

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5203      PCB JUAS 15-02      Sentencing  
**SPONSOR(S):** Justice Appropriations Subcommittee, Burgess, Jr.  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

| REFERENCE                                        | ACTION    | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--------------------------------------------------|-----------|-----------|------------------------------------------|
| Orig. Comm.: Justice Appropriations Subcommittee | 10 Y, 0 N | McAuliffe | Lloyd                                    |
| 1) Appropriations Committee                      | 24 Y, 1 N | McAuliffe | Leznoff                                  |

### SUMMARY ANALYSIS

Section 775.08(1), F.S., defines the term “felony” as any criminal offense that is punishable under the laws of Florida, or that would be punishable if committed in Florida, by death or imprisonment in the state penitentiary. “State penitentiary” includes state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which exceeds one year. All felonies are punishable by incarceration in state prison. A person who receives a sentence of a year or less for a felony serves that sentence in a county jail.

This bill provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The offender’s total sentence points score, as provided in s. 921.0024, F.S., is more than 44 points but no more than 60 points.
- The offender’s primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass).
- The offender’s primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The court may only sentence an offender to a county jail pursuant to this bill if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections.

The Department of Corrections (DOC) must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The bill provides all contracts are contingent upon a Specific Appropriation in the General Appropriations Act. Contracts will be awarded by DOC on a first-come first-served basis and DOC must assume maximum annual value of each contract when determining the full utilization of funds appropriated.

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this bill. The bill also limits the award of contracts to the amount appropriated. (See Fiscal Impact)

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 775.08(1), F.S., the term “felony” means any criminal offense that is punishable under the laws of Florida, or that would be punishable if committed in Florida, by death or imprisonment in the state penitentiary. “State penitentiary” includes state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which exceeds one year. All felonies are punishable by incarceration in state prison. A person who receives a sentence of a year or less for a felony serves that sentence in a county jail.

##### **Effect of the Bill**

This bill provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The offender’s total sentence points score, as provided in s. 921.0024, F.S., is more than 44 points but no more than 60 points.
- The offender’s primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass).
- The offender’s primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The DOC must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county’s most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

A specific appropriation category (“Inmates Sentenced to County Jail”) is created within the House proposed Fiscal Year 2015-16 GAA and appropriated \$5,845,415 to fund the incarceration of offenders sentenced under this bill. In addition to the appropriation, the bill authorizes the department to transfer funds into this specific category in order to fulfill DOC’s contractual per diem obligation which may not exceed DOC’s average male or female total per diem published for the preceding fiscal year. This allows DOC flexibility in the amount they must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jail is unknown. The \$5,845,415 appropriation will fund the remaining contract amount not to exceed a per diem of \$60. The maximum appropriation allowable would be the appropriated funds plus any funds that are transferred from other DOC categories to fulfill DOC’s contractual per diem obligation.

Any contract executed as provided in this bill is contingent upon a specific appropriation in the General Appropriations Act (GAA). Contracts must be awarded by DOC on a first-come, first-served basis up to the maximum appropriation.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 950.021, F.S., relating to sentencing to a county jail in the county where the offense was committed.

Section 2. Provides an effective date of July 1, 2015.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill provides DOC must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this bill. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The DOC's most recent annual adult male custody per diem rate is \$43.03, and the bill limits the total per diem to \$60. Most County detention facilities per diem rates are above the \$60 rate, therefore the state will be responsible for paying that additional amount of the total per diem up to \$60. For instance, if a county per diem is \$60 and the county chooses to contract with DOC for 100 inmates, the total daily cost would be \$6,000 per day; \$4,303 (\$43.03 per inmate per day) of that would be the cost DOC would have expended if those prisoners were sentenced to state prison. The remaining would be paid from the funds provided in the specific appropriation category "Inmates Sentenced to County Jail."

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Counties with excess jail capacity that have a contract with DOC will benefit from the state paying the cost of incarceration.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create the need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**