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 Judiciary Committee

BILL:	CS/CS/CS/SB 1614
INTRODUCER:	Judiciary Committee, Children, Families, and Elder Affairs Committee, Criminal Justice Committee, and Criminal Justice Committee
SUBJECT:	Department of Corrections
DATE:	April 10, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Krol	Cannon	CJ	**Fav/CS**
2.	Ray	Jameson	CF	**Fav/CS**
3.	Maclure	Maclure	JU	**Fav/CS**
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:

This bill reflects legislative initiatives pursued by the Department of Corrections for the 2008 Regular Session and addresses a number of issues within the department's jurisdiction. Through its principal provisions, the bill:

- Provides that an administrative law judge may appoint a private pro bono attorney in a continued placement proceeding to represent an inmate who is receiving treatment in a correctional mental health facility.
- Adds cellular phones and other portable communication devices to the list of articles declared to be contraband within a state prison and makes it a third-degree felony to introduce or possess a cellular phone or portable communication device with an intent to provide the device to an inmate.
- Revises the Corrections Mental Health Act to, among other changes, allow a court to waive the presence of an inmate at the mental health hearing and allow the inmate's counsel to have access to the inmate and records that are relevant to representation of the inmate, as well as to allow an administrative law judge to waive the inmate's presence at a continued placement hearing.

- Provides that electronic transmission of data to the Parole Commission on prisoners to be released satisfies the department's duties in the restoration-of-civil-rights application process.
- Requires the department to house certain young adult offenders, who currently must be housed separately, at youthful offender facilities.
- Authorizes a court to place on community control an offender who has been convicted of a forcible felony and who has a prior forcible felony conviction.
- Removes the requirement that a trainee who attends an approved basic recruit training program paid for by the employing agency and leaves employment less than two years after graduation shall reimburse the agency for wages and benefits paid during the training period.

This bill substantially amends the following sections of the Florida Statutes: 120.57, 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

Cellular telephone devices are extremely valuable to prisoners and have been linked to violence, extortion, and serious disruption within prison systems across the nation.

> Prison officials across the country say inmates' possession of cellphones is a growing and serious problem. … [I]t has led to arrests or convictions of scores of inmates and of prison staff members who have smuggled phones to inmates. The authorities say they are concerned that inmates are using the phones to buy drugs, intimidate witnesses, plot escapes or oversee organized crime back home. Most prisons and jails in the United States have policies forbidding inmates to have cellphones.[1]

In Florida, the Department of Corrections (DOC or department) reports that there are more than 100 documented cases of cellular telephones being discovered inside a state institution over the past year.[2] These devices have been used in coordinating escape attempts with individuals outside of prison, employed in connection with drug use and sales, and used by inmates to threaten and intimidate members of the public.[3]

Some states have criminalized the possession of cellular phones within a penal institution. Texas, for example, makes it a felony for an inmate to possess a cellular telephone or for a person to provide a cellular telephone to an inmate.[4] Currently, DOC can assess solely administrative penalties. Citing the security threat stemming from the presence of cellular phones in prisons, the

[1] Fox Butterfield, *Inmates Use Smuggled Cellphones to Maintain a Foot on the Outside*, The New York Times, June 21, 2004.
[2] Department of Corrections, *2008 Bill Analysis, SB 1614*, 11 (Revised April 5, 2008) (on file with the Senate Committee on Judiciary).
[3] *Id*. at 11-12.
[4] *See* Texas Penal Code s. 38.11.

department asserts that criminal penalties are needed to combat and assist in deterring this behavior. [5]

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 Corrections Mental Health Act in the circuit court for the county in which the inmate is imprisoned. The court must hold a hearing (sometimes called a "placement hearing") to determine whether the inmate meets the statutory criteria for involuntary placement in the hospital setting. If determined to meet the 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.[6] The court shall authorize the CMHI to retain the inmate for up to six months.[7] If an inmate's condition improves, he or she is 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).

Currently, Lake Correctional Institution houses male CMHI patients and Broward Correctional Institution houses female CMHI patients. 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 Correctional Institution and Charlotte Correctional Institution, 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 has chosen not to represent inmates during admission hearings. This development is significant because Lake Correctional Institution (C.I.) is where the male CMHI unit is located, and there are more admissions there.[8] Lake C.I. has its own CSU and also takes in inmates from other CSUs for emergency admission to the CMHI unit. The Lake County Public Defender takes the position that neither the public defender statute nor the Corrections Mental Health Act authorizes appointment of a public defender in admission or continuing placement hearings. Currently, the 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.[9]

In fiscal year 2006-07, 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 timeframe. No public defender appeared in any of those 24 DOAH proceedings, nor was any one of those inmates represented by a court appointed attorney.[10]

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[5] Department of Corrections, *supra* note 2, at 11-12.
[6] *Id.* at 14-15; *see also* s. 945.43, F.S.
[7] Section 943.43(2)(c), F.S.
[8] Department of Corrections, *supra* note 2, at 4. The Department of Corrections reports that there are usually three to six admissions per month.
[9] Department of Corrections, *2008 Agency Proposal – PSU-DOC-006 – Mental Health Act* (on file with the Senate Committee on Judiciary). Section 945.43(2)(b)4., F.S., requires notice to the inmate that he or she may apply to the court to have an attorney appointed in an admission hearing if he or she cannot afford one.
[10] Department of Corrections, *supra* note 9.

Public defenders are specifically required to represent indigent persons during involuntary commitment hearings under the Baker Act, or during sexually violent predator or developmental disability proceedings.[11] Although portions of the Corrections Mental Health Act contemplate the appoint of counsel for inmates who cannot appoint counsel,[12] the department reports that the process for the appointment of counsel in admissions and treatment proceedings is not clear and consistent.[13]

Hearings for continued placement of inmates in mental health treatment are conducted in accordance with s. 120.57(1), F.S. That statute provides that, in hearings presided over by administrative law judges, parties involved have the opportunity to respond, present evidence, and be represented by counsel or by another qualified representative.

Restoration of Civil Rights

The department is required to inform and educate inmates and offenders on community supervision about restoration of civil rights and to assist them in completing the application.[14] In addition, the department is required, 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.[15]

The Florida Parole Commission acts as the agent of the Clemency Board in determining whether offenders are eligible for restoration of civil rights, investigating applications, conducting hearings when required, and making recommendations to the board. Prior to 2001, the commission annually received approximately 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.[16]

After 2000, the number of names in the backlog increased due, in part, to the 2000 presidential election, which focused attention on voting issues, and civic groups organizing efforts to help ex-felons apply for restoration of civil rights. Additionally, a lawsuit 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.[17]

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

[11] Section 27.51(1), F.S.
[12] *See* 945.43(2)(b)4., F.S.
[13] Department of Corrections, *supra* note 9.
[14] Section 940.061, F.S.
[15] Section 944.293, F.S.
[16] Committee on Criminal Justice, The Florida Senate, *Rules for Restoration of Civil Rights for Felons and Impacts on Obtaining Occupational Licenses and Other Opportunities*, Interim Project Report 2008-114, 1 (December 2007).
[17] *Id*.; Department of Corrections, *supra* note 2, at 6-8.

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.[18]

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.[19] 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.[20]

Cases are processed either as Level I, which is an automatic approval of restoration of civil rights, or Level II, which is a 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.[21] If determined eligible as a Level I case, 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.[22]

In Level II cases, 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.[23]

According to the department, due to these current and more efficient practices, the statutory provisions[24] requiring them to educate inmates and assist them with restoration of civil rights 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.[25]

Youthful Offender Section Reorganization

Section 944.1905, F.S., creates 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

[18] *Id.*
[19] *Id.* at 7.
[20] *Id.*
[21] *Id*.
[22] *Id.*
[23] *Id*. at 7-8.
[24] Sections 940.061 and 944.293, F.S.
[25] Department of Corrections, *supra* note 2, at 8.

from all other types of inmates. The other category of young offenders, those who have no prior adjudications and are 15 or younger at the time of their offense, can be housed with youthful offenders in a facility for youthful offenders. A youthful offender is a person who is either sentenced as such by the court or is classified as such by the department.[26]

A court may sentence as a "youthful offender" any person:

- 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 ch. 985, F.S.;
- Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and
- Who has not previously been classified as a youthful offender under the provisions of the Florida Youthful Offender Act;[27] however, no person who has been found guilty of a capital or life felony may be sentenced as a youthful offender under the act. [28]

For classification purposes, the department screens inmates at all institutions to identify individuals who are younger than 25 and whose total sentence does not exceed 10 years, for possible designation as a youthful offender.[29]

The act provides for segregation of youthful offenders by designated age groups. The department may move any youthful offender assigned to a facility for the 14-18 age group who is disruptive or uncontrollable to a facility for the 19-24 age group. In addition, the department may move a youthful offender assigned to a facility for the 19-24 age group who is mentally or physically vulnerable to a facility for the 14-18 age group.[30]

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 define successful participation in the program.

A youthful offender is required to receive visits from a probation and parole officer prior to the offender's release from incarceration.[31] 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.[32]

In addition, references to the term "Assistant Secretary for Youthful Offenders" in s. 958.11, F.S., are obsolete. Names of institutions have also since been changed and are no longer correct. The Department of Labor and Employment Security, for example, no longer exists and should be

[26] Section 958.03(5), F.S.
[27] Sections 958.011-958.15, F.S.
[28] Section 958.04(1), F.S.
[29] Section 958.11(4), F.S.
[30] Section 958.11(3)(g) and (h), F.S.
[31] Section 958.12(3), F.S.
[32] Department of Corrections, *2008 Agency Proposal – PSU-DOC-003 – Youthful Offender* (on file with the Senate Committee on Judiciary).

removed from s. 958.12(4), F.S. Subsection (5) of that section refers to the job title "probation and parole officer," which is no longer accurate.[33]

Community Control

Current law does not allow the sentencing of certain forcible felons[34] to community control.[35] 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 or 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. Community control officers carry caseloads of 25 offenders to 1 officer.[36]

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 is to notify the sentencing judge, state attorney, and 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.[37] This approach resulted in a reduction of ineligible sentences.[38] For 2002, 171 (2.7 percent) of the 6,256 placed offenders on community control from July 1, 2002, until December 31, 2002, were found to be ineligible placements,[39] while in 2006 1.3 percent of the 10,850 offenders were found to be ineligible.[40]

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, 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 regular probation.[41]

Tuition Reimbursement

The department has a high officer turnover rate, which the department attributes primarily to the fact that entry-level salaries at most county law enforcement agencies are substantially higher

[33] Department of Corrections, *supra* note 2, at 17.
[34] Section 776.08, F.S., defines the term "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."
[35] Department of Corrections, *2008 Agency Proposal – PSU-DOC-008 – Revisions to Futch Act* (on file with the Senate Committee on Judiciary).
[36] *Id.*
[37] Section 948.10(8) and (12), F.S.
[38] Department of Corrections, *supra* note 35.
[39] Department of Corrections, *2003-2004 Annual Report: Futch Bill – Ineligible Community Control Sentences*, http://www.dc.state.fl.us/pub/annual/0304/futch.html (last visited April 3, 2008).
[40] Department of Corrections, *2006-2007 Annual Report: Futch Act – Ineligible Community Control Sentences*, http://www.dc.state.fl.us/pub/annual/0607/futch.html (last visited April 3, 2008).
[41] Department of Corrections, *supra* note 35.

than those 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. The department's turnover rate has climbed significantly since state fiscal year 2002-2003.[42]

Current law 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.[43]

Section 943.16(2)(b), F.S., further provides that a trainee terminating employment shall reimburse the employing agency for the wages and benefits paid during the training period. The Department of Correction's Office of the General Counsel has conducted a thorough analysis of this provision, which was enacted in 2003.[44] The office concludes that any attempt to recover the full salary of trainees who leave at any time is a violation of the Fair Labor Standards Act, which provides for a minimum wage for such employees. In addition, the U.S. Department of Labor has issued regulation 29 C.F.R. s. 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."[45]

III. Effect of Proposed Changes:

Mental Health Act (Sections 1, 8-16)

The bill makes substantive and organizational changes to provisions relating to the Corrections Mental Health Act, ss. 945.40-945.49, F.S.

The bill amends s. 120.57, F.S., to provide that, in a proceeding relating to an inmate's continued placement in a correctional mental health institute pursuant to s. 945.45, F.S., the administrative law judge may appoint a private pro bono attorney from the circuit in which the treatment facility is located to represent the inmate. It is not immediately clear from what source or pool the administrative law judge will draw for the purposes of making the appointments.

The bill removes the requirement for the department to contract with the Department of Children and Family Services for the provision of mental health services in any departmental mental health treatment facility and authorizes the department to contract with "entities" to provide these services. The bill does not define the term "entities" for purposes of this authority.

For purposes of the Corrections Mental Health Act, the bill creates a definition of "crisis stabilization care," which is a less intensive and restrictive level of care than is provided in a mental health treatment facility. The bill also broadens the definition of the term "mental health treatment facility" beyond the Corrections Mental Health Institution to include any extended treatment or hospitalization unit within the corrections system designated by department rule to

[42] Department of Corrections, *supra* note 2, at 8-9.
[43] Section 943.16, F.S.
[44] Section 1, ch. 2003-264, L.O.F. (amending s. 943.16, F.S.).
[45] Department of Corrections, *supra* note 2, at 9.

provide acute psychiatric care. The term includes involuntary treatment and therapeutic intervention.

The bill changes the definition of "psychologist" 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.

The bill amends s. 945.43(3)(a), F.S., 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, the bill allows the inmate's counsel to have access to the inmate and records that are relevant to the representation of the inmate. Similarly, a court and administrative law judge, respectively may waive the presence of the inmate under similar conditions in a hearing regarding treatment and continued placement, under ss. 945.48 and 945.45, F.S.

Numerous organizational and language changes are made by the bill to the Corrections Mental Health Act, which the department reports are designed to more accurately reflect the stages of the inmate mental health treatment process – including placement hearings, treatment hearings, and continued placement hearings – and to improve readability of the statutory provisions.

Cellular Security (Section 7)

The bill adds cellular telephones and portable communication devices to the list of contraband items prescribed in s. 944.47, F.S. Under the terms of that statute, a person who introduces these items into a prison or possesses them on prison grounds without prior authorization or consent commits a felony of the third degree. Persons affected by this portion of the bill would include department staff, inmates, and visitors.

Restoration of Civil Rights (Sections 3 and 6)

The bill amends ss. 940.061 and 944.293, F.S., to specify that the department's monthly submission to the Florida Parole Commission of the names of inmates released from incarceration and offenders terminated from supervision during the preceding month satisfies compliance with the 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. The department notes that the bill maintains practices that help expedite the restoration of civil rights process and that the amendments to ss. 940.061 and 944.293, F.S., codify the department's existing practice.

Youthful Offenders (Sections 5, 19, 20, and 21)

The bill directs the department to house inmates who are under 18 years of age in a youthful offender facility until they reach 18, or up until age 21 if the department determines it is in the best interests of the inmates, even though the inmate has not been deemed a youthful offender.

Current law does not allow the mixing of certain young adult offenders and youthful offenders. Under current law, these young adult offenders were not sentenced by the court or classified by the department as youthful offenders within the meaning of ch. 958, F.S., and must be housed separately from all other inmates. The department believes, however, that young adult 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.

Currently, under s. 958.04, F.S., a court may sentence a person as a youthful offender if, among other criteria, the person is guilty of a felony *committed* before the defendant's 21st birthday. The bill tightens this particular criterion by requiring that the person must be younger than 21 at the time *sentence is imposed*.

The bill provides for the department's rule-making authority to define what constitutes successful participation in the youthful offender program. Under existing statute, "successful participation" may result in the department recommending to the court a modification or early termination of probation, community control, or the sentence prior to its scheduled expiration.[46]

Section 958.11(2), F.S., provides that female youthful offenders may be housed at 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. The bill removes the names of specific facilities to accommodate past and future changes.

The bill also deletes obsolete references to the "Assistant Secretary for Youthful Offenders" and replaces them with the word "department" in multiple provisions of s. 958.11, F.S.

The bill eliminates a requirement under s. 958.12(3), F.S., for a youthful offender to be visited by a probation and parole officer prior to the youth's release in order to facilitate his or her transition.

Current law requires the department to develop community partnerships to provide post-release resources to youthful offenders. The statute specifically identifies some organizations with whom the department must partner, including community health agencies, school systems, and certain named state agencies. The bill deletes the specific references in s. 958.12, F.S., to the Department of Labor and Employment Security, which no longer exists, and the Department of Children and Family Services and instead refers broadly to partnerships with "state agencies." It also requires the department to partner with "private agencies" for the provision of these services. The bill does not define the term "private agencies." The department reports that private agencies could include halfway houses, private work-release centers, faith-based organizations, or other privately run centers providing transitional services.

[46] Section 958.04(2)(d), F.S.

The bill corrects the reference in existing s. 958.12(5), F.S., to supervision by a "probation and parole officer," to make it a "correctional probation officer."

Community Control (Sections 2, 17, and 18)

The bill allows 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. Specifically, the bill removes the current prohibition under s. 921.187(2), F.S., from placing an offender on community control if he or she is convicted of a forcible felony and was previously convicted of a forcible felony. Thus, the bill provides judges with the discretion to use the sentencing option of community control, which the department reports to be more intensive and appropriate for certain forcible felons.

In other substantial changes to the community control statutes, the bill eliminates current requirements for the department to notify – either at the direction of the court or upon request in writing – law enforcement and the victim of the offense when a person is placed on community control. The bill also eliminates the requirement for the department to develop and implement diagnostic procedures at intake and for the development of a manual and training programs on implementation of community control.

Tuition Reimbursement (Section 4)

The bill removes provisions from s. 943.16, F.S., which require trainees who terminate employment within a specified period of time of the training program to reimburse the employing agency for wages and benefits paid during the training period. The department maintains these provisions conflict with the Federal Fair Labor Standards Act.

This change 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 reports that it 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.

Effective Date

The bill provides an effective date of October 1, 2008.

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 bed-space impact from the provision making it a third-degree felony to possess or introduce a cellular telephone into a prison.

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 solely for the 15 young adult offenders who currently must be housed separately from other inmates, 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 does not anticipate a 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/CS/CS by Judiciary on April 8, 2008:
The committee substitute:

- Clarifies the provisions authorizing the Department of Corrections to house certain inmates under 18 years of age in a facility for youthful offenders, even though they were not sentenced or do not otherwise qualify as youthful offenders.
- Specifies, within the statutory section governing continued placement of inmates in a mental health facility, that the administrative law judge may appoint a private pro bono attorney to represent the inmate at the continued-placement hearing. This language duplicates a similar provision in the portion of the bill amending the statutory section governing administrative hearings under ch. 120, F.S.

CS/CS by Children, Families, and Elder Affairs on March 26, 2008:
The committee substitute adds a provision that an administrative law judge may appoint a private pro bono attorney in a continued placement proceeding, from the circuit in which the treatment facility is located, to represent an inmate.

CS by Criminal Justice on March 11, 2008:

- Public defenders are not required to represent inmates during hearings on placement or continued placement in a mental health treatment facility.
- The department's "not less than 10%" staff and resource commitment to parole and probation has been reinstated.

B. Amendments:

None.

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