

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1068

INTRODUCER: Senator Brandes

SUBJECT: Sentencing

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1068 authorizes a court to sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets the following criteria:

- The offender's total sentence points are more than 44 points, but no more than 60 points;
- The offender's primary offense is not a forcible felony, except that an offender whose primary offense is a third degree felony burglary or trespass offense is eligible to be sentenced to a county jail; or
- The offender's primary offense is not punishable by a minimum mandatory sentence exceeding 24 months.

The court may only sentence an offender to a county jail under the bill if there is a contractual agreement between the chief correctional officer of the county and the Department of Corrections (DOC). The DOC must enter into such contract upon the request of a chief correctional officer. Contracts are to be awarded by the DOC on a first-come, first-served basis. 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 that all contracts are contingent upon a specific appropriation in the General Appropriations Act. The Auditor General and the Department of Corrections may experience significant expenditures to implement the bill. See Section V. Fiscal Impact Statement.

II. Present Situation:

The Criminal Punishment Code and Sentencing

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury.

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. Absent mitigation,⁵ 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.⁶

Length of Stay

According to a recent study of the operations of the Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average (30 months). LOS has consistently increased in Florida "from just under 30 months on average in 2008 to almost 40 months by 2015."⁷ According to the study's authors, the longer average LOS in Florida "explains to a large degree Florida's significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000."⁸

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on March 23, 2017).

³ 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.

⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁵ 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.

⁶ 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.

⁷ Study of Operations of the Florida Department of Corrections (prepared by Carter Goble Associates, LLC), Report No. 15-FDC (November 2015), Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited on March 23, 2017).

⁸ *Id.*

Departure from a Code Sentence

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony,⁹ and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

Alternative Sentencing

An offender with a sentence in excess of one year typically serves his or her sentence in a state correctional facility operated by the Department of Corrections (DOC);¹⁰ however, other options are statutorily authorized and sometimes available. These include placement in a:

- Prison diversion program for offenders who meet certain criteria, including a requirement to have no more than 54 total sentence points.¹¹
- Local detention facility if the offender's sentence is between 366 days and 22 months and there is a contract between the DOC and the chief correctional officer for the applicable county.¹²
- Imprisonment in county jail if the total of the prisoner's cumulative sentences is not more than one year.¹³
- County work camps operated under a county/state contractual arrangement.¹⁴
- County or municipal facility pursuant to a contract between the DOC and such facility. Section 944.171, F.S., authorizes the DOC to contract with county or municipal facilities for the purpose of housing inmates. The DOC indicates that such contractual arrangements have been used as recently as FY 2011-2012, with Franklin, Washington, and Lafayette Counties.¹⁵

⁹ 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.

¹⁰ Section 921.0024(2), F.S.

¹¹ Section 921.00241, F.S. The court may sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the DOC.

¹² Section 921.188, F.S.

¹³ Section 922.051, F.S.

¹⁴ Section 950.002, F.S.

¹⁵ Department of Corrections, *Senate Bill 1068 Analysis* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

III. Effect of Proposed Changes:

Sentencing of Offenders to County Jail

Effective July 1, 2017, the bill authorizes a court to sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets all of the following criteria:

- The offender's total sentence points on the Code worksheet are 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., except that an offender whose primary offense is a third degree felony under ch. 810, F.S., entitled "Burglary and Trespass," is eligible to be sentenced to a county jail.
- The offender's primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The bill provides that the court may only sentence an offender meeting the above-referenced criteria to county jail if there is a contract for the applicable county between the county's chief correctional officer and the DOC.

The DOC must enter into a contract with a county when requested by the county's chief correctional officer. 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 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

A contract is contingent upon a specific appropriation in the General Appropriations Act. Contracts must be awarded by the DOC on a first-come, first-served basis up to the maximum appropriation. The maximum appropriation allowable consists of funds appropriated in or transferred to the specific appropriation category created by the bill entitled "Inmates Sentenced to County Jail" (ISCJ).

In addition to an appropriation, the bill authorizes the DOC to transfer funds into the ISCJ specific appropriation category to fulfill DOC's contractual per diem obligation that may not exceed the DOC's average male or female total per diem published for the preceding fiscal year. This allows the DOC flexibility in the amount it must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jails is unknown. 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. All contractual per diem rates as well as per diem rates used by the DOC must be validated by the Auditor General.

The bill is effective July 1, 2017.

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:

The DOC states that the bill may result in the elimination of privately operated community release center contracts if the DOC is required to contract with the sheriffs for the inmates currently served by these contracts.

C. Government Sector Impact:

The Auditor General states additional staff would be needed to meet the bill's requirements of validating per diem rates used by the Department of Corrections.¹⁶

Based on inmate admissions for Fiscal Year 2015-16, the DOC found that there were approximately 4,200 inmates that met criteria in the bill. The loss of this number of inmates could impact bed space usage (custody), inmate work squads, community release programs, institutional inmate work, and program assignments.¹⁷

For Fiscal Year 2015-2016 the per diem for all DOC facilities excluding private facilities is \$53.49. This is an average of the adult male per diem of \$48.28 and female per diem of \$57.06. The per diem accounts for the operation of a full facility including expenditures for security, and other support staff, utilities, maintenance, insurance, medical, and education.¹⁸

¹⁶ Auditor General, *HB 157 Analysis* (January 23, 2017) (on file with the Senate Committee on Criminal Justice).

¹⁷ Department of Corrections, *Senate Bill 1068* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

¹⁸ *Id.*

The bill provides 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 per inmate. The DOC provided the following fiscal information for potential funding consideration when the population would warrant the various operating per diems.¹⁹

Fiscal Based on 730 Days (24 months)				
% Inmates	ADP ²⁰	FDC Cost	Additional Cost Incurred to Implement	Total Cost to Implement
75%	3150	\$123,000,255	\$14,969,745	\$137,970,000
50%	2100	\$82,000,170	\$9,979,830	\$91,980,000
25%	1050	\$24,420,690	\$21,569,310	\$45,990,000
20%	840	\$9,756,012	\$27,035,988	\$36,792,000
15%	630	\$7,317,009	\$20,276,991	\$27,594,000
10%	420	\$4,878,006	\$13,517,994	\$18,396,000
5%	210	\$2,439,003	\$6,758,997	\$9,198,000

Fiscal Based on 547 Days (18 months)				
% Inmates	ADP	FDC Cost	Additional Cost Incurred to Implement	Total Cost to Implement
75%	3150	\$92,165,945	\$11,217,056	\$103,383,000
50%	2100	\$61,443,963	\$7,478,037	\$68,922,000
25%	1050	\$18,298,791	\$16,162,209	\$34,461,000
20%	840	\$7,310,327	\$20,258,473	\$27,568,800
15%	630	\$5,482,745	\$15,193,855	\$20,676,600
10%	420	\$3,655,163	\$10,129,237	\$13,784,400
5%	210	\$1,827,582	\$5,064,618	\$6,892,200

Fiscal Based on 365 Days (12 months)				
% Inmates	ADP	FDC Cost	Additional Cost Incurred to Implement	Total Cost to Implement
75%	3150	\$61,500,128	\$7,484,873	\$68,985,000
50%	2100	\$41,000,085	\$4,989,915	\$45,990,000
25%	1050	\$12,210,345	\$10,784,655	\$22,995,000
20%	840	\$4,878,006	\$13,517,994	\$18,396,000
15%	630	\$3,658,505	\$10,138,496	\$13,797,000
10%	420	\$2,439,003	\$6,758,997	\$9,198,000
5%	210	\$1,219,502	\$3,379,499	\$4,599,000

¹⁹ *Id.*

²⁰ ADP is average daily population.

Fiscal Based on 182 Days (6 months)				
% Inmates	ADP	FDC Cost	Additional Cost Incurred to Implement	Total Cost to Implement
75%	3150	\$30,665,817	\$3,732,183	\$34,398,000
50%	2100	\$20,443,878	\$2,488,122	\$22,932,000
25%	1050	\$6,088,446	\$5,377,554	11,466,000
20%	840	\$2,432,321	\$6,740,479	9,172,800
15%	630	\$1,824,241	\$5,055,359	6,879,600
10%	420	\$1,216,160	\$3,370,240	4,586,400
5%	210	\$608,080	\$1,685,120	2,293,200

VI. Technical Deficiencies:

The bill does not specify if the inmates sentenced to county jail will be required to serve 85 percent of the sentence. Without this provision, the bill could result in inmates sentenced to county jails serving less than 85 percent of the sentence imposed. Section 951.21, F.S., provides counties the discretion to reduce the time an inmate must serve by the award of gain time.

The DOC states that because of the discretionary authority afforded the county, the actual percentage of a sentence an inmate will serve may vary depending on local policies and interpretations of the statute. The DOC further explains that it is clear that the maximum amount of a sentence that could be satisfied by gain time is 25 percent, meaning the inmate would serve 75 percent of the sentence.²¹

Section 951.21(1), F.S., authorizes the county to grant up to 5 days per month for the first 2 years of a sentence “when no charge of misconduct has been sustained against a county prisoner.” Section 951.21(3), F.S., authorizes “an extra good-time allowance for meritorious conduct or exceptional industry not to exceed 5 days per month.” If an inmate earns the maximum allowable award under these statutes of 10 days per month, the sentence could be reduced by up to 25 percent by virtue of the application of gain time.²²

VII. Related Issues:

It appears that any contract between the DOC and a county would be limited to one year; however, inmates under this section could be sentenced to up to 24 months. “The bill does not address what would happen to the inmate’s sentence or confinement if a contract is revised or cancelled and the inmate’s service of sentence is still active after the contract cancellation.”²³

The DOC also notes that “the bill states that the court will ‘sentence’ the offender to county jail, which means that the court will impose a sentence and also determine where the offender will serve the sentence. The bill language creates confusion as to whether the offender is being

²¹ Department of Corrections, *Senate Bill 1068 Analysis* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

²² *Id.*

²³ *Id.*

committed to the Department and housed in the county jail, or whether the offender is being committed to the county.”²⁴

VIII. Statutes Affected:

This bill creates section 950.021 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²⁴ *Id.*