

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1201 Department of Corrections

SPONSOR(S): Justice Appropriations Subcommittee, Criminal Justice Subcommittee; Gonzalez

TIED BILLS: HB 1203 **IDEN./SIM. BILLS:** CS/CS/SB 1604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N, As CS	Merlin	White
2) Justice Appropriations Subcommittee	15 Y, 0 N, As CS	Smith	Gusky
3) Judiciary Committee	17 Y, 0 N	Merlin	Camechis

SUMMARY ANALYSIS

The bill amends statutes relating to the operation of the state prison system, including:

Confidential Information: Florida law is more restrictive than federal law regarding the disclosure of a patient's protected health information (PHI). The bill amends s. 943.04, F.S., to authorize the Florida Department of Law Enforcement (FDLE) to receive PHI, medical records, or mental health records of an inmate from FDC upon written demand when FDLE is conducting an investigation or assisting FDC in the investigation of an injury to or death of an inmate in the custody or control of FDC.

Criminal Procedure and Corrections: Section 944.151, F.S., currently provides that the Secretary of FDC is required to appoint a security review committee, composed of specified individuals, to conduct announced and unannounced inspections of existing buildings and facilities, as well as security audits. The bill amends the statute so that it removes the requirement that the committee be composed of specified individuals and instead permits the FDC Secretary to designate appropriate department staff. The bill clarifies the responsibilities and duties of the committee and the requirements for audits and inspections.

Commitment Documents: Under current Florida law, the documentation required for FDC to accept a prison is provided in paper form. The bill allows such documentation to be provided electronically.

Educational Gain-Time: The bill authorizes inmates sentenced on or after October 1, 1995 to receive an award of 60 days of gain-time for completing a high school diploma or vocational certificate.

Transportation by Private Transport Company: Current law requires a FDC contract for private prisoner transport to require company employees to meet the minimum standards for a correctional or law enforcement officer. The bill amends the statute to model federal law, which specifies other training requirements.

Contracted Drug Testing: The bill includes employees at community correctional centers among the list of designated individuals that can perform urine drug testing if certified by FDC.

Youthful Offenders: The bill amends s. 958.11, F.S., to make the statute comport with the Prison Rape Elimination Act.

The FDC estimates that educational gain time component of the bill would decrease department expenditures by \$499,415. The bill does not appear to have fiscal impact on local governments.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Medical Privacy under Federal Law

Federal law provides a right to privacy for health and medical records under the Health Insurance Portability and Accountability Act (HIPAA).¹ The HIPPA Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information (PHI), by covered entities.²

Although many disclosures about an individual's health and medical records are private under HIPPA, there are exceptions that are applicable to health and safety, protection of the public, protection of law enforcement, and the furtherance of investigations.³ These exceptions also include correctional facilities,⁴ where disclosure of PHI for inmates and other covered individuals is permitted if it is necessary for:

- The provision of health care to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.

Under HIPPA, a covered entity that is a correctional institution may use the PHI of individuals who are inmates for any purpose for which such information may be disclosed.⁵

The HIPPA Privacy Rule establishes a baseline or "floor" of privacy protections for PHI, not a "ceiling." Where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect.⁶

Currently, Florida law affords greater privacy protection than HIPPA. Section 945.10(2)(g), F.S., only allows FDC to share the record of an inmate or offender's mental, medical, and substance abuse information in one circumstance – to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to HIV. Section 456.057(7), F.S., in turn, provides limited exceptions for sharing records. While HIPPA permits limited sharing for specified purposes, FDC is presently unable to share such information under Florida law without a court order, subpoena, or inmate consent.

¹ Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-91, 110 Stat. 1936 (1996).

² *Summary of HIPPA Privacy Rule*, United States Department of Health and Human Services, May 2003, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (Last viewed April 11, 2017); see also *HIPPA for Professionals*, United States Department of Health and Human Services, available at <https://www.hhs.gov/hipaa/for-professionals/> (Last viewed April 11, 2017).

³ See generally 45 C.F.R. 164.512.

⁴ 45 C.F.R. 164.512(k)(5)(i)(A)-(F).

⁵ 45 C.F.R. 164.512(k)(5)(ii).

⁶ 45 C.F.R. 160.201-05.

Florida Department of Law Enforcement

The Florida Department of Law Enforcement (FDLE) is a statewide law enforcement agency headquartered in Tallahassee, Florida.⁷ FDLE's primary mission is "[t]o promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors."⁸ As authorized by s. 943.03, F.S., FDLE provides assistance to federal, state, and local criminal justice agencies.⁹

Section 943.04, F.S., creates the Criminal Justice Investigations and Forensic Science Program (CJIFSP). The purpose of CJIFSP is to provide "forensic analysis, criminal investigations, and public security to prevent, investigate, and solve crime. It conducts independent criminal investigations that target crime and criminal organizations whose illegal activities cross jurisdictional boundaries, include multiple victims, or represent a major public safety concern to the state. It also commits investigative resources to initiatives that address a statewide public safety priority or provide expertise or assistance to Florida's law enforcement community. The program also provides forensic analysis of evidentiary materials to aid in the investigation and prosecution of criminal offenses."¹⁰

Currently, whenever FDLE is investigating or assisting FDC in an investigation, and an FDC inmate does not or cannot agree to release their PHI (such as in the case of injury, unconsciousness, unresponsiveness, or death), FDLE must produce or obtain a HIPPA compliant subpoena¹¹ or a search warrant. Once FDC receives the subpoena or search warrant, FDC will provide the PHI, medical records, or mental health records of an FDC inmate.

Effect of the Bill

The bill amends s. 943.04, F.S., adding subsection (6) to authorize FDLE to receive inmates' PHI, medical records, or mental health records from FDC upon written demand when FDLE is conducting an investigation or assisting FDC in the investigation of an injury to or death of an inmate in the custody or control of FDC. The information is to be used for the limited purpose for which the records were requested.

The bill provides that the investigative demand must be specific and limited in scope to the extent reasonably practicable in light of the purpose for which the PHI or records are sought and must include a certification that:

- The PHI or records sought are relevant and material to a legitimate law enforcement inquiry;
- There is a clear connection between the investigated incident and the inmate whose PHI and records are sought; and
- De-identified information could not reasonably be used.

Security Review Committee

Section 944.151, F.S., currently provides that the Secretary of FDC¹² is required to appoint a security review committee. At a minimum, s. 944.151, F.S., requires that the committee be composed of: "the

⁷ Florida Department of Law Enforcement Website, *Contacts*, available at <http://www.fdle.state.fl.us/cms/Contacts.aspx> (last viewed April 11, 2017).

⁸ Office of Program Policy Analysis and Governmental Accountability, *GPS Government Program Studies, Department of Law Enforcement* ("OPPAGA FDLE Report Summary"), Mar. 6, 2017, available at <http://www.oppaga.state.fl.us/profiles/1075> (last viewed April 11, 2017).

⁹ *Id.*

¹⁰ Office of Program Policy Analysis and Governmental Accountability, *GPS Government Program Studies, Department of Law Enforcement, Criminal Investigations and Forensic Science* ("OPPAGA CJIFSP Report Summary"), May 31, 2016, available at <http://www.oppaga.state.fl.us/profiles/1061/> (last viewed April 11, 2017).

¹¹ See U.S. Department of Health and Human Services Website, *Court Orders and Subpoenas*, available at <https://www.hhs.gov/hipaa/for-individuals/court-orders-subpoenas/index.html> (last viewed April 11, 2017).

¹² The current Secretary of the Florida Department of Corrections is Julie L. Jones. See Website for the Florida Department of Corrections, available at <http://www.dc.state.fl.us/secretary/> (last viewed April 11, 2017).

inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer.”¹³ The committee is required to:

1. Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution. Such schedule must give priority to older institutions, institutions housing a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts.¹⁴
2. Conduct both announced and unannounced annual security audits and operational reviews of all state and private correctional institutions.¹⁵ In conducting such audits, priority must be given to older institutions, institutions housing a large proportion of violent offenders, and institutions with a history of escapes or escape attempts. The audit must include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies. The secretary must report the general survey findings annually to the Governor and the Legislature.
3. Adopt and enforce minimum security standards that include: (a) random monitoring of outgoing telephone calls by inmates; (b) maintenance of current photographs of all inmates; (c) daily inmate counts at varied intervals; (d) use of canine units, where appropriate; (e) use of escape alarms and perimeter lighting; (f) Florida Crime Information Center/National Crime Information Center capabilities; (g) employment background investigations.¹⁶
4. Annually make written prioritized budget recommendations to the Secretary that identifies critical security deficiencies at major correctional institutions.¹⁷
5. Investigate and evaluate the usefulness and dependability of existing security technology at the institutions and new technology available and make periodic written recommendations to the Secretary on the discontinuation or purchase of various security devices.¹⁸
6. Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts the committee deems necessary for security audits and security consultant services.¹⁹

In addition to appointing the security review committee, the Secretary is required to:

- Maintain and produce quarterly reports with accurate escape statistics. For the purposes of these reports, “escape” includes all possible types of escape, regardless of prosecution by the state attorney, and including offenders who walk away from nonsecure community facilities;
- Adopt, enforce, and annually evaluate the emergency escape response procedures, which shall at a minimum include the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement; and
- Submit in the annual legislative budget request a prioritized summary of critical repair and renovation security needs.

Effect of the Bill

The bill amends s. 944.151, F.S., to clarify that the focus of the statute pertains both to the safe operation and security of correctional institutions and facilities.

The bill amends s. 944.151(1), F.S., to remove the requirement that the security review committee be composed of specified individuals and instead permits the FDC Secretary to appoint “appropriate department staff” to the committee. The bill changes the name of the committee to the “safety and security review committee” (“committee”).

¹³ s. 944.151(1), F.S.

¹⁴ s. 944.151(1)(a), F.S.

¹⁵ s. 944.151(1)(b), F.S.

¹⁶ s. 944.151(1)(c), F.S.

¹⁷ s. 944.151(1)(d), F.S.

¹⁸ s. 944.151(1)(e), F.S.

¹⁹ s. 944.151(1)(f), F.S.

The bill provides that the committee shall:

- Evaluate new safety and security technology;
- Review and discuss current issues impacting state and private correctional institutions and facilities; and
- Review and discuss other issues as requested by department management.

The bill removes the requirement that the committee itself conduct the activities discussed in 1. through 6. above, and the additional responsibilities of the Secretary, and, instead, provides that the committee shall direct appropriate department staff to conduct those activities. The bill amends the activities discussed above:

- In 1., by adding to the list of priorities for the scheduling of inspections, institutions and facilities that have experience a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.
- In 2., by repealing current law's list of priorities for the conduct of audits, and instead providing that the audits shall give priority to institutions and facilities that have experience a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse. The bill also adds that the audit must evaluate confinement, arsenal, key and lock, and entrance and exit policies. The bill repeals the requirement for the audit to address inmate classification and staffing policies, and adds that the evaluation of physical plant policies must identify blind spots or areas where staff or inmates may be isolated and the deployment of video or other monitoring systems in those areas.
- In 3., by moving the minimum safety and security standards to a different subsection.
- In 4., by repealing the requirement to make annual written prioritized budget recommendations that identify critical security deficiencies at major correctional institutions.
- In 5., by clarifying that staff should investigate and evaluate the usefulness and dependability of existing safety and security technology at state and private correctional institutions and facilities; investigate and evaluate new available safety and security technology; and make periodic written recommendations to the Secretary on the discontinuation or purchase of various safety and security devices.
- In 6., by clarifying that the provision regarding contracting includes safety and security experts and safety and security consulting services.

The bill directs appropriate department staff to review staffing policies and practices as needed, and adds that such staff must submit in the annual legislative budget request a prioritized summary of critical "safety and security deficiencies" and repair and renovation security needs.

Transmittal of Required Commitment Documents Electronically

When a person has been sentenced to prison, county jail personnel receive the documents required for FDC to accept an inmate from the clerk of court. Transport officers then provide this documentation, in paper form, to staff at the receiving reception facility at the time the inmate is transported.

Section 944.17(5), F.S., currently provides that FDC must refuse to accept a person into the state correctional system unless the required documentation is provided to the officer in charge of the reception process.

Effect of the Bill

The bill amends s. 944.17(5), F.S., to clarify that documents required to lawfully receive a prisoner into FDC custody may be transmitted electronically. Specifically, the bill provides, "The department may, at its discretion, receive such documents electronically."

Gain-Time

Currently, FDC may grant inmates incentive gain-time for each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.²⁰ Inmates earn incentive gain-time at the rate that was in effect on the date the inmate committed the offense which resulted in his or her incarceration.²¹ For offenses committed on or after October 1, 1995, FDC may grant up to 10 days per month of incentive gain-time, but the total amount of incentive gain-time cannot result in release of an inmate before he or she serves a minimum of 85 percent of his or her sentence.²² Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes²³ are not entitled to gain-time.²⁴ When an inmate is found guilty of a violation of the laws of the state or FDC rules, gain-time may be forfeited.²⁵

Educational Gain-Time

Currently, s. 944.275(4)(d), F.S., authorizes a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. An eligible inmate includes one who was:

- Sentenced for offenses committed prior to January 1, 1994; and
- Sentenced for offenses committed on or after January 1, 1994 and before October 1, 1995.

At present, inmates who were sentenced to prison on or after October 1, 1995 do not have the ability to receive an award of educational gain-time for completing such educational achievements.

Effect of the Bill

The bill amends s. 944.275(4)(d), F.S., to permit inmates who were sentenced to prison on or after October 1, 1995, to receive gain-time for completing such educational achievements. The bill creates s. 944.275(4)(f), F.S., which provides that such an inmate may not earn or receive gain-time or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed.

Transportation and Return of Prisoners

Sheriffs

Section 30.24(2)(a), F.S., provides that the sheriff²⁶ of any county in Florida is authorized to contract with private transport companies to transport prisoners both within and beyond the limits of this state.

Section 30.24(2)(b), F.S., provides that any company transporting a prisoner is considered an independent contractor and is solely liable for the prisoner while the prisoner is in the custody of the company. Further, any transport company contracting with a sheriff for the transportation of prisoners is required to be insured and provide no less than \$100,000 in liability insurance with respect to the transporting of the prisoners.

²⁰ s. 944.275(4)(b), F.S.

²¹ *Id.*

²² s. 944.275(4)(b)3., F.S.

²³ For example, inmates sentenced to a mandatory minimum term of imprisonment as a dangerous sexual felony offender are not eligible to receive gain-time. s. 794.0115(7), F.S.

²⁴ s. 944.275(4)(b)3., F.S.

²⁵ s. 944.275(5), F.S.

²⁶ In Florida, the “[S]heriff is a constitutional officer and a county administrative officer whose powers and duties are prescribed by statute like other county administrative officers, and he possesses such authority as has been expressly granted by statute or is necessarily implied in order to carry out some function expressly imposed or authorized by statute.” 06-06 Fla. Op. Att’y Gen. (2006); FLA. CONST. art. VIII, s. 1(d); s. 30.072(5), F.S. Sixty-six of Florida’s 67 counties have elected Sheriffs as their chief law-enforcement officers. The sole exception is Miami-Dade County, which appoints a Director to the Miami-Dade Police Department. *See* website for the Florida Sheriff’s Association, available at <https://www.flsheriffs.org/sheriffs/directory/> (last viewed April 11, 2017).

In addition, personnel employed by any transport company for the transportation of prisoners under s. 30.24(2)(b), F.S. are specifically exempted from:

- Any requirements of being appointed as deputy sheriffs;
- Providing bond; and
- Meeting requirements and training as provided by the Criminal Justice Standards and Training Commission for law enforcement and correctional officers.

Federal Regulation of Prisoner Transport Companies

At the federal level, there are for-profit transportation companies which assist in the extradition of prisoners, fugitives, and individuals with open arrest warrants. Such companies are governed by a 2000 law known as Jeanna's Act.²⁷ Under the Act, there are minimum standards for the length and type of training employees of private transport companies must undergo before they can transport prisoners. These standards include 100 hours of preservice training focusing on the transportation of prisoners. In addition, training is required for:

- Use of restraints;
- Searches;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary Resuscitation;
- Map reading; and
- Defensive driving.

FDC - Transportation and Return by Private Transport Company

Currently, section 944.597(1), F.S., provides that FDC is authorized to contract with private transport companies for the transportation of prisoners both within and beyond the limits of this state. Section 944.597(2)(b), F.S., provides that in any contract between FDC and a transport company, personnel employed with the transport company who are based in Florida are required to meet the minimum standards for a correctional or law enforcement officer in s. 943.13, F.S. Likewise, personnel employed with the transport company based outside of Florida are required to meet the minimum standards for a correctional officer or law enforcement officer in the state where the employee is based.²⁸

Effect of the Bill

The bill amends s. 944.597(2)(b), F.S., to change the minimum requirements of personnel employed by a transport company. Similar to federal law, the bill requires that employees of a transport company complete 100 hours of training before transporting prisoners. The bill provides that the curriculum for the training must be approved by FDC and must include instruction in:

- Use of restraints;
- Searches of prisoners;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary Resuscitation;
- Map reading; and
- Defensive driving.

Contracted Drug Testing

Section 944.033(1), F.S., provides that there is a statewide system of correctional facilities known as "community correctional centers" or "CCCs." Section 944.033(2), F.S., provides that "[t]he purpose of these centers is to facilitate the reintegration of state inmates back into the community by means of participation in various work-release, study-release, community service, substance abuse treatment, and other rehabilitative programs."

²⁷ Jeanna's Act of 2000, Pub. L. No. 106-560, 114 Stat. 2784, S. 1898, 106th Cong. (Dec. 21, 2000).

²⁸ s. 944.597(2)(b), F.S.

Currently, correctional officers in Florida perform inmate drug testing at contracted CCCs, rather than the employees at those sites; this may require a correctional officer to travel away from his institutional assignment or post. Section 945.36(1), F.S., provides:

Any law enforcement officer, state or county probation officer, or employee of FDC, who is certified by FDC pursuant to subsection (2), is exempt from part I of chapter 483, for the limited purpose of administering a urine screen drug test to:

- Persons during incarceration;
- Persons released as a condition of probation for either a felony or misdemeanor;
- Persons released as a condition of community control;
- Persons released as a condition of conditional release;
- Persons released as a condition of parole;
- Persons released as a condition of provisional release;
- Persons released as a condition of pretrial release; or
- Persons released as a condition of control release.²⁹

Section 945.36(2), F.S., provides that FDC is required develop a procedure for certification of any law enforcement officer, state or county probation officer, or employee of FDC to perform a urine screen drug test on such persons.³⁰ However, the statute does not provide authority for employees at CCCs to perform these tests.

Effect of the Bill

The bill amends s. 945.36(1) and (2), F.S., to include employees at contracted CCCs among the list of designated individuals that can perform a urine screen drug testing if they are certified by FDC.

Youthful Offenders

Florida Youthful Offenders

The Florida Youthful Offender Act (“the Act”)³¹ was enacted by the Legislature in 1978 to create “an alternative sentencing scheme available to judges when sentencing certain youthful criminal defendants.”³² The legislative intent of the Act is “to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by providing them with enhanced vocational, educational, counseling, or public service opportunities and by preventing their association with older and more experienced criminals during the terms of their confinement.”³³

Section 958.03(4), F.S., defines a “youthful offender” as “any person who is sentenced as such by the court or is classified as such by the department pursuant to s. 958.04.” Section 958.04, F.S., provides that a court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 years old but less than 21 years of age at the time of sentencing, or is under 18 years of age but was prosecuted as an adult pursuant to chapter 985, F.S.;
- Has been found guilty of or entered a plea of nolo contendere to a felony, unless he or she was found guilty of a capital or life felony; and
- Has not previously been classified as a youthful offender under the Act.³⁴

The court has four sentencing options for a youthful offender:

- Incarceration for no more than 364 days in a county facility, department probation and restitution center, or community residential center as a condition of community supervision;
- Community supervision;

²⁹ s. 945.36(1), F.S.

³⁰ s. 945.36(2), F.S.

³¹ ss. 958.011 – 958.015, F.S.

³² *Jackson v. State*, 137 So. 3d 470, 473 (Fla. 4th DCA 2014) (citing Ch. 78-84, Laws of Fla. and s. 958.04(1), F.S.).

³³ s. 958.021, F.S.

³⁴ s. 958.04(1)(1)(a)-(c), F.S.

- Incarceration; or
- A split sentence of incarceration and community supervision.

The total period of incarceration, community supervision, or a split sentence cannot be longer than six years or the maximum sentence for the offense if the maximum sentence is less than six years.³⁵

Classification as a Youthful Offender by the Department of Corrections

A defendant who is not sentenced as a youthful offender can still be classified and assigned as a youthful offender by FDC. Chapter 958, F.S., requires FDC to continuously screen all institutions, facilities, and programs for inmates who are less than 25 years old and who FDC believes should be classified and assigned as a youthful offender. Specifically:

- Section 958.045(8)(a), F.S., permits FDC to designate an inmate who is less than 25 years old as a youthful offender if he or she met the eligibility criteria to be sentenced as a youthful offender by the court pursuant to s. 958.04, F.S., but was not.
- Section 958.11(4), F.S., allows designation of an inmate who is less than 25 years old as a youthful offender if the inmate was ineligible for youthful offender sentencing by the court only because he or she was more than 21 years old at the time of sentencing, and the total sentence does not exceed 10 years.

Special Provisions for Juveniles or Vulnerable Young Adults

Some younger inmates are assigned to youthful offender facilities even though they cannot be designated as a youthful offender. FDC is required to assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender. Such an inmate may continue to be assigned to the youthful offender facility until reaching 22 years of age if FDC determines that it is in the inmate's best interests and that the assignment does not pose an unreasonable risk to other inmates in the facility.³⁶ FDC may also assign an inmate who is less than 20 years old, except a capital or life felon, to a youthful offender facility if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.³⁷

Youthful Offender Facilities

Section 958.11, F.S., requires FDC to designate separate institutions and programs for youthful offenders and requires personnel be specially qualified by training and experience to operate the institutions and programs. Male youthful offenders who are 14 through 18 years old must be separated from those who are older than 19. Separate institutions exist for each age group.³⁸ Female youthful offenders of all ages may be housed together due to the small numbers and lesser risk posed by combining age groups.³⁹ Only youthful offenders can be in the designated institutions and programs, with the exception of select adult offenders who may be assigned to a youthful offender facility under special circumstances.⁴⁰

Assignment of Youthful Offenders to Adult Facilities or Outside of Age Range

Section 958.11(3), F.S., limits the circumstances in which FDC can assign a youthful offender to an adult facility. These circumstances are:

- Conviction of a new felony under Florida law;
- Commission of serious violations of FDC rules to the point that the youthful offender becomes a serious management or disciplinary problem, and his or her presence would be detrimental to the interests of other youthful offenders and to the program;

³⁵ s. 958.04(2), F.S.

³⁶ s. 944.1905(5)(a), F.S.

³⁷ s. 958.11(6), F.S.

³⁸ s. 958.11(1), F.S. However, 18-year old youthful offenders can be assigned to a facility for 19-24 year olds if facilities designed for 14 to 18 year olds exceed 100 percent of lawful capacity.

³⁹ s. 958.11(2), F.S.

⁴⁰ *Id.*

- Need for medical treatment, health services, or other specialized treatment not available at the youthful offender facility; and
- Transfer outside of the state correctional system to receive services not provided by FDC.

There are several scenarios in which a youthful offender may be assigned to a youthful offender facility that is outside of his or her age range. A youthful offender who is over 18 years old may be retained in a 14 to 18 year old facility to which originally assigned if “the department determines that it is in the best interest of the youthful offender and the department.”⁴¹ Likewise, a youthful offender who was originally assigned to a facility designated for the 19-24 age group may be reassigned to a 14-18 year old age group facility if he is “mentally or physically vulnerable” with the older age group, and “the department determines that reassignment is necessary to protect the safety of the youthful offender or the institution.”⁴² On the other hand, a youthful offender can be moved up from a facility designated for the 14 to 18 year old age group to a facility for 19 to 24 year olds if he is “disruptive, incorrigible, or uncontrollable,” and “the department determines that a reassignment would serve the interests of the youthful offender and the department.”⁴³

Federal Prison Rape Elimination Act

In September 2003, Congress passed the Prison Rape Elimination Act (PREA),⁴⁴ which was created to eliminate sexual abuse in confinement facilities including adult prisons and jails, lockups, community confinement facilities, and juvenile facilities.⁴⁵ PREA includes 43 standards that define three clear goals: to prevent; detect; and respond to sexual abuse.⁴⁶ “The act also created the National Prison Rape Elimination Commission and charged it with developing draft standards for the elimination of prison rape.”⁴⁷ Those standards were published in June 2009, and were turned over to the Department of Justice for review and passage as a final rule.⁴⁸ That final rule became effective August 20, 2012.⁴⁹

In Florida, FDC “has established a zero-tolerance policy⁵⁰ for all forms of sexual abuse, sexual battery, and sexual harassment”⁵¹ based on PREA standards. “Zero-tolerance applies not only to incidents between inmates, but also to incidents involving staff members, contractors, and volunteers. The policy also encompasses an inmate, staff or volunteer’s right to be free from retaliation if they report an incident or participate in an investigation.”⁵² FDC has assigned a PREA coordinator and support staff to help in developing, implementing, and monitoring compliance with these standards.⁵³

Under PREA, the term:

- “Juvenile means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.”
- “Prison means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

⁴¹ s. 958.11(3)(f), F.S.

⁴² s. 958.11(3)(g), F.S.

⁴³ s. 958.11(3)(h), F.S.

⁴⁴ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79 (2003); see 42 U.S.C. § § 15601 et seq.

⁴⁵ See Florida Department of Corrections, *Prison Rape Elimination Act (PREA)* (“Florida PREA Information Description”), available at <http://www.dc.state.fl.us/oth/PREA/> (last viewed April 11, 2017).

⁴⁶ *Id.*

⁴⁷ 42 U.S.C. § 15606.

⁴⁸ See United States Department of Justice, *Prison Rape Elimination Act, Prisons and Jail Standards*, United States Department of Justice File Rule, May 17, 2012, available at <http://www.dc.state.fl.us/oth/PREA/PREAFinalStandards.pdf> (last viewed April 11, 2017); 28 C.F.R. part 115 et seq.; see also 42 U.S.C. § 15607.

⁴⁹ National PREA Resource Center, *Prison Rape Elimination Act*, available at <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea> (last viewed April 11, 2017).

⁵⁰ 42 U.S.C. § 15602.

⁵¹ Florida PREA Information Description, *supra* note 45.

⁵² *Id.*

⁵³ *Id.*

- Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.⁵⁴

PREA requires that offenders under the age of 18 be housed separately from adults in correctional facilities. Specifically:

- A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.⁵⁵
- In areas outside of housing units, agencies shall either:
 - Maintain sight and sound separation between youthful inmates and adult inmates; or
 - Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.⁵⁶

Further, agencies are required to make “best efforts to avoid placing youthful inmates in isolation to comply with this provision.”⁵⁷ “Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.”⁵⁸

As described above, FDC identifies youthful offenders in two age groups: those who are 14 to 18 years of age and those who are 19 to 24 years of age. Under PREA, however, inmates who are under 18 years of age must be housed separately from adults. As a result of these requirements, FDC has reported that it currently maintains separate housing for those inmates who are 17 years of age or younger; those who are 18 years of age; and those who are 19 to 21 years of age.⁵⁹

Effect of the Bill

The bill amends s. 958.11, F.S., relating to the assignment of youthful offenders at institutions and programs to align with PREA guidelines regarding age groups for youthful offenders. Specifically, the bill amends s. 958.11(1), F.S., to decrease the maximum age limits in that section. Under the bill, youthful offenders who are at least 14 years of age but are under the age of 18 at the time of reception (i.e., 17 years of age or younger) shall be separated from offenders who are 18 years of age or older.

The bill deletes the requirement that 18-year old youthful offenders can be assigned to a facility for 19-24 year olds if facilities designed for 14 to 18 year olds exceed 100 percent of lawful capacity.

The bill provides that FDC may assign a youthful offender who is not older than 17 years old to an adult facility for medical or mental health reasons, for protective management, or for close management. The bill also provides that a youthful offender shall be separated from offenders who are 18 years of age or older.

The bill also provide that if the youthful offender was originally assigned to a facility for 18- to 22-year old youthful offenders, but subsequently reaches the age of 23 years, FDC may retain the offender until the age of 25 if FDC determines that it is in the best interest of the offender and FDC.

The bill amends s. 958.11(3)(f), F.S., and redesignates it s. 958.11(5), F.S., to decrease the age limits currently set forth in that section. The bill provides that if a youthful offender was originally assigned to a facility designated for 14- to 17-year old youthful offenders, but subsequently reaches the age of 18

⁵⁴ 28 C.F.R. § 115.5.

⁵⁵ 28 C.F.R. § 115.14(a).

⁵⁶ 28 C.F.R. § 115.14(b)(1)-(2).

⁵⁷ 28 C.F.R. § 115.14(c).

⁵⁸ *Id.*

⁵⁹ See 2017 Department of Corrections Legislative Bill Analysis for HB 1201, Mar. 10, 2017 (on file with the House Criminal Justice Subcommittee).

years, FDC may retain the youthful offender in a facility designed for 18- to 22-year old youth offenders if FDC determines that it is in the best interest of the offender and FDC.

The bill deletes provisions in the statute relating to the reassignment of youthful offenders in the 19 to 24-year old group who are designated mentally or physically vulnerable. Likewise, the bill deletes the provisions in the statute relating to reassignment of youthful offenders in the 14- to 18-year old group who are disruptive, incorrigible, or uncontrollable.

The bill makes technical changes to incorporate the language and terminology used in the act.

The bill takes effect on July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.04, F.S., relating to Criminal Justice Investigations and Forensic Science Program; creation; investigative, forensic, and related authority.

Section 2. Amends s. 944.151, relating to security of correctional institutions and facilities.

Section 3. Amends s. 944.17, F.S., relating to commitments and classification; transfers.

Section 4. Amends s. 944.275, F.S., relating to gain-time.

Section 5. Amends s. 944.597, F.S., relating to transportation and return of prisoners by private transport company.

Section 6. Amends s. 945.36, F.S., relating to exemption from health testing regulations for law enforcement personnel conducting drug tests on inmates and releases.

Section 7. Amends s. 958.11, F.S., relating to designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.

Section 8. Amends s. 921.002, F.S., relating to the Criminal Punishment Code.

Section 9. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have an impact on state government revenues.
2. Expenditures: The Department of Corrections has indicated that the bill would decrease expenditures by \$499,415.

The portion of the bill that enables inmates to receive a one-time award of educational gain time will result in a small shift in the release date of some inmates. While the estimated long-term impact of the bill is indeterminate, the FDC estimates that the average daily population (ADP) will be reduced by approximately 86 inmates during the first year of implementation:

Year 1 Impact-Population Reduction: $(86) \times \$15.91 = \mathbf{\$-499,415}$.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not appear to have an impact on local government revenues.
2. Expenditures: This bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The 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: Section 945.10(4), F.S., currently requires FDC to adopt rules to prevent the disclosure of confidential records or information to unauthorized persons. To the extent that FDC would be permitted to share or disclose any confidential records or information with FDLE, the bill will require FDC to amend its existing rules set forth in Rules 33-401.701 and 33-601.901, F.A.C.

Section 958.11(1), F.S., provides that FDC, by rule, shall “designate separate institutions and programs for youthful offenders and shall employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders.” To the extent that the bill amends this statute, the bill will require FDC to amend existing rules as set forth in the relevant part of Chapter 33-601, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Clarifies that an inmate who was sentenced to prison on or after October 1, 1995, may not earn or receive gain-time or any other type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in the prisoner’s release, prior to serving a minimum of 85 percent of the sentence imposed.

On April 3, 2017, the Justice Appropriation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute (CS). The CS removes the portion of the bill that reclassifies Correctional Officer Lieutenant and Captain positions from Career Service status to Select Exempt Service status, which reduces the total fiscal impact of the bill by \$1,440,900.

This analysis is drafted to the CS as passed by the Justice Appropriations Subcommittee.