores in debate  
10:40:28 AM Senator Pizzo in debate  
10:41:43 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in support on SB 510  
10:41:54 AM Closure waived by Senator Wright  
10:41:57 AM Roll call by Administrative Assistant Sue Arnold  
10:42:02 AM SB 510 reported favorably  
10:42:10 AM Introduction of Tab 1 by Chair Brandes  
10:42:22 AM Explanation of SB 346, Controlled Substances by Senator Bradley  
10:59:00 AM Question from Senator Bracy  
10:59:08 AM Response from Senator Bradley  
11:01:21 AM Question from Senator Pizzo  
11:01:31 AM Response from Senator Bradley  
11:03:27 AM Follow-up question from Senator Pizzo  
11:03:38 AM Response from Senator Bradley  
11:04:59 AM Additional question from Senator Pizzo  
11:05:10 AM Response from Senator Bradley  
11:05:41 AM Additional question from Senator Pizzo  
11:05:48 AM Response from Senator Bradley  
11:07:14 AM Introduction of Amendment Barcode No. 196590 by Chair Brandes  
11:07:25 AM Explanation of Amendment by Senator Bradley  
11:07:46 AM Closure waived  
11:08:00 AM Amendment Barcode No. 196590 adopted  
11:08:06 AM Introduction of Amendment Barcode No. 527338 by Chair Brandes  
11:08:10 AM Explanation of Amendment by Senator Bradley  
11:08:26 AM Seth Miller, Executive Director, Innocence Project of Florida waives in support of Amendment  
11:08:33 AM Closure waived  
11:08:37 AM Amendment Barcode No. 527338 adopted

11:08:44 AM Melissa Viller, Executive Director, NORML Tallahassee  
11:08:51 AM Speaker Gary Hester, Government Affairs, Florida Police Chiefs Association in opposition  
11:15:55 AM Question from Chair Brandes  
11:16:01 AM Response from Mr. Hester  
11:16:30 AM Question from Senator Pizzo  
11:17:30 AM Response from Mr. Hester  
11:18:07 AM Question from Senator Pizzo  
11:18:21 AM Response from Mr. Hester  
11:18:45 AM Question from Senator Flores  
11:19:00 AM Response from Mr. Hester  
11:20:00 AM Follow-up question from Senator Flores  
11:20:07 AM Response from Mr. Hester  
11:21:43 AM Comments from Senator Flores  
11:22:17 AM Response from Mr. Hester  
11:24:09 AM Speaker Phillip Suderman, Americans for Prosperity in support  
11:25:46 AM Speaker Greg Newburn, Florida Director, FAMM in support  
11:31:12 AM Jorge Chamizo, FACDL waives in support  
11:31:18 AM Barney Bishop III CEO, Florida Smart Justice Alliance waives in opposition  
11:31:23 AM Seth Miller, Executive Director, Innocence Project of Florida waives in support  
11:31:29 AM Pamela Burch Fort, ACLU of FL waives in support  
11:31:45 AM Speaker Cesar Grajales, Coalitions Director, the Libre Initiatives in support  
11:32:46 AM Speaker Andy Thomas, Public Defender, 2nd Circuit, Florida Public Defender Association in support  
11:35:40 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center Action Fund waives in support  
11:36:02 AM Speaker Melissa Viller, Executive Director, NORML Tallahassee for information  
11:38:20 AM Senator Bracy in debate  
11:39:08 AM Comments from Chair Brandes  
11:39:51 AM Senator Bradley in closure  
11:43:15 AM Roll call by Administrative Assistant Sue Arnold  
11:44:16 AM CS/SB 346 reported favorably  
11:44:31 AM Chair returned to Chair Perry  
11:44:39 AM Introduction of Tab 6 by Chair Perry  
11:44:44 AM Explanation of SB 520, Drones by Senator Gruters  
11:45:34 AM Speaker Michael Crabb, Lieutenant, Orange County Sheriff's Office in support  
11:46:09 AM Jess McCarty, Assistant County Attorney, Miami-Dade County/Miami-DAO Police waives in support  
11:46:12 AM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in support  
11:46:17 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in support  
11:46:20 AM Pamela Burch Fort, ACLU of FL waives in opposition  
11:46:27 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in support  
11:46:34 AM Closure waived  
11:46:40 AM Roll call by Administrative Assistant Sue Arnold  
11:46:47 AM SB 510 reported favorably  
11:46:56 AM Introduction of Tab 2 by Chair Perry  
11:47:02 AM Explanation of SB 436, Youth in Confinement by Senator Montford  
11:48:32 AM Question from Senator Brandes  
11:48:37 AM Response from Senator Montford  
11:48:42 AM Speaker Alex Lavelle, FSU Public Interest Law Center in support  
11:51:30 AM Olivia Babis, Public Policy Analyst, Disability Rights Florida waives in support  
11:51:35 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in opposition  
11:51:42 AM Ken Kniepmann, Florida Conference Catholic Bishops waives in support  
11:51:49 AM Karina Flores, FSU Public Interest Law Center waives in support  
11:51:54 AM Caitlyn Kio, FSU Public Interest Law Center waives in support  
11:52:00 AM Alison Marshall, FSU Public Interest Law Center waives in support  
11:52:01 AM Pamela Burch Fort, ACLU of FL waives in support  
11:52:07 AM Andy Thomas, Public Defender, 2nd Circuit, Florida Public Defender Association waives in support  
11:52:15 AM Closure waived  
11:52:23 AM Roll call by Administrative Assistant Sue Arnold  
11:52:27 AM SB 436 reported favorably  
11:52:40 AM Introduction of Tab 4 by Chair Perry  
11:52:49 AM Explanation of SB 470, Searches of Cellular Phones and Other Electronic Devices by Senator  
11:53:31 AM Introduction of Amendment Barcode No. 158654 by Chair Perry  
11:53:35 AM Explanation of Amendment by Senator Brandes  
11:53:56 AM Andy Thomas, Public Defender, 2nd Circuit, Florida Public Defender Association waives

11:54:05 AM Amendment Barcode No. 158654 adopted  
11:54:12 AM Jorge Chamizo, FACDL waives in support  
11:54:14 AM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in opposition  
11:54:19 AM Phillip Suderman, Policy Director, Americans for Prosperity waives in support  
11:54:23 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in opposition  
11:54:31 AM Senator Brandes in closure  
11:55:18 AM Roll call by Administrative Assistant Sue Arnold  
11:55:23 AM CS/SB 470 reported favorably  
11:55:32 AM Introduction of Tab 7 by Chair Perry  
11:55:37 AM Explanation of SB 556, Inmate Conditional Medical Release by Senator Brandes  
11:56:52 AM Introduction of Amendment Barcode No. 575744 by Chair Perry  
11:56:57 AM Explanation of Amendment by Senator Brandes  
11:57:18 AM Closure waived  
11:57:23 AM Amendment Barcode No. 575744 adopted  
11:57:29 AM Ken Kniepricann, Florida Conference Catholic Bishops waives in support  
11:57:36 AM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in support  
11:57:44 AM Greg Newburn, Florida Director, FAMM waives in support  
11:57:44 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center Action Fund waives in support  
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11:57:49 AM Pamela Burch Fort, ACLU of FL waives in support  
11:57:51 AM Barney Bishop III, CEO, Florida Smart Justice Alliance waives in support  
11:57:55 AM Olivia Babis, Disability Rights Florida waives in support  
11:58:03 AM Senator Pizzo in debate  
11:58:15 AM Closure waives  
11:58:18 AM Roll call by Administrative Assistant Sue Arnold  
11:58:22 AM CS/SB 556 reported favorably  
11:58:33 AM Introduction of Tab 8 by Chair Perry  
11:58:45 AM Explanation of SB 560, Sentencing by Senator Brandes  
11:59:09 AM Question from Senator Bracy  
11:59:17 AM Senator Perry states that Appearance cards will be placed in public records  
11:59:24 AM Closure waived  
11:59:26 AM Roll call by Administrative Assistant Sue Arnold  
11:59:29 AM SB 560 reported favorably  
11:59:35 AM Senator Bracy moves to adjourn, meeting adjourned