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 Criminal Justice Committee

BILL:	CS/SB 1614
INTRODUCER:	Criminal Justice Committee; and Criminal Justice Committee
SUBJECT:	Department of Corrections
DATE:	March 11, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Krol	Cannon	CJ	**Fav/CS**
2.			CF	
3.			JU	
4.			JA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill adds cellular phones and other portable communication devices to the list of articles declared to be contraband within the secure perimeter of a state prison. Unlawful introduction or unauthorized possession of a cellular phone or portable communication device is punishable as a third degree felony. The bill provides there must be intent to provide such device to an inmate.

The bill changes definitions found within the Corrections Mental Health Act (Act). It also allows courts to waive the presence of an inmate at the mental health hearing. Additionally, it allows the inmate's counsel to have access to the inmate and records that are relevant to the representation of the inmate.

The bill amends ss. 940.061 and 944.293, F.S., to reflect the current duties of the Department of Corrections (department) in the restoration of civil rights application process.

This bill revises s. 944.1905, F.S., so that the department can house young adult offenders that currently must be housed separately from youthful offenders at youthful offender facilities.

The bill would allow courts to place offenders on community control who have been convicted of or who have had adjudication withheld for forcible felonies and who have a prior forcible felony conviction withheld. It would also remove certain administrative requirements relating to eligibility of offenders, including reporting requirements that were appropriate upon program inception, but are now considered obsolete by the department.

The bill removes the requirement that a trainee who attends an approved basic recruit training program paid by the employing agency and leaves employment less than 2 years after graduation shall reimburse the agency using a pro-rata schedule for wages and benefits paid by the employing agency during the training period.

This bill substantially amends the following sections of the Florida Statutes: 921.187, 940.061, 943.16, 944.1905, 944.293, 944.47, 945.41, 945.42, 945.43, 945.44, 945.45, 945.46, 945.47, 945.48, 945.49, 948.01, 948.10, 958.04, 958.11, and 958.12.

II. Present Situation:

Cellular Security
The Department of Corrections (department) can only assess administrative penalties in the form of a disciplinary report to the offender; or loss of visitation privileges for a visitor who intentionally provides an inmate a cellular telephone device.

These devices are of significant value in prison and have been linked to violence, extortion, and serious disruption within the prison system. Last year, the department documented that 270 phones were seized from inmates between 6/13/06 and 11/26/07. By region this number is divided into 29 phones seized from Region 1, 42 phones from Region 2, 49 phones from Region 3, and 150 phones from Region 4.

The department asserts that felony penalties are needed to combat and assist in deterring this behavior which reportedly poses a security threat. These devices have been found to help in coordinating escape attempts with individuals outside of prison, have been found in relation to drug use and sales, and as a way for inmates to threaten and intimidate members of the public.

Mental Health Act
Inmates are housed in correctional mental health institutes (CMHI) at specified prisons. In order to admit an inmate into a CMHI, the correctional institution's warden must file a petition under the Act in the local circuit court and a hearing must take place in order to determine whether the inmate meets the statutory criteria for involuntary placement in the hospital setting. If determined to meet criteria, the inmate will then be transferred to one of the correctional institutions designated as a CMHI if the inmate is not already housed there. Currently, Lake Correctional Institution houses male CMHI patients and Broward Correctional Institution houses female CMHI patients. Admission orders generally permit the department to place inmates in CMHI status for six months. If an inmate's condition improves, they are released from the CMHI. If after six months the inmate still requires CMHI level care, the department may file a petition for continuing admission with the Division of Administrative Hearings (DOAH). These petitions are heard at the local level in Lake and Broward counties and the orders generally expire in 90 days.

In most circumstances, inmates are admitted to the CMHI units from crisis stabilization status. There are currently eight Crisis Stabilization Units (CSUs) in institutions around the state. Two of those institutions, Santa Rosa C.I. and Charlotte C.I., are not conducting CMHI admission hearings. Inmates at those institutions are usually transported to other CSUs for admission hearings. Public defenders typically appear at each of the facilities except in Lake County, where the public defender there has chosen not to represent inmates during admission hearings. This is significant because Lake C.I. is where the male CMHI unit is located and there are more admissions there (usually between 3 and 6 per month). Lake C.I. has its own CSU and also takes in inmates from other CSUs for emergency admission to the CMHI unit. The Lake Public Defender takes the position that neither the public defender statute nor the Corrections Mental Health Act authorizes their appointment in admission or continuing placement hearings. The current Act states that an inmate may be appointed counsel if he cannot afford one, although it does not clearly address the procedure for such an appointment.

For Fiscal Year 2006-2007, the department conducted approximately 232 involuntary treatment hearings. This number includes petitions for continuing treatment. Twenty-four hearings on continuing placement were also conducted within that time frame. No public defender appeared in any of those 24 DOAH proceedings, nor was any one of those inmates represented by a court-appointed attorney.

Currently s. 27.51(1)(d), F.S., requires the public defender to represent indigent persons during involuntary commitment hearings under the Baker Act, or during sexually violent predator or developmental disability proceedings. This subsection makes no provision for court-appointed representation during hearings for involuntary placement of inmates into mental health treatment facilities and hearings for involuntary treatment proceedings.

Section 120.57(1)(b), F.S., states that in hearings presided over by administrative judges, parties involved have the opportunity to respond, present evidence, and to be represented by counsel or by other qualified representative.

Restoration of Civil Rights

Section 940.061, F.S., requires the department to inform and educate inmates and offenders on community supervision about restoration of civil rights and to assist them in completing the application.

Section 944.293, F.S., requires the department, prior to the discharge of an offender from supervision, to obtain from the Governor the application and other necessary forms for restoring civil rights, to assist the offender in completing the forms, and to ensure that the application and other forms are forwarded to the Governor.

Prior to 2001, the commission annually received 22,500 requests for restoration without a hearing through applications of felons being released from prison, applications from felons previously released, and those released from supervision whose names were sent directly to the Florida Parole Commission. At that time, there was a backlog of approximately 7,199 names.

After 2000, the number of names in the backlog increased due to the 2000 presidential elections and civic groups organizing efforts to help ex-felons apply for restoration of civil rights.

Additionally, a law suit filed in 2001 by the Florida Caucus of Black State Legislators resulted in a 2004 ruling by the First District Court of Appeal that the department was not assisting inmates with the application process as required by law. The lawsuit prompted better compliance with the law, resulting in an increase in applications.

Currently, the department electronically submits the names of inmates released from incarceration and offenders who have been terminated from supervision and who may be eligible for restoration of civil rights upon release monthly to the Clemency Administration Office in the Florida Parole Commission. These lists serve as electronic applications, in an effort to meet the statutory obligation to assist inmates and offenders in completing their applications. This process also negates the need for offenders to complete their own applications.

Revisions made to the rules governing the restoration of civil rights process at the time of the 2007 Legislative Session provided for the automatic restoration of civil rights for persons who meet certain criteria.

Under the revised rules, the Florida Parole Commission, using lists provided by the department, reviews records of inmates and offenders being released from prison or community supervision to certify their eligibility for restoration of civil rights without a hearing.

Cases are processed either as Level I (automatic approval of restoration of civil rights) or Level II (restoration of civil rights without a hearing by preliminary review list). This is described in Rules 9 and 10 in the Rules of Executive Clemency-Revised.

If determined eligible as a Level I case (automatic restoration), the person's name is submitted to the Executive Clemency Board on an Executive Order for approval and a certificate is mailed to the last known address.

In Level II cases (restoration of civil rights without a hearing by preliminary review list), following an investigation of the case, the person's name is provided to the Executive Clemency Board for a 30-day review. If the Governor and two or more Board Members approve restoration of civil rights, a certificate is mailed to the last known address. If, however, a person is determined ineligible by the Commission, or is not approved for restoration of civil rights by the Board, that person will be notified and may pursue restoration of these rights by requesting a hearing.

According to s. 940.061, F.S., the department is also required to "inform and educate inmates and offenders on community supervision about the restoration of civil rights."

Due to these current and more efficient practices, ss. 940.061 and 944.293, F.S., may no longer accurately describe the department's process for assisting inmates and offenders with restoration of civil rights. Technically, the department is not in compliance with statutory duties to assist inmates in completing applications and obtaining applications and other necessary forms from the Governor's Office. According to the department the statutory language is made even further obsolete by recent changes made to streamline the restoration of civil rights in providing for automatic restoration for certain inmates and offenders.

Youthful Offender Section Reorganization
When s. 944.1905, F.S., was adopted it created two categories of young adult offenders who were received into state prison under the age of 18. One category of young adult offenders, those with prior adjudications or those who are over 15 at the time of their offense must be housed separately from youthful offenders. The other category of young adult offenders, who have no prior adjudications and are under 15 at the time of their offense, can be housed with youthful offenders.

Youthful offenders are defined in s. 958.04, F.S., as an offender:

> (a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;
>
> (b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime which is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and
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> (c) Who has not previously been classified as a youthful offender under the provisions of this act; however, no person who has been found guilty of a capital or life felony may be sentenced as a youthful offender under this act.

According to s. 958.11(3)(g) and (h), F.S., the department has the right to move any youthful offender deemed disruptive or a disciplinary problem to a non-youthful offender facility. In addition, the department has the right to move any young adult, placed in a non-youthful offender facility, who may be mentally or physically vulnerable into a youthful offender facility.

Section 958.04(2)(d), F.S., provides for the sentencing requirements of the youthful offender program. The department may recommend to the court modification of the sentence or early termination of the sentence, probation, or community control. This section does not provide the department with any criteria that defines successful participation in the program.

Section 958.12(3), F.S., requires that a youthful offender shall be visited by a probation and parole officer prior to the offenders release from incarceration. The department reports parole and probation officers do not visit inmates for release transition purposes and that this function is accomplished by the releasing facility in partnership with community providers and services.

In addition, numerous provisions in ss. 958.11 and 958.12, F.S., have obsolete references. Positions, such as “Assistant Secretary for Youthful Offenders” and the “Youthful Offender Program Office” are obsolete and should be eliminated from Florida Statutes. Names of institutions have also since been changed and are no longer correct. The Department of Labor and Employment agency no longer exists and should be removed from statute. Section 958.12(5), F.S., lists the title “probation and parole officer” which is no longer correct.

Community Control
Florida Statutes do not allow the sentencing of a forcible felon to community control.

A forcible felon is defined in s. 776.08, F.S., 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."

Community control requires a more intense level of supervision than probation. Compared to probation, community control requires more officer to offender contacts and is more restrictive in nature as it requires the offender to remain confined to his/her residence 24 hours a day with the exception of approved activities such as working, seeking medical attention, or participation in a mandated substance program. In addition, community control officers carry caseloads of 25 offenders to 1 officer and are required to make 8 personal contacts with offenders every month.

The "Howard E. Futch Community Safety Act" requires the department to report to judges offenders ineligibly sentenced to community control. If an offender is ineligible for community control, the department would notify the sentencing judge, state attorney, and the Attorney General and the department is also to provide an annual analysis to the Governor, President of the Senate, and Speaker of the House of Representatives. This resulted in a reduction of ineligible sentences. In 2002, 171 (2.7 percent) of the 6,256 offenders on community control were found to be ineligible placements and were reported to the sentencing judge, while in 2006 only 34 (1.1 percent) of the 3,017 offenders were found to be ineligible.

When a judge re-sentences an ineligible offender, a sentence of a less restrictive form of community supervision such as probation is often the result. According to the department these reports historically have had minimal impact on ensuring that offenders ineligible for community control receive a prison sentence.

According to the department, this has resulted in the unintentional sentencing of some violent offenders to probation instead of incarceration. Florida Statutes currently only allow the court to sentence a forcible felon to regular probation if a prison sanction is not chosen. The department reports that in June 2006, there were approximately 28,000 forcible felons on probation.

Tuition Reimbursement

The department has a high officer turnover rate. The department considers that this is primarily due to the fact that entry level salaries at most county law enforcement agencies are substantially higher than what the department can offer. The turnover rate for fiscal year 2006-2007 was an average of 22.425 percent among the four regions, ranging from a low of 14.2 percent to a high of 35.4 percent.

Currently s. 943.16, F.S., requires trainees who attend approved training programs to reimburse their employing agency if the trainee's employment or appointment is terminated by the trainee's own initiative within two years. This reimbursement includes the full cost of the trainee's tuition and other course expenses. During the 2003 Legislative Session, s. 943.16, F.S., was amended to increase the term of the reimbursement obligation from one year to two and expand the scope of the obligation by adding previously paid wages and benefits during the academic training period. The pro-rata schedule defined repayment of wages and benefits based on the trainee's termination date.

The Department of Correction's Office of the General Counsel has conducted a thorough analysis of the 2003 provision which requires recovery of paid wages and benefits if the employee leaves. It has been determined that any attempt to recover the full salary of trainees who leave at any time is a clear violation of the Fair Labor Standards Act which provides for a minimum wage for such employees. In addition, the Department of Labor has issued regulation 29 C.F.R. §531.35 indicating that "wages" cannot be considered to have been paid by the employer unless they are paid finally and unconditionally or "free and clear."

The Department of Correction's turnover rate has climbed significantly since state fiscal year 2002-2003. The department has not realized any reimbursement of wages and benefits, relating to s. 943.16, F.S.

III. Effect of Proposed Changes:

Cellular Security
Currently there is no provision in s. 944.47, F.S., declaring cellular phones or portable communication devices as contraband. Section 7 of this bill would add cellular phones and portable communication devices to the list of unlawful articles found in s. 944.47, F.S. Any person found in violation would be punishable by a third degree felony.

Persons affected by this portion of the bill would include department staff members, inmates, and other visitors.

It would be the responsibility of the department to clearly inform all affected parties of the prohibition specified in the proposed amendment and the penalties for violation.

Mental Health Act
This bill would remove the requirement to contract with the Department of Children and Family Services. It would create the definition of the term "crisis stabilization care" and lengthen the definition of "in immediate need of care and treatment." The definition of "mental health treatment facility" would be revised from the Corrections Mental Health Institution to "any extended treatment or hospitalization-level unit within the corrections system." The definition of "psychologist" is changed to "psychological professional" and reflects a person with a doctoral degree in psychology and is employed by the department or a person who is a licensed psychologist. This has the effect of allowing unlicensed psychologists to provide care to inmates as long as they are an employee of the department. Section 945.43(3)(a), F.S., would be revised to allow courts to waive the presence of an inmate at the mental health hearing should the waiving be consistent with the interest of the inmate and the inmate's counsel does not object. Additionally, it allows the inmate's counsel to have access to the inmate and records that are relevant to the representation of the inmate.

These changes would affect the Florida Department of Corrections, inmates within the department, the Florida Division of Administrative Hearings, and the Florida Department of Children and Families.

Restoration of Civil Rights
This bill revises ss. 940.061 and 944.293, F.S., to update the two statutes to reflect current practices within the department relating to restoration of civil rights. It removes reportedly obsolete language and clarifies that the department's monthly submission to the Florida Parole Commission of the names of inmates who have expired their sentences and offenders who have expired their terms of supervision constitutes compliance with statutory directives to assist in the initiation of restoration of civil rights.

According to the department, this bill will not affect an ex-offender's or soon-to-be ex-offender's ability to fill out paper applications, online applications, or any other means of application that is facilitated by the Florida Parole Commission.

This bill, according to the department, maintains practices that help expedite the restoration of civil rights process.

The department would be the only agency affected as this bills subdivision only codifies an already existing practice.

Youthful Offender Section Reorganization
The current law does not allow the mixing of young offenders and youthful offenders. The department believes that young offenders, those under 18 years of age sentenced under life or capital felonies, or whose sentences are greater than 10 years, should be considered for assignment to a facility housing youthful offenders in order to benefit from the institutional programs available to youthful offenders, as well as to enable the department to provide educational and vocational services to offenders of this age. This change would allow young offenders who have been found guilty of a capital or life felony to be housed in the same units as youthful offenders who have no prior criminal background.

There are currently 15 of these young adult offenders that would be transferred to a youthful offender facility.

Changes to s. 958.04(2)(d), F.S., would allow the department to create criteria that would define successful participation within the youthful offender program. This will allow the department rule-making authority in defining what constitutes successful participation.

Section 958.11(2), F.S., names the female correctional facilities, Florida Correctional Institution and Broward Correctional Institution. However, Florida Correctional Institution is now named Lowell Correctional Institution and Lowell Correctional Institution Annex. Since original enactment of this statute, other facilities now house youthful offender female inmates. This section would be revised to remove the names of specific facilities to accommodate past and future changes.

Section 958.11(4), F.S., refers to an obsolete title, Assistant Secretary for Youthful Offenders, and should be replaced with the word "department."

Section 958.11(5), F.S., refers to specific offices within the department, and the obsolete Office of Assistant Secretary of Youthful Offenders. These specific offices referenced will be removed and replaced with the "department."

Section 958.11(6), F.S., refers again to the Assistant Secretary for Youthful Offenders. This title will be replaced with the word "department."

Section 958.12(3), F.S., would be removed from statute as the department reports that parole and probation officers do not visit inmates for release transition placement purposes. By eliminating this provision, this requirement would no longer be statutorily mandated.

Section 958.12(4), F.S., requires the department to develop community relationships to assist with a youthful offender's transition. This section names specific agencies such as the Department of Labor and Employment Security which no longer exists. The department recommends striking agency names and amending this section to specify other government and private agencies.

Section 958.12(5), F.S., references the supervision of a youthful offender after incarceration by a probation and parole officer. The actual title of this position is Correctional Probation Officer.

Section 944.1905(5), F.S., created a new class of inmates under 18 years of age who are considered by the department as "Young Adult Offenders," as they do not qualify as youthful offender based on the youthful offender definition. The statute effectively establishes two types of young adult offenders, and requires the department to totally separate the first small group of inmates from every other type of offender, although it allows for the second type to be housed with youthful offenders. As their age would indicate, they are in need of specific services best provided at youthful offender facilities in which they cannot be placed. This section is modified to allow all young adult offenders to be assigned to facilities housing youthful offenders.

This bill will affect the Department of Corrections, youthful offenders, and adult offenders.

Community Control

The bill would allow for the sentencing of certain violent offenders to community control, which is reported by the department to be the most intensive form of supervision and is commensurate with the risk represented. Judges would now have discretion to use the sentencing option, community control, which the department reports to be more intensive and appropriate for certain forcible felons.

This bill would affect Florida Courts, State Attorneys, Public Defenders, offenders with a record of forcible felonies who may qualify to be sentenced to community control, and sentencing judges who may have not had the discretion to impose community control on offenders.

Section 18 of the bill would make substantial change to the community control program. It would eliminate the requirement of the department to notify in writing law enforcement and the victim of the offense when a person is placed on community control. This section eliminates the requirement for the department to develop and implement diagnostic procedures at intake and for the development of an implementation manual.

The department cannot estimate the number of offenders the courts will sentence to community control instead of probation.

Tuition Reimbursement
Because the current provision is in conflict with the Federal Fair Labor Standards Act, the department is proposing to remove it from the statutes.

This bill would affect the Department of Corrections, the Department of Law Enforcement, the Department of Highway Safety and Motor Vehicles, and any other criminal justice agencies that may enforce the wage and benefits reimbursement portion of the statute. At this time, the department has not received any indication that there is an impact on the Florida Department of Law Enforcement or the Florida Department of Highway Safety and Motor Vehicles.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Cellular Security
The department anticipates minimal fiscal impact to the agency. The Criminal Justice Estimating Conference determined an insignificant bedspace impact.

Mental Health Act
None.

Restoration of Civil Rights
The department anticipates no fiscal impact. Additionally, the bill may reduce the likelihood of litigation.

Youthful Offender Section Reorganization
The department reports no fiscal impact. It states that freeing the beds used by young adult offenders would be resource friendly to the department.

The FY 2006-07 per diem for male youthful offender custody is $61.48. The per diem at Marion Correctional Institute is $42.43 for adult male inmates. The department cannot discern a cost just for those 15 offenders, as it is subsumed in the adult prison per diem. Because of the specialized attention provided to this small number of offenders, the actual per diem will likely be higher, but difficult to discern.

Community Control
The department cites that the impact would be purely procedural, rather than substantive, as minimum impact is anticipated.

Tuition Reimbursement
The department anticipates no fiscal impact as the department has not collected any reimbursement of wages and benefits as a result of the current provision.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on March 11, 2008:
- Public defenders are not required to represent inmates during a placement or continued placement in a mental health treatment facility hearing.
- The department's "not less than 10%" staff and resource commitment to parole and probation has been reinstated.

B. Amendments:

None.